Response to draft 'Regulation of Australian Agriculture' Productivity Commission Report

August 2016

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NSW Farmers' Association Background

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

Executive Summary

NSW Farmers is Australia's largest state farming organisation representing the interests of the majority of commercial farm operations throughout the farming community in NSW. Through its commercial, policy and apolitical lobbying activities it provides a powerful and positive link between farmers, the Government and the general public.

The state of NSW is responsible for the production of almost a quarter of Australia's gross value of agricultural production and twenty percent of Australia's agricultural exports. Further the value of agriculture is vital to the regional economies with almost one in thirteen employees in NSW regions directly employed in agriculture, fishing or forestry.[1]

We welcome the draft report from the Productivity Commission (the Commission), which has provided some excellent recommendations which support farmers as small business operators exposed to a range of regulatory mechanisms.

Regulation should enhance productivity, not impinge it, and this must be the bottom line. Whilst there is often a negative interpretation given to regulatory burden, the Association recognises that many rules and regulations are necessary for the effective operation of business. Many of the benefits of regulation extend beyond the farmer to the general public; however their costs are imposed directly on the farmer.

In this context, we welcome the Commission's findings in relation to biodiversity and land use regulation generally. We offer here some specific observations on our members' situation in NSW to provide greater context for the Commission. However, with regard to animal welfare, foreign investment and competition policy the Association support the current position of the Federal and NSW Government.

We support existing provisions prohibiting cruelty to animals in both state legislation and through the Export Supply Chain Assurance Scheme (ESCAS). We believe that, to the extent that the public demands alternate animal husbandry practices, market-based drivers form best mechanism to provide signals for adoption by producers.

Further, we support the introduction of an effects test because when parties with market power engage in unilateral conduct that discriminates against their competitors, the discrimination may be subtle and difficult to clearly distinguish from legitimate business conduct. Competition legislation therefore must have regard to the effect of conduct on competition, not just the purpose of the conduct.

Finally, it is clear that the farming community is aligned with the majority of the Australian population in seeking greater scrutiny of and transparency around the foreign investment in agricultural land and water.

[1] NSW Trade and Investment (2015) The Contribution of Primary Industries to the NSW Economy: Key Data 2015, available from: http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0006/550347/contribution-of-primary-industries-to-the-nsw-economy-2015.pdf, accessed 11 August 2016.

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1. Land use regulation

1.1 Implementing land management objectives directly through land use regulation

The Association supports the Commission's recommendation to implement land management objectives through land use regulation rather than through pastoral lease conditions. The current system presupposes a homogenous landscape and does not allow for potential economic developments to the land. Legislation should allow for more versatility and flexibility in allowable activities. For example, the current 50ha cap on fodder production is not a sufficient figure to help farmers deliver their drought preparedness strategies. Increasing this to 100ha per 5000 Dry Sheep Equivalent (DSE) would be a more appropriate measurement for capacity fodder production and would allow greater flexibility in activity farm management.

Better technologies and sustainable farming methods have enabled farmers to gain more returns from their capital in the long run with very minimal, if any degradation to their land over time. With better technologies available in the agricultural sector, farmers are exploring new methods and practices successfully.

1.2 Converting pastoral leases to freehold and efficient land use

The Association supports this recommendation in part. We do not accept that free holding is always better than lease holding and we reiterate that the cost of converting a perpetual lease to freehold is a major concern for farmers.

The majority of our members in the Western Division are happy with their leasehold status, although some would like more flexibility with their covenants. The cost of conversion for most grazier leases would be far greater than the cost of converting a cultivation or agricultural lease due to the sheer size of most grazier leases, which make up the majority of the Western Division in NSW. As such, the costs are likely to far outweigh the benefits of conversion in most cases.

1.3 Additional property rights and rates for leases at market value

For this reason, the Association has policy that any conversion to freehold land must occur without restrictions or impediments. In addition, the terms upon which such conversions need to be calculated also need to be consistent with 'unimproved capital value' – the current rate in NSW of 3 per cent has seen a reasonable take up.

Government only holds a reserve 'historical' equity and, as a result of improvements, market value of many leases has increased. The rental charged by the government should always reflect their limited stake; they do not own the improvements.

State Governments should consider the value of stewardship over fragile ecosystems (managing weeds and pests, which farmers manage and pay for via rates to Local Land Services and in accordance with nationally agreed programs). This would not occur if State Governments made it unaffordable for farmers to maintain operations in marginal parts of the country. Distance makes it unlikely that alternate land uses will replace this kind of land stewardship.

1.4 Advantages and disadvantages of 'right to farm' legislation.

The Association advocates for right to farm principles to be legislated and not just found in local council practices, policies or local planning instruments or regulations that inform such. We note the Commission considers that land use conflicts would be more effectively addressed through improvements to the planning system, rather than through the introduction of right to farm laws.[2] The Commission refers to the Environmental Defenders Office of Tasmania (the only Australian State or Territory with current Right to Farm laws) recollection of only one application of the law in Williams Davies v Devonport City Council [2002] TASRMPAT.[3]

The Association would be hesitant to judge the effectiveness of a law based on the number of cases that proceeded through the Courts. In a recent analysis of right to farm laws across global jurisdictions, the NSW Parliamentary Research Service references one of the first ever United States analysis of the effectiveness of Right to Farm legislation which notes that:

> It is difficult to accurately gauge the effectiveness of the laws in preventing nuisance suits against farmers because it is hard to estimate how many legal actions are not filed due to the existence of the laws. But even in light of the problems with quantifying results, most observers would agree the laws are a valuable protection for agriculture. The laws provide some sense of security for farmers making investments in improving and expanding their farming operations. The laws also alert and place on notice those non-farm owners who move into agricultural areas that use of their property may be subject to the rights of the nearby pre-existing farm operations.[4]

Whilst it is important that right to farm principles be found in subordinate legislation and policy, we maintain that a specific Right to Farm law itself is warranted because it serves to both prevent nuisance claims against lawful agricultural activity and indirectly strengthens farming principles across the community - law, regulation, policy and local practical application, at all levels of Government. Importantly in the context of local council planning, it is the most common point of land use planning interface experienced by agribusiness. The perception of our members in many, particularly eastern (coastal) and highly urban-fringed, councils, is a lack of regard for existing and lawful agricultural practices, which is a fundamental driving force for our Association in pursuing right to farm legislation. Peri-urban agriculture plays an important role in providing

[2] Productivity Commission, *Regulation of Australian Agriculture, Draft Report*, p. *76*
[3] *ibid.* p. 75
[4] NSW Parliamentary Research Service e-brief 5/2015 p. 6. Original source- ND Hamilton, "Right to farm laws reconsidered: ten reasons by legislative efforts to resolve agricultural nuisances may be ineffective" (1998) 3 *Drake Journal of Agricultural Law* 103 at 104

near-to-market fresh produce as well as employment and ultimately a key economic driver for communities.

In the case of poultry meat production, the issue is particularly pertinent. The structure of the supply chain and the welfare and health of the animals means that poultry farms need to be both clustered in proximity to each other and in proximity to processing sites. Furthermore significant infrastructure is required to house these animals on-farm.

Re-location is not an option and investment certainty is crucial. It could be argued that better informed Council decisions in terms of the principles of Right to Farm, would have prevented the vast amount of land use conflict we know is currently occurring in the poultry growing local government areas of NSW and beyond, and threatening the viability of a number of poultry businesses in this state right now.

We know that Right to Farm laws alone are not a panacea to agricultural and urban land use conflict or for that matter, the prevention of unfounded nuisance claims. However right to farm laws are needed to both firmly establish the lawfulness of existing use and to create a holistic planning system that promotes rather than restricts the critical role of agriculture in the nation's economy, society and environment.

The study referred to above concluded that 'for either the farming operations or farmland aspects of right to farm laws to function most effectively the law must be part of a more comprehensive program, such as a system of planning, regulation and economic incentives.[5] The recently released NSW Right to Farm policy is a sound starting point that our Association has welcomed with the view that the use and application of this policy will contribute to the evidence required to substantiate Right to Farm legislation.[6]

Beyond a Right to Farm – a 'master plan' approach

Australia lags behind the developed world in applying master planning approaches to agriculture. In urban and peri-urban areas, intensively planned agricultural precincts are a key element in ensuring a sustainable future for intensive agricultural production.

However, planners tend only to tolerate agriculture as a surrogate for green space. In other words, they will 'protect' unproductive pastoral land in peri-urban areas while driving out intensive production such as greenhouses and chicken sheds.

With good planning and design to incorporate visual amenity, buffer zones, recycling and renewable energy, intensive production precincts can be valued adjuncts to our towns and cities. However, to progress from vision to reality, sophisticated planning and analysis is needed to achieve synergies across commercial, employment and amenity outcomes.

[5] *ibid*.

[6] Available at http://www.dpi.nsw.gov.au/content/agriculture/resources/lup/legislation/right-to-farm-policy

The Association advocates a strategic planning approach that locates sustainable food and fibre precincts in expanding regional hubs and growth centres such as Badgerys Creek in Western Sydney, as well as protecting existing peri-urban agricultural enterprises.

Purpose built precincts, tailored to regional strengths, would enable agricultural production to be co-located with value-adding facilities and waste and water recycling plants, with economies of scale around ICT and infrastructure (see Tamworth case study below).

Both council and industry would benefit from the reductions in red tape resulting from a precinct approach to new development. To take the Tamworth example, the benefit of one EIS for a well located precinct, compared to 400 EISs scattered across an urbanising community is obvious.

Case study – a sustainable food precinct for Tamworth

NSW Farmers has been seeking prefeasibility funding with Namoi Council and other industry stakeholders to facilitate creation of a 'sustainable food precinct' in Tamworth.

The proposed development would co-locate new chicken sheds with processing and recycling facilities in a purpose built precinct that uses advanced technology to achieve water and energy self sufficiency, and improved standards of animal welfare and biosecurity.

Massive expansion in chicken meat production and processing, with as many as 400 new production sheds in the pipeline, means additional jobs, increasing housing demand, and is great news for the regional economy. It also creates a suite of planning challenges for Council and industry.

Chicken meat production involves costly waste management problems, including amenity issues around the coexistence of industry with residential accommodation. Further, the new production and processing facilities require energy. This presents an opportunity to meet new demand for energy through recycling the waste and using it to power a small scale gas power plant.

The project would address real-world local government and industry problems surrounding the zoning of industry, waste management, energy supply, water and transport efficiency. It would also reduce infrastructure and development costs, streamlining approvals, and present marketing opportunities.

To go any further, the project demands intensive analysis and a master planning exercise to enable development of firm business plan. Unfortunately, existing funding and incentive programs don't cover the alignment and prefeasibility steps required to get projects such as this to implementation. Despite the talent and good will of people working within funding bodies, such solutions typically don't fit the administrative models that they have to work within.

The Association holds that there should be incentives for advanced manufacturing in food and fibre are embedded in regional development policy, and national

industry development and infrastructure policy. Further, consideration should be given to the creation of sustainable food and fibre precincts in regional hubs.

1.5 Highest value land use

The preservation of agricultural land could indeed prevent land from being put to what is *notionally* its highest value *short term* use. However, the Association submits that this finding needs greater consideration, especially when considering the long term impacts of extractive industries. Extractive industries have the potential to affect the characteristics of agricultural land permanently.

Extractive industries can often cause irreparable damage to the long term productive capacity of the land on which they operate. It is the Association's view that in many cases, the greatest Net Present Value from land use will only be achieved when agricultural land remains undisturbed by extractive industries. This is especially the case given the jobs and export revenue that is created long term along the agricultural supply chain. The same consideration must also be given to the loss of agricultural land through the extension of peri-urban and urban development.

For example, in NSW, for the purposes of the NSW *Strategic Regional Land Use Policy* (a policy designed to strategically plan resource and agricultural land use), the State's *Biophysical Strategic Agricultural Land* (BSAL) was identified and mapped across the State. BSAL is NSW's highest naturally occurring quality agriculturally productive land, and is mapped using widely accepted threshold criteria: soil fertility class, soil capability, rainfall or access to water etc.[7] BSAL, NSW's best and most productive agricultural land, occurs in only 3.5% of the land in NSW (approximately 2.8million hectares).

There is currently no mechanism within the NSW planning framework to preserve *any* agricultural land, let alone BSAL. It could be the case that today for land containing significant tracts of BSAL is enjoyed at its "highest value" in use in the resources (extractive) sector. However, the nature of BSAL means that it cannot be re-created (it is naturally occurring).

At only 3.5% of land in NSW, we believe it would be in the strong interests of the State to preserve at the very least the area of BSAL exclusively for agriculture, and therefore caution should be exercised when using the term 'highest value use'. To whom and over what time period a 'highest value use' is, may become relevant when considering the potential permanent reduction of high value agricultural activity if land is committed to other uses.

1.6 A right of veto by agricultural landholders over resource development

Landholder veto would empower all farmers in all land access negotiations and the benefits of this should not be under-estimated. However, we agree with the

[7] See NSW Government *Interim Protocol for site verification and mapping of biophysical strategic agricultural land* available at http://www.planning.nsw.gov.au/Policy-and-Legislation/Mining-and-Resources/~/media/ED7BE8EE5FC34A71889FE89CF744D846.ashx

Commission in that a legislated 'right to say no' could mean that important resource development projects could be prevented by a small number of landholders (or even an individual landholder).

For these reasons, we believe that more important than landholder veto is a) strengthened landholder rights, and b) a strategic approach to exploration licence allocation by the appropriate government. We seek balanced land access and compensation laws setting a fair playing field where landholders cannot be forced to grant access to their land when there are clear and unacceptable risks to either the farm business or the peaceful pursuit of the property rights.[8]

As mentioned by the Commission[9], in 2014 we signed an MOU with two of the State's largest CSG companies, Santos and AGL 'principles of land access' whereby those companies agreed to respect landholders' wishes to refuse to grant access. This was a very well received agreement mostly in that it was a voluntary commitment. Importantly, a 'right to say no' or strengthened landholder rights should not be considered in isolation to broader environmental impact issues. A strong, scientifically based regulatory regime with adequate protection of agricultural land and water along with strengthened landholder rights is the focus for the Association.

[8] NSW Farmers' policy [AC13]: That the NSW Government:
a) break the nexus implied by fees levied on granting a coal exploration licence and granting a mining licence;
b) require the granting of all exploration, mining and coal seam gas licences be subject to achieving a triple bottom line benefit; and
c) amend relevant legislation to include land owner's time as a compensable loss in negotiating access agreements.

[9] Productivity Commission, *op. cit.*, p. 81

2. Environmental regulations

2.1 Native vegetation and biodiversity conservation regulations

NSW Farmers welcomes and supports the Commission's recommendations in relation to native vegetation and biodiversity conservation regulations. Since submitting comments to the Commission welcoming a NSW independent expert panel's 43 recommendations for biodiversity legislative reform, the NSW Government has released a draft policy package to reform the native vegetation scheme in NSW. We are currently advocating for changes to this draft package which would reduce the complexity and costliness of the proposed system whilst ensuring healthy biodiversity in the most equitable and practically fair way for all the people of NSW.

Key to the changes we are seeking to the reform package is the incorporation of the fundamental elements of the independent panel's recommendations (for example moving from site based assessment to strategic landscape approach to conservation management). We particularly will be seeking the consistent consideration and balance of the economic, social and environmental factors, a consideration that has been categorically and explicitly absent in NSW under the current *Native Vegetation Act 2003* (NSW).

An additional consideration for farmers following reform of the state based regulatory scheme will be *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC) obligations. The Association agrees the Commission's findings about the experience of landholders in relation to the two varying legislative schemes. From a farmer's perspective, two schemes could be regulating simultaneously yet differently the same natural feature on their farm. The level of variation in the state versus Commonwealth listing process, from threshold criteria requirements for determining endangered ecological communities to information dissemination, is varied and therefore confusing, not well communicated, duplicative, and not widely understood by landholders. We agree that knowledge of the *EPBC Act* is extremely low amongst farmers.

It would be contradictory to recommend better communication of the *EPBC Act* if the *EPBC Act* itself does not fulfil the recommendations put forward about natural resource management legislation *i.e.* ensuring that they are risk based (proportionate to the impacts of their proposed actions), rely on assessments at the landscape scale (not just at the individual property scale) and consistently consider and balance economic, social and environmental factors. The *EPBC Act* should not be immune to the scrutiny involved in the pursuit of achieving better regulation. If it's not evident that triple bottom line outcomes are being considered, for example, then options need to be explored to improve this.

It is submitted that reform of the *EPBC Act* is required to truly harmonise the state and federal schemes and reduce unnecessary red tape. We strongly oppose any Federal Government intervention in or use of constitutional powers to limit any

right of farmers in NSW under any NSW biodiversity or land management legislation.

The *EPBC Act* relies on an expensive 'referral' system- referral is the only way to ensure compliance with the Act. This means that there is no certainty that low risk, potentially self-assessable and 'code of practice' based activities (such as those proposed in NSW) do not require referral at the Commonwealth level. This means that a farmer could have his clearing activity 'certified' by the Local Land Services and yet still be in breach of the Commonwealth legislation, when undertaking the activity. Not only is it procedurally unfair it isn't logical to regulate the same species or native habitat twice and differently.

This is an obvious opportunity to remove unnecessary red tape, duplication, and a lot of confusion and potential non compliance, whilst still ensuring the protection of species and habitat that the Australian people want to protect.

We submit that the *EPBC Act* needs amendment to either provide a means to certify state based low risk (self assessable) activities, or a mechanism to ensure compliance that does not involve the referral process. We agree with the Productivity Commission's recommendation that the Department can improve on its communication procedures to landholders and this is important, however it is submitted that amendments to the *EPBC Act* itself are required to establish fully a one-stop-shop model and a harmonised approach. This is becoming urgent as legislation is expected to go to the NSW Parliament this Spring Sitting and be activated in mid-2017.

3. On-farm regulation of water

3.1 The cumulative burden of regulation and appropriate regulatory settings for accessing water

We support the Commission's findings in relation to the cumulative burden of regulation on farm businesses and that more flexible arrangements may be needed to develop locally appropriate regulatory settings for accessing water. Particularly highlighting the need for adaptive and flexible management is the case of 'environmental flows' (variably known as translucent, transparent or dilution flows) where 'set and forget' rules within certain NSW river valleys' Water Sharing Plans created perverse environmental outcomes where a better environmental and economic/social outcome could have been achieved by the strategic variation of those rules. We therefore agree and support the flexibility proposed by the Commission and argue that this is imperative to improving the settings in the water policy arena as experienced by irrigators and regional economies in the Murray Darling Basin in particular.

We understand and appreciate the need for government action in regulating this highly valuable and scarce resource, and the move from administrative water policy to market based allocation of water.[10] However, as the Commission finds, the absolute complexity and layer upon layer of regulation in the water policy and planning context experienced by all jurisdictions clearly calls for simplification. The constant change in pricing and charging rules coupled with a high number of both state based and Commonwealth agencies has amounted to a reduction in certainty for farm businesses and a lack of transparency of, and accessibility to, information about the market and regulatory context.

3.2 Critical role of information technology in water regulation

Bulk water regulation, allocation and trade, demands seamless electronic service delivery.

Advances in telemetry, automation and cloud data base technology have removed any technical barriers to the implementation of an integrated national digital platform for regulation, allocation and trade in the Murray Darling Basin.

It is illogical to disconnect water exchange functions from water management and regulatory functions. To trade water you need to know with precision exactly what is available, when it can be delivered and the rules that apply. If national government could competently provide real time water management and regulatory data, building a seamless and comprehensive national water exchange would be relatively easy. Water brokers and small scale water exchanges only exist because government data is inadequate.

[10] *ibid*., p. 147 citing Connell 2007

The time has come for Australia to commission a top tier commercial ICT firm to analyse the Basin's total water information needs and build a solution that is fit for purpose. This is likely to entail taking the management of water information programs out of the hands of state and federal government departments and entirely replacing legacy systems.

Such a process would need to be supported by policy reform and harmonisation to meet the special requirements for implementation of regulation and trading rules within computing systems.

4. Regulation of farm animal welfare

4.1 The market versus the regulators

The farm sector finds the recommendation of an Office of Animal Welfare unusual in the absence of an analytical basis.

In the first instance we would urge the Commission to reconsider their recommendation in the light of the Australian Government's *Guide to Good Regulation* and the Council of Australian Governments' *Best Practice Regulation - A Guide for Ministerial Councils and National Standards Setting Bodies*. The relevant key principles are that regulation should:

a) not be the default option;
b) be in response to an identifiable market failure, regulatory failure or an unacceptable hazard or risk;
c) be targeted to a specific problem and confined to that problem;
d) be effective and proportional to the problem that is being addressed; and
e) not restrict competition unless it can be demonstrated that the benefits outweigh the costs and the objectives of regulation can only be achieved through restricting competition.

Against any of the measures set out above, the proposed Office of Animal Welfare is ill-conceived and unwarranted. It appears to rest on the principle that the community attaches a value to farm animal welfare that is distinct from the value that animal welfare contributes to the productivity and profitability of the farm business. [11] This claim ignores the link between market drivers and animal welfare outcomes.

This is borne out most clearly in the Commission's proposed conceptual relationship between productivity and welfare[12] which attempts to rationalise welfare in the market using production economics. We suggest that the Commission should explore the animal welfare economy in more detail.

Animal welfare is intrinsically linked to the economic productivity and profitability of farm businesses. Indeed, market forces over recent decades has seen consumer demand for alternate production systems create more choice for consumers with regard to livestock raising procedures. This can result in alternate production systems for animals. This is evidenced by free range credence claims, sow stall free pork and grass-fed beef. The report notes that these may not be scientific and we argue that therefore they should be the province of the market, rather than legally prescribed (see below, 5.3).

Tellingly, the Commission proposes that there are elements of animal welfare (such as the use of invasive procedures without anaesthetic) that are not responsive to market pull-through or higher prices which would incentivise producers to adopt alternate production practices. The Association submits that

[11] Productivity Commission, *Regulation of Australian Agriculture, Draft Report*, p. 176
[12] *ibid*.

where this is the case, there is nothing precluding such a mechanism from being adopted.

A case in point is mulesing. Mulesing is a contentious animal welfare issue and the subject of agitation amongst interest groups. We believe that mulesing is a necessary procedure to protect sheep from the debilitating condition of fly-strike.

We support the right of farmers to mules. However we do seek the mandating of the National Wool Declaration (NWD) which allows producers to declare whether or not they have mulesed their sheep during wool production. By mandating this declaration, we hope that there will be a clearer market driver for producers to adopt this practice. As market drivers evolve we would expect that competition for certain types of pain relief and alternatives to mulesing would be enhanced.

If the government is looking for economic drivers to enhance welfare outcomes, then these are the areas of regulation that should be examined. This is one small and discrete example of a regulatory mechanism (the mandating of the NWD) that would enhance and enliven the economy of animal welfare. The market is capable of dealing with 'perceived community attitudes'. In the hands of regulators, dealing with such a fluid and politically complex subject is a messy and inappropriate intervention.

Fundamentally, animal welfare is a *value system* that people engage with through *consumption*. That should not be distorted or undermined.

4.2 Standards and guidelines

The Commission cites a lack of consistency across jurisdictions with respect to the Australian Animal Welfare Standards and Guidelines. It goes further to note that the standards themselves do not deal specifically enough with analgesics for invasive procedures.

The case studies used as market failure include lowering stocking densities in poultry systems used for egg production and the use of pain relief for invasive procedures such as mulesing or castration, that impose costs with limited offsetting productivity improvements.

The Association is firmly of the view that stocking density shouldn't be used as a proxy for animal welfare and, where analgesics are necessary, voluntary uptake is occurring. This was reinforced at the 2016 NSW Farmers' Annual Conference where members voted to urge the use of pain relief when mulesing and to call for the mandating of the National Wool Declaration which is the very regulatory instrument that will create support the market to drive change. This would be a welcome regulatory intervention and would be consistent with best practice regulatory guidelines.

4.3 Science and perception

The Commission notes that whilst ethical considerations are important in determining the acceptability of welfare standards, it is critical that views about animal welfare are based on credible science. It goes on to spell out the complexities of such ethical considerations through the case study of egg production.

> For instance, people may believe 'free range' eggs to always be superior to cage egg production, but neglect the risks posed by predation, feather pecking and cannibalism in some free range systems (UK DEFRA 2005). And most people accept that there can be tradeoffs between standards and the costs and practicality of achieving them. For that reason, it is important that factual (scientific and economic) considerations are separated from judgements about what is appropriate (ethics) and that an effective governance framework is in place for this to occur.[13]

In arguing for a scientific basis for assessments of animal welfare, the Commission has failed to properly articulate how an Office of Animal Welfare would address animal welfare concerns on the basis of scientific evidence. Further, should such assessment be made purely on the basis of science, there is a possibility that this would act to distort the market.

Animal welfare is not a binary concept. It involves trade-offs between production systems. Whilst caged eggs create a higher level of confinement for the hen, they provide an environment which excels in all other forms of welfare: disease, predation and exposure to externalities.

4.4 The Association's position

On the basis of the above information, we reject the need for Federal Government oversight of animal welfare (recommendation 5.1) and suggests that current state government monitoring and enforcement functions are adequate and do not require a review (recommendation 5.2). We would welcome the examination of best practice guidelines as useful tools.

The basis of our submission on these issues is that regulation in regards to animal welfare is sufficient and that there is no market failure that extends beyond state-based Prevention of Cruelty to Animals legislation.

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[13] *ibid*., p. 178

5. Access to technologies and agricultural and veterinary chemicals

5.1 Access to genetically modified organisms and products

The Association's response to the issues paper outlined support for the ability of a farmer to select the farming system they seek to implement, including the use of genetically modified crops, such as cotton and canola, or alternatively the implementation of conventional and organic farming systems. Key to facilitating farmers' right to chose is ensuring that the facts about crops that have been bred using genetically modification, the production systems used in their cultivation and control down the supply chain dominate debate.

This includes promoting awareness within industry and the broader community about:

- How the approach taken by the Office of the Gene Technology Regulator in the approval of genetically modified crops for use in Australian agriculture to ensure there are no detrimental health implications meets world's best practice; and
- The ability of GM and non-GM farmers to successfully co-exist over the period 2008 to present.

On this basis, we support the view proposed by the Commission that relevant Commonwealth and state agencies should engage in program to develop community awareness that will accurately inform them of the risks and benefits to the Australian community from genetic modification technologies.

5.2 Information and communication technology (ICT)

Information and communication technology (ICT) impacts every aspect of agriculture from precision agriculture and automation on-farm, through to disintermediated, direct marketing solutions. In the absence strategic regulatory and programmatic measures there is a risk that farmers will become price takers in the digital economy.

Farmers across every sector need access to digital solutions and connect seamlessly with upstream compliance, supply chain and marketing processes.

Many of the systems so far developed for agriculture (*e.g.* decision support tools, electronic identification for livestock) have been designed 'top down' to fit academic, policy or agribusiness agendas. As a result, they seldom allow farmers to work the way they need to and fail to make concrete contributions to farm gate value.

Increasingly, we are seeing up stream business demanding data from farmers without providing anything in return.

Currently there is no government body focussed on helping farmers engage with the digital economy on a commercial basis, *i.e.* in a way that enables them monetise the data they generate and/or use to it increase market power.

5.3 Regulation of telecommunications

The Commission notes the loss of productivity that occurs in farm businesses through inability to access affordable, quality telecommunications services.[14] Given the 'thin' nature of rural telecommunications markets and the lack of competition for services (particularly for mobile services), having the right regulatory settings is of particular importance.

The regulatory settings regarding telecommunications are unlikely to be considered a direct 'burden' on agriculture. However, in setting the parameters that guide, "investment decisions by governments, industries and the community"[15], these settings have a very real and immediate impact on the extent to which market failure in telecommunications is experienced by farm businesses.

The Universal Service Obligation (USO) is one of the settings that has the most influential role in shaping the rural telecommunications landscape. NSW Farmers considers that in light of the NBN roll out, it is time to update and modernise the USO. A USO should include:

- Minimum standards for voice and data services
- Updated consumer protections equivalent to the current Customer Service Guarantee
- Regular public reporting by both retailers and the wholesaler (nbnco) on how they are meeting any standards that are put in place under the new USO
- Provision for a retail and wholesale provider of last resort
- A means through which customers across regional Australia can hold both retail and wholesale telecommunications companies to account for poor service, and
- Establishment of a permanent fund for the mobile black spot program which rolled out towers that increased both coverage and competition in rural telecommunications.

5.4 Access to agricultural chemicals and veterinary chemicals

Use of international decisions

The Association welcomes the Commission's conclusion that reform to the system of pre-market approval of agricultural and veterinarian chemicals (agvet chemicals) has the potential to ameliorate the market failure which presently limits optimal access to chemistry to Australian farmers. Draft Recommendation 6.2, that the Australian Pesticides and Veterinary Medicines Authority (APVMA) should make greater use of international evidence in its assessment of agvet chemicals, provides one of the steps to reducing this burden on industry.

[14] *ibid*., p. 244-5
[15] *ibid*. p. 245

Specifically, the Association believes that the APVMA should develop systems that enable them to rely on hazard assessments, such as human toxicological assessment, where they have been undertaken by a trusted international agency that has utilized an approach that is in accordance with Australia's assessment regime. This would include Joint FAO/WHO Meeting on Pesticide Residues (JMPR), the Joint Export Committee on Food Additives and Veterinary Drug Residues (JECFA) or the Global Joint Review program as well as other recognised international jurisdictions.

While the APVMA has flagged that its policy is to accept these decisions, it is done on a case by case basis, and requires the registrant to provide the data that was relied upon as part of the international assessment it seeks to rely upon. We are concerned that this leads to the potential entrenchment of a duplication of hazard assessment by the APVMA. This in turn will continue to duplicate regulatory costs, failing to provide full relief to the opportunity cost of foregone optimal access to agvet chemical products.

Likewise we would be supportive of the development of an agri-ecological regional co-equivalency model to guide the APVMA's ability to rely on international environment exposure assessments depending on the source of data generation and the target pest and host in its application to the Australian operating environment. This could create a lower regulatory pathway for assessment modules by enabling reliance upon overseas data where agri-ecological co-equivalency exists.

Beyond acceptance of international hazard acceptance and assessments utilizing a co-equivalency, we reiterate our view there are clear limits to the ability to accept international regulatory decisions. Specifically, we do not accept the *ipso facto* use of regulatory decisions made in other jurisdictions as a valid justification for a domestic regulatory decision for chemicals used as part of agricultural production. This is likely to lead to less stable decision making and increases the risks of the politicisation of the approval of chemicals for use by the Australian farm sector due to the different tests used in overseas jurisdictions.

Access to Minor Use Chemicals

While not restricted to minor uses of chemicals, the opportunity costs of market failure in the registration of agvet chemicals are most clearly observed where the host crop, livestock species or environment; or target pest is not of a sufficient scale to support the full costs of registration. In considering the regulatory problem associated with opportunity costs of minor uses of agvet chemicals, we acknowledge the Commission's view that recommendations surrounding the funding of a minor use program was out of scope of the inquiry.

Despite this, we recommend that the Commission consider options for regulatory reform that will reduce the burden of the opportunity costs borne by impacted farmers.

Drawing on the experience of the two North American minor use programs, Crop Protection Australia (CPA) identified regulatory incentives as critical to the long

term success in alleviating market failure in the registration of minor use chemicals.[16] Further, it was the conclusion of CPA that not only do well designed incentive programs reduce market failure in the registration of minor use chemicals; in some jurisdictions their impact has been so successful that the *need for Government co-investment no longer exists*.

On this basis, we recommend that further investigation be undertaken to design appropriate regulatory incentives for inclusion within the *Agricultural and Veterinary Chemicals Code*. An appropriate commencement point for such an investigation is the suite of incentives identified by the OECD. They are:[17]

- Economic incentives:
  - data protection and extension of data protection.
  - expedited reviews.
  - fee reduction or waivers.
- Technical arrangements based on sound science:
  - extrapolation and mutually accepted data.
  - reduced requirement for trials.
- Promotion of safer alternatives:
  - reduced risk incentives.
- Liability:
  - liability waivers and disclaimers.

National Harmonisation of Control of Use of Agricultural and Veterinary Chemicals
The Association supports the recommendation that the national harmonisation of control of use of agvet chemicals should be expedited.

With regard to this recommendation, it is crucial that the harmonisation effectively harmonise allowed off-label use by enabling growers to use registered agvet chemicals on crops that are not included on the registered label.

In NSW the lack of off label use of chemicals has reduced NSW producer access to chemical options which competing producers and cross border Agricultural operators benefit from in Victoria or also South Australia.

[16] Rohan Rainbow, 'Delivery of Access to AgVet Chemicals Collaboration System' (RIRDC Final Report to Department of Agriculture and Water Resources.
[17] OEDC, 'Guidance Document on Regulatory Incentives for the Registration of Pesticide Minor Uses' (2011).

6. Transport

6.1 The National Heavy Vehicle Regulator (NHVR) and delays in road access

The Association supports the Commission's finding that "there remain significant variations and inefficiencies in heavy vehicle regulation, including delays in road access permits".[18] Our members have felt the impacts of delays in processing road access permits particularly acutely. The current delays are forcing operators who strive for compliance into situations of constrained productivity, and towards a situation of growing apathy towards both the regulator and the law.

The timeframes in which access permits are currently processed does not match the business needs of farmers who need to be able to move agricultural machinery at short notice. Notwithstanding this, farmers have to continue to operate their businesses and manage their risks appropriately. The regulation needs to work alongside farmers in doing this, rather than fostering disengagement.

The Association believes that there are a number of initiatives that will improve the speed with which access permits can be granted to the industry, outlined below.

6.2 A national agricultural notice

Whilst not directly identified in the Commission's draft Report, the development of a National Agricultural Notice would immediately reduce the volume of permits required to be processed by the NHVR. This would also obviously assist in removing existing variations across jurisdictions and the inefficiencies that this creates through perverting choice of vehicle and creating additional paperwork.

However, the NHVR has indicated that it does not have sufficient resources to deliver a national agricultural notice within the next two years. The Association believes that additional resources should be allocated to the NHVR so that it can expedite the development of this notice. The efficiencies that would be immediately generated from such a notice, for both government and industry, would quickly compensate for the allocation of additional resources.

6.3 Increased gazettal of roads and funding for road assessment

As identified by the Commission, increased gazettal of local and state roads for the movement of agricultural combinations is also critical to overcoming issues with permits and inconsistent regulation. The Association also supports the Commission's recommendation that there should be greater funding for road assessment. The baseline knowledge generated through such assessment is the cornerstone of access decisions.

[18] Productivity Commission, *op. cit.*, p 307

The creation of a specific Federal or State Government fund to facilitate such assessments would provide particular benefits in NSW, where the resources available to many local councils in NSW are not commensurate to the size of the road network that they manage. Everything that can be done to remove permits from the access system should be done.

We believe that the continued implementation of the NHVR's *Access Connect* Initiative should also assist in drawing together the benefits that will result from greater gazetting and a national notice.

Aligned with this, we also support the NVHR being delegated greater authority by state and local government road managers to grant access to road networks once road managers had granted initial access for a class of vehicle (subject to the road conditions). The NVHR was originally intended to have greater responsibility delegated to it, as outlined in the 2011 Draft Heavy Vehicle National Law.[19] Greater delegation to the NHVR would compliment work on a national agricultural notice, and the increased efficiencies that can be generated through the *Access Connect* initiative.

6.4 Road user charging

We support the introduction of a national distance based charge for the registration of primary producers' heavy vehicles. This should be a part of a fair and equitable system of road and rail pricing that enhances productivity and efficiency throughout the transport sector. User charges should be relative to road damage caused by individual vehicle types, loads carried and distance travelled, and, in terms of registration, should exclude off-road usage by primary producers.

However, our support is given with several caveats. Firstly, road user charges should not increase the tax burden of transport operators (through increased general road user charges) or be used as general revenue. Secondly, registered primary producer vehicles should be exempt from the installation of regulatory tracking devices.

6.5 Risk and moving oversize agricultural machinery

As indicated in our initial submission to the Commission's inquiry, the Association believes that in many cases the heavy regulatory burden currently placed on the movement of agricultural machinery and combinations (especially in NSW), does not match the risk posed by these movements.

The Association is continuing discussions with RMS about expanding the vehicle envelopes currently defined as 'high risk' agricultural movements. This includes consideration of how to improve the speed of issue and utility of permits for the movements of oversized agricultural machinery. We are encouraging RMS to

[19] National Transport Commission (2011) *Heavy Vehicle National Law Draft Bill Part 8, Division 1, Section 143*, available at http://www.ntc.gov.au/Media/Reports/(EF96D60D-C181-87FD-D832-E519CF92C326).pdf, accessed 8 August 2016.

progress towards a system that allows permits to be user generated via an instant online interface for routine, relatively low risk movements.

The Productivity Commission's discussion of the differences between Victoria and NSW regarding movement of agricultural vehicles after dark is an excellent example of where in NSW regulation in no way attempts to respond to the risks posed by a movement.

We completely endorse the Commission's comments that, "There appears to be some scope to increase flexibility for moving oversized agricultural machines without impacting on public safety."[20]

6.6 Reallocation of funding from the Road Safety Remuneration Tribunal

The Association believes that the allocation of funding from the Road Safety Remuneration Tribunal (the RSRT) to the NVHR, as outlined in recommendation 8.4, is an appropriate allocation of funding to ensure better road safety practices.

There is limited evidence to support the link between stringent regulation of transport contract price and safety improvement. The costs of maintaining the RSRT outweighed the costs to the community.[21] The Government made the right move in abolishing the RSRT.

The reintroduction of the RSRT, or a body founded on the same rationale as the RSRT with similar functions of regulating contract price, is still being agitated by the union movement. The Road Safety Remuneration (RSR) system caused significant overlaps across heavy vehicle safety, road safety, employment and workplace safety laws. Even though the RSRT was relatively short lived, it threatened the livelihood of small business owner drivers and created significant confusion and uncertainties in the industries that rely on them, including agriculture. The creation of the RSR system was flawed and the same mistake should not be allowed to occur again.

6.7 Chain of Responsibility

The Commission discussed changes to work diary requirements reducing the burden of Chain of Responsibility. As outlined in our previous submission, as long as farmers remain without detailed guidance on how they can legally discharge their obligations, Chain of Responsibility legislation will remain a significant issue.

Additionally, the primary producer exemption, framed as a means of reducing red tape[22], has actually acted to increase regulatory burden on farmers in NSW.

[20] Productivity Commission, *op. cit.*, p. 314
[21] PricewaterhourseCoopers, *Review of the Road Safety Remuneration System: Final Report*, January 2016
[22] Productivity Commission, *op. cit.*, p. 317

The previous NSW notice allowed an exemption if a farmer was "driving a heavy vehicle on a journey for the purpose of primary production within a radius of 160 kilometres of the driver's base"[23], and defined primary production in such a way as to allow farmers an exemption when they travelled to pick up of farm supplies, which frequently occurs after a farmer has delivered primary produce to a point of sale or distribution.

The national notice that has replaced the NSW work diary exemption only allows a primary producer an exemption if they transport primary produce directly to a point of sale or distribution, and if they then return to their base without deviation. This precludes the pickup of farm inputs as a part of the return trip – doing so would invalidate the exemption. The Association has communicated this discrepancy to the NHVR, and it is our understanding that they will be seeking to address it and to restore the ability for the exemption to be used to transport farm inputs.

[23] Commonwealth of Australia (2015) *Heavy Vehicle National Law, New South Wales Work Diary Exemption (Notice) 2014 (No. 1) Amendment Notice (No 1) (2015)*, available from: https://www.nhvr.gov.au/files/c2015g00516-nsw-work-diary-exemption-amendment-notice-no1.pdf, accessed 10 August 2016.

7. Food regulation

7.1 Country of Origin Labelling

The Australia New Zealand Food Standards Code includes a mandatory regime which operates within Australia, however it fails in its current form to provide transparency of the origin of ingredients to consumers that would enable them to exercise their purchasing preferences with certainty. The Food Standards Code requires all packaged and unpackaged food to be accompanied by a statement identifying the country of origin. It also requires a statement on the package that indicates to the effect that the food is either a mix of imported foods or from local and imported ingredients. NSW Farmers believes the relaxed stance, enabling food to be labelled as having a mixed origin, frustrates the objective of country of origin labelling.

Without a requirement to make a clear and understandable disclosure as to the origin of food, a form of market failure in which food of either a mixed origin or of an imported origin is represented as having an Australian origin has occurred. This not only impacts a consumer by frustrating their consumption choices, it further impacts on the market signal to Australian farmers to continue to invest in safer and more sustainable production and distribution practices.

While no voluntary standard presently exists, such disclosure is already lawful provided that the obligations of the Food Standards Code are met. The fact that NSW Farmers is not presently aware of any companies providing this level of disclosure demonstrates a level of market failure. Therefore NSW Farmers believes it is necessary to mandate food processors to disclose the relative proportion of local and imported ingredients and characterising ingredient/s for all products. This should be reinforced in the Food Standards Code.

7.2 Egg Stamping

The Association fully endorses egg stamping and has worked closely with the NSW Food Authority on the roll out of this industry-wide practice. Food traceability is a trend that will only become more acute and to consider devolving the traceability that has been achieved in this area would be extremely concerning to the sector.

Egg stamping has demonstrated clear benefits for consumer health and food safety and any commonsense assessment of the net benefit to farmers and the community would implicitly endorse the continuation of this practice.[24]

[24] We are concerned that the Commission has raised the issue of egg stamping. We suggest that the Commission examines the members of the NSW Egg Farmers' Association and whether it represents any significant portion of the NSW egg industry.

7.3 National Information Standard on Free Range Eggs

The National Information Standard on free range eggs was the subject of a rigorous regulatory process which involved a Regulatory Impact Statement (RIS) and a Decision RIS. The result of the process provided both consumers and industry with certainty about what they were buying and how it was being produced.

For industry, the most important aspect of this decision was that it ended the long era of uncertainty on what constituted free range production and which stalled all investment in new free range egg infrastructure. With egg consumption continuing to grow, this decision drew an important line under the issue for farmers and allowed for the opportunity to invest. The nation is still experiencing a shortage of eggs. That shortage was a direct result of a lack of new investment. For the Commission to unpack this issue and suggest it be the subject of ongoing examination is alarming and economically irresponsible.

7.4 Opportunities to further reduce the burden of regulatory food safety audits

The Association agrees that the ability for government to reduce the burden of regulatory audits is limited by importing country requirements. We believe that the opportunity to reduce the regulatory food safety audit burden still focuses on the ability to effectively negotiate with an importing country the conditions and checks of approval they require, which affects if a state based or Commonwealth based audit is required.

We see an opportunity to explore projects within industries to help influence negotiations with importing countries, such as the recent NSW DPI cherry project that looks to show the food safety management programs in place for control of fruit fly in the Central West.

8. Competition regulation

8.1 Existing competition legislation

The Australian Government has clearly indicated that they recognise the need for greater understanding of the agricultural sector in the application of competition policy. Effective regulation of anti-competitive behaviour in markets upstream and downstream is important to developing the market signal to the farm gate to increase production and optimise agriculture's contribution to the Australian economy.

The appointment of an Agricultural Commissioner and the establishment of an Agricultural Unit within the Australian Competition and Consumer Commission (ACCC) provides an opportunity for the ACCC to improve its understanding of the agricultural supply chain and protect competitive processes within the agricultural value chain.

As we stated clearly in our first submission, the Association supports the introduction of an effects test [amending section 46 of the Competition and Consumer Act (CCA)], as recommended by Professor Harper. Competition legislation must have regard to the effect of conduct on competition, not just the purpose of the conduct.

As the Commission noted, we argue there is an existing imbalance between participants in the supply chain which places pressure on the competition law to restrain anti-competitive conduct and provide timely remedies for any conduct that damages the competitive process. In particular, when parties with market power engage in unilateral conduct that discriminates against their competitors, the discrimination may be subtle and difficult to clearly distinguish from legitimate business conduct; however, due to the structure of the market, the conduct would still have a substantial impact on competition.[25]

The Commission has argued that evidentiary burden "is not sufficient to justify amending section 46… [and that] amending the regulation to include an effects test may itself bring regulatory risk, particularly if the threshold invoking the test was set too low."[26]

The Association considers that these arguments do not reflect the recent operation of agriculture markets. Whilst we agree that there is certainly a co-dependence of businesses along the supply chain, the experience of the dairy industry in Victoria and Southern NSW in mid 2016 demonstrates that large processors with considerable exposure to supermarket pricing strategies do not always act in the best interests of smaller suppliers and cannot always resist the need to squeeze those further down the supply chain.

[25] Productivity Commission, *op. cit.*, p. 432
[26] *ibid*. p. 433

Regardless of whether the Murray-Goulburn situation would be addressed through section 46, it demonstrates that firms with substantial market power do not always behave well simply because they depend upon suppliers and apparent competitive constraints may be present.

In our original submission we outlined the case of the Third Party Export Rail Outload Fee imposed by GrainCorp upon grain exporters.[27] This additional fee increases the upcountry storage and handling costs by an estimated 12 per cent. Due to localised freight advantages most farmers have limited choice as to their use of grain receival sites. During the 2015 winter cereal harvest, our members have reported that, as a result of this additional fee, some third party grain exporters reduced the amount they offer for grain at GrainCorp receival sites.

The introduction of an effects test will still require an appropriately high evidentiary bar and is most unlikely to result in a wave of legal action. The Government has a range of options open to it when applying an effects test and the concept of 'effect' exists within other sections of the CCA. A move to an effects test would not be unprecedented nor would it be out-of-step with the legislation of other developed countries.

These things, taken together, argue for rebalancing the legislation to ensure that conduct which lessens competition within the market place can be more easily policed. The Association therefore supports the proposal put forward by Professor Harper in relation to changes to section 46 of the CCA.

8.2 Collective bargaining and mandatory codes

The Association does not accept the Commission's implicit view that because farmers are "more self-sufficient people who are less comfortable in a cooperative structure"[28], have financial structures with high capital investment, and the historically limited take ups of cooperatives that changes should not be made to the CCA to enhance competition.

The inequality of market and/or bargaining power means that farmers are largely price-takers in the market and susceptible at times to questionable business practices. As the NFF has outlined in its original submission, this means that farmers may be forced to accept standard form contracts on a 'take it or leave it' basis or to operate under arrangements without the benefit of contractual security. Therefore, collective bargaining is an important tool to help address these issues, and restore in some part a balance in the power of market participants.

A relevant example of a successful collective bargaining arrangement in NSW is in the poultry meat industry. NSW Farmers has an authorisation from the ACCC to

[27] With the development of competition at port terminals with the commissioning of the Newcastle Agri-Terminal and Quattro's Port Kembla terminal facility and the introduction of the Port Access Code GrainCorp has imposed a discriminatory Third Party Export Rail Outload Fee of $2.50 per tonne upon grain exporters loading grain by rail to a non-GrainCorp port terminal facility.
[28] Productivity Commission, *op. cit.*, p. 429

facilitate collective bargaining for our growers. This arrangement provides benefits to both growers and processors.

Importantly, growers have no 'cultural' tendency against collective bargaining and we submit that as an example of general attitudes to the use of these arrangements by farmers. This assertion by the Commission is plainly not the case.

Growers view their ability to collectively bargain in NSW as important to their productivity and essential to their ability to negotiate a fair deal.

NSW Farmers has also established a strong working relationship with processors where the ACCC authorisation enlivens a processors ability to decrease the transaction cost of individual negotiations. Whilst we would not presume to submit this assertion on behalf of the processors we would encourage the Commission to engage with those processors on the benefits at that tier of the supply chain.

We therefore support the National Farmers Federation in their call for relaxing the 'public interest' test for boycott approvals, to consider the unique nature of agricultural markets; allowing interim boycotts in certain/limited circumstances which may assist producers' ability to progress negotiations; increasing the threshold for primary production bargaining from $5 million; allowing for a more accessible notification process for primary producers; and increasing the ability for peak bodies to commence and progress collective bargaining and boycott applications, on behalf of their members.

Mandatory codes of conduct are effective regulatory tools in response to specific competition issues impacting agriculture. However efforts are required to improve the ability of these codes to ensure the benefits of the competitive process flow to the farm gate.

9. Foreign investment in agriculture

9.1 Increasing the screening thresholds for agricultural land and agribusiness

The Association cannot support this recommendation.

The Association supports foreign investment, recognising the benefits of additional capital to the sector, but we do believe there should be an appropriate process to ensure that to foreign investment in Australia's strategic industries and primary commodities is in the national interest. As we move from the mining boom to the dining boom, it is important to properly map and assess the affect of increased investment in agricultural land and the affect on the supply chain as additional investments flow into Australia.

The *Foreign Acquisitions and Takeovers Act 1975* empowers the Treasurer to prohibit an investment if satisfied it would be contrary to the national interest. However, the national interest, and what would be contrary to it, is not defined in the Act. Instead, the Act confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to the national interest. In general the national interest considerations can include: national security, competition, other Australian Government policies (including tax), impact on the economy and the community, and the investor's character.

The Association supports the Foreign Investment Review Board (FIRB) test including assessment of social, environmental and economic impacts in line with community expectations. It is critical that foreign investments are tested and that our democratically elected representatives have the final say on investment thresholds and that these align with public opinion, as expressed in ABC's VoteCompass and elsewhere.[29]

As Table 2.2 of the draft report makes clear, the rejection rate of FIRB has been steadily declining, whilst the number of applications over the last five years has more than doubled.[30] It is clear that the farming community is completely aligned with the vast majority of the Australian population in seeking greater scrutiny of the levels and spread of foreign investment in agricultural land. Given the small number of applications rejected, it is not clear that keeping the threshold is providing an appropriate screen of potential investors, especially given the existence of exemption certificates.[31]

As indicated in our previous submission to the Commission, we support a register of foreign investment in agricultural land, believing the appropriate threshold for the collection of this information to be $5 million cumulatively. A register increases transparency in the administration of the FIRB approval regime and allows the public and industry to map any investment that increases consolidation in the

[29] *ibid.*, p. 453
[30] *ibid.,* p. 444
[31] *ibid.*, p. 458

agricultural sector. It is therefore vital that the register is regularly updated and publically available. Without this there cannot be an informed public discussion and industry discussion on foreign investment.

Investment in enterprises that are large employers or that have significant market share may raise more sensitivities than investment in smaller enterprises. For this reason, foreign investment should take place under the same tax regime as domestic business to combat against transfer pricing in both goods and services. However, investments in small enterprises with unique assets or in sensitive businesses may also raise concerns.

We support extending the architecture of the Agricultural Land Register to encompass water rights and consistency of approach would require reporting of foreign interests in water rights. We support the National Farmers' Federation's position that there should be full transparency in the market (including Private Irrigation Infrastructure Operators).

9.2 Application fees for foreign investment proposals

The Association supports the commission's recommendation to increase fees in order to recover costs. It is important that the FIRB is adequately resourced to support the community's expectations.