Australian Government
Department of Agriculture
and Water Resources

ACTING SECRETARY

Ref: EC16-000541

Regulation of Agriculture
Productivity Commission
Locked Bag 2, Collins Street East
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Dear Commissioners

Regulation of Australian Agriculture – Productivity Commission draft report

Thank you for the opportunity to respond to the Commission's draft report 'Regulation of Australian Agriculture'. I welcome the draft report and note the breadth of the issues considered.

The attached document contains our views on matters relevant to the Department of Agriculture and Water Resources. This includes information to correct a small number of factual errors as well as the Department's views on relevant recommendations and findings in the draft report.

I note that in the draft report you refer to a number of reviews that the Department is undertaking. I would like to offer you an update on progress with these reviews prior to you finalising your report in November 2016. If you require any further information please contact David Galeano, Senior Economist, ABARES .

Yours sincerely

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Land use regulation
In general the department agrees with the Commission's draft findings and recommendations in this section of the report. There is considerable scope for reforms to streamline land use regulation and promote more efficient use of land. Building on its conclusions in relation to pastoral leases, it would be useful if the Commission reflected on the opportunities the Government has also identified for economic development in relation to native title. This was most recently set out in the 2015 White Paper on Developing Northern Australia.

Environmental regulations
The department notes that in 2004 the Commission inquired into the impacts of native vegetation and biodiversity regulations. The department agrees in principle with risk based approaches to native vegetation and biodiversity conservation regulations and that assessments be undertaken at the landscape scale rather than the individual property scale. It would be useful if the Commission identified specific areas of regulation that could be amended to maximise the net benefit to the community. The department notes that the New South Wales Government has proposed risk-based reforms to its legislative framework, which permits regional assessments in some circumstances for native vegetation management, private land conservation, threatened species and other protected native animals and plants.

The department recognises that the legal requirements and responsibilities on landholders and land managers are not always accessible or clearly defined. This can lead to confusion as to which laws apply to their particular circumstance. Improving certainty around rules and identifying areas of most environmental value would likely be of benefit to the agriculture sector. The large number of Australian and state/territory government agencies that are involved in land management also makes it difficult for landholders to know where to seek information or approvals. Aside from recognising the need to better target information and reforms to environmental regulation such as the Australian Government's One-Stop Shop initiative, the department also recognises the need to build stakeholder trust and genuine collaboration to achieve successful regulation.

On-farm regulation of water
The Commission's draft report requires a number of updates regarding the discussion of on-farm water regulation. For example, some content of the draft report has been overtaken by the implementation of recommendations of the *Report of the Independent Review of the Water Act 2007* (November 2014, the Water Act Review). In December 2015, the Australian Government accepted all 23 of the expert panel's recommendations in full or in part in the *Report of the Independent Review of the Water Act 2007: Australian Government Response* (the Government's response). The draft report should further discuss the linkages between the Water Act Review, the Government's response and the actions undertaken to implement these reforms to date. A number of the Review's recommendations were implemented by the *Water Amendment (Review Implementation and Other Measures) Act 2016*, passed by Parliament in May 2016. The department would also like to draw the Commission's attention to recommendations 11 and 18, where substantial progress has been made on reviews of water information reporting to the Commonwealth (led by the Bureau of Meteorology (BoM)) and the Australian Competition and Consumer Commission (ACCC) water charge rules.

The Commission's recommendation 4.1 to implement the findings of the Interagency Working Group on Commonwealth Water Information Provision needs to reflect progress on the implementation of the Water Act Review recommendation 18, which recommended that an Interagency Working Group (IAWG) undertake a review of water information reporting requirements. This review has now been undertaken and the report was released in 2016 (see: http://www.bom.gov.au/water/regulations/interagencyWorkingGroup.shtml). The

review identified measures to streamline water information reporting and reduce regulatory burden. The first tranche of regulatory amendments to the *Water Regulations 2008* to implement the review recommendations were registered on the Federal Register of Legislation (FRoL) on 19 April 2016 (*Water Amendment (Water Information) Regulation No. 1*). These amendments, which gave effect to recommendations 1 and 4 of the water information review, will:

- reduce the number of sub-categories of water information required from rural water entities such as irrigation infrastructure operators from 37 to 10; and
- change the frequency of reporting required so that rural water entities would no longer provide daily information to the Bureau of Meteorology with these changes flowing through to state and territory agencies that provide the relevant data.

The second tranche of regulatory amendments, to implement the remainder of the water information review recommendations, are currently being developed by the BoM in consultation with stakeholders. This amendment will further reduce the requirement for rural water utilities to provide water use information to the Bureau (reduced from seven to four subcategories of water information, and provision of annual aggregated volumes only). It will also streamline urban water information reporting to the Bureau by urban utilities.

The department has also identified a number of areas that require clarification in the draft report:

- Water information regulations under Part 7 of the *Water Regulations 2008* do not regulate 'farm businesses' (depending on how these are defined), but rather rural and urban water entities such as Irrigation Infrastructure Operators (IIOs) (see: http://minister.agriculture.gov.au/joyce/Pages/Media-Releases/simplifying-water-information-reporting0303-1138.aspx). Cost savings from implementing IAWG recommendations were for rural water entities such as IIOs, not individual farmers.
- The figures and submissions from 2014 which pre-date the work of the Interagency Working Group to address the issues of duplicative and burdensome reporting should be removed. It would also be worthwhile to quote from the IAWG that, for rural water entities, it found that less than 5 per cent of information requested was duplicated between Commonwealth agencies (Exec summary of the IAWG report, page 3) and that most of the duplication would be removed by implementing the report recommendations.
- The IAWG did not recommend investigating a single portal for supply of water information from rural water entities to the Australian Government. It noted that, for urban utilities, reporting is starting to evolve toward a single portal solution. However, it also noted that a similar concept is less feasible and more difficult to apply to rural water entities, and went on to note that there is a risk of unnecessary complication and additional transaction costs if a single portal process is applied to genuinely different requests for information from rural water entities.
- The draft report should be updated to reflect progress regarding the regulation of water market intermediaries (page 157 of the report). In 2015, the Government's response to the Water Act Review agreed in part with recommendation 9 and considered that industry-led self-regulation of water market intermediaries directed at protecting the integrity of the water markets has merit and will encourage water market industry representative bodies to establish such arrangements. The Government also undertook

to explore other options that may improve transparency in the water market. Further, please update the incorrect reference on page 157 to 'a regulatory impact statement prepared by the then Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) to a 'draft COAG regulatory impact statement for consultation' (statement available at: http://www.environment.gov.au/system/files/pages/7de1ffdd-87c0-4117-822e-3c6482d1ef96/files/consultation-ris-2013.pdf). The COAG regulatory impact statement (RIS) was a 2013 draft for consultation on options for the regulation of water market intermediaries. Stakeholder views were received on the draft RIS that included comments on the costs and benefits of proposed regulatory options. The RIS remained in draft form and was not progressed further because the government was committed to continuing to explore other options.

- The ACCC are presently undertaking their review of the water charge rules. Their draft advice was released on 24 November 2015 (see: https://www.accc.gov.au/regulated-infrastructure/water/water-projects/review-of-the-water-charge-rules-advice-development). The ACCC are expected to submit the final report on the review of the water charge rules to the Minister in the coming weeks.

The draft report should be updated and further clarity provided about the National Water Infrastructure Fund, and we propose the inclusion of new content regarding the National Water Infrastructure Loan Facility as outlined below.

- The Australian Government, through the White Papers on Developing Northern Australian and Agricultural Competitiveness, has established the $500 million National Water Infrastructure Development Fund (the fund). The fund will provide funding to states and territories to start the detailed planning necessary to inform water infrastructure investment decisions and provide capital contributions to co-fund the construction of water infrastructure, including to manage and access groundwater and wastewater capture, treatment and re-use schemes. This approach will identify potential projects to deliver sustainable, secure and affordable access to water, to underpin investment decisions by governments and water users, that will improve the competitiveness of agriculture and generate regional economic development.

- The $2 billion National Water Infrastructure Loan Facility (the facility) was announced in the 2016-17 Federal Budget to provide state and territory governments with access to concessional loans to co-fund the construction of economically viable water infrastructure. The facility is complementary to the infrastructure fund and builds on the government's strategic approach for water infrastructure set out in the white papers. These water infrastructure initiatives recognise that water regulation, planning and management is the responsibility of the state and territory governments, but that the Australian Government can, through targeted funding, expedite the construction of water infrastructure to improve regional reliability and access to water. The Australian Government's funding for construction of water infrastructure will be conditional upon the development and management of new water infrastructure consistent with the *Water Act 2007*, state water plans and environmental legislation, and the principles of the National Water Initiative to promote open and transparent pricing and allocation of water resources.

Regulation of animal welfare

Legislative responsibility for animal welfare within Australia rests with state, territory and local governments. The department works closely with those governments, scientists, animal welfare groups and farmers to establish animal welfare standards.

The Council of Australian Governments has structures to minimise duplication and facilitate national consistency. For animal welfare, those structures fall under the Agriculture Ministers' Forum. Animal welfare groups and livestock industry representatives are expressly included in the process of developing new requirements for animal welfare in livestock industries. Public consultation on all proposed changes to animal welfare legislation covering livestock industries is required before such changes are considered by Ministers and again when implemented by each jurisdiction.

The Commission's recommendations in this section of the report represent a significant shift from current Commonwealth-State responsibilities and it is not clear they have a feasible constitutional basis to actually advance this matter, or could be implemented in a way that is materially different from the status quo.

Access to technologies and agricultural and veterinary chemicals

The department agrees with the Commission's draft recommendation that the New South Wales, South Australian, Western Australian, Tasmanian and Australian Capital Territory governments remove their moratoria on genetically modified crops. Research undertaken by ABARE (Acworth, Yainshet and Curtotti (2008)) highlighted the significant economic cost associated with the delay of adoption of genetically modified crops. The department also supports the recommendation to provide the Australian community accurate information about the risks and benefits from genetic modification technologies.

While the final decision on whether or not to approve and register a chemical should be retained by the Australian Pesticides and Veterinary Medicines Authority (APVMA), the department agrees with the Commission that there is significant scope for the APVMA to make greater use of international evidence. This would include data, assessments and standards made internationally that are considered by the APVMA to have been developed to an acceptable level of rigour. The APVMA has recently developed a user guide for applicants to enable greater use of such evidence. The department would also be interested in any views the Commission may have on overcoming impediments that limit or prevent overseas regulators or importing companies providing evidence that contributed to overseas decisions.

The department agrees that implementing a national control-of-use regime for agricultural and veterinary chemicals is critical for improving productivity. The Australian Government is a partner in the National Registration Scheme, regulating agvet chemicals up to the point of sale. As such, the Australian Government strongly supports the process of harmonising state and territory control-of-use legislation.

A national control-of-use regime is important for consistency between jurisdictions, particularly for 'off-label' use. The department has been working with the states and territories to implement COAG's 2010 direction to harmonise agvet chemical regulation, including control-of-use provisions. Seeking national agreement and implementing changes to all relevant state legislation has proven to be a significant task in the present challenging fiscal environment. This project will require increased resources by all jurisdictions to complete it by 2018.

Biosecurity

The department notes that there are no specific biosecurity recommendations or findings in the draft report. However, there is an apparent misunderstanding of the Biosecurity Import Risk Analysis (BIRA) process.

The BIRA process is regulated under legislation, and considers the level of biosecurity risk that may be associated with the importation of goods into Australia. If necessary, the process will identify appropriate conditions that must be met in order to manage the risk, to a level that

achieves the Appropriate Level of Protection (ALOP) for Australia. If the risk cannot be reduced to an acceptable level, the goods will not be imported into Australia until suitable measures are identified.

Economic consideration is only taken into account in relation to matters arising from potential negative direct and indirect impact of diseases and pests that could enter, establish or spread in Australian territory as a result of a good being imported.

Specific factual errors relating to the BIRA process, along with suggested amendments, are described below:

- Page 261, last sentence of third dot point
    - replace sentence with: "The new Act introduced approved arrangements which are designed to provide maximum flexibility for operators and recognise existing business processes where possible."

- Page 264, last sentence of paragraph 3
    - this statement is incorrect. Biosecurity risk is not traded off against other economic benefits.
    - suggest amending to read "Import risk assessments consider the level of biosecurity risk that may be associated with the importation of a good, and identify appropriate ways to manage these risks."

- Page 281, first sentence of paragraph 3
    - the Scientific Advisory Group may be requested to examine and provide comments on any aspect of a BIRA, not just on "scientific risks related to an import".
    - suggest amending the sentence to "…role of the Scientific Advisory Group (which may be requested to examine and provide comments on any aspect of a BIRA)."

- Page 282, last sentence of last paragraph
    - it is incorrect to say that economic benefit is a major consideration in import risk analyses. BIRAs consider the level of biosecurity risk (which takes account of likelihood and consequence) that may be associated with the importation of goods into Australia. Economic consideration is only taken into account in relation to matters arising from potential negative direct and indirect impact of diseases and pests that could enter, establish or spread in Australian territory as a result of a good being imported.
    - suggest removing the sentence "When the overall benefit from an import after accounting for broader economic factors is positive, there is an in-principle case for Australia to import a product." – as it is not explicit that while true of commercial operators perhaps, this is not the logic followed by the Department as a regulator under international trade law.
        - Australia has its own biosecurity laws and policies which take into account our international trade obligations including the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The SPS Agreement provides WTO members with the right to use sanitary (human and animal health) and phytosanitary (plant health) measures (SPS measures) to protect human, animal and plant life or health. The agreement requires governments to base their SPS measures on international standards, guidelines and recommendations, and states that SPS measures are not to be applied in a manner which would constitute a disguised restriction on international trade. Australia bases its

risk analysis methodologies and import risk management measures on the standards, guidelines and recommendations set by the International Plant Protection Convention and the World Organization for Animal Health. However, when such standards do not achieve Australia's ALOP, or relevant standards do not exist, Australia exercises its right under the SPS Agreement to apply appropriate measures, justified on scientific grounds and supported by risk analysis.

- Page 283, first paragraph
    - it is incorrect to say that outcomes from risk analyses can differ from those based on an ALOP. If the biosecurity risks do not achieve Australia's ALOP, risk management measures are proposed to reduce the risks to an acceptable level. If the risks cannot be reduced to an acceptable level, the goods will not be imported into Australia until suitable measures are identified.
    - economic benefits are not considered as part of the ALOP.
    - suggest removal of the paragraph "Outcomes from these cases can differ from those based on an ALOP. Some products that meet Australia's ALOP may be costly to Australia once all economic factors are considered, while other products which are riskier than specified by the ALOP could be justified under a broader economic approach."

Transport

While not the responsibility of the Department of Agriculture and Water Resources, the department generally agrees with the recommendations and findings in this section of the report. Any changes that improve the efficiency of regulation in this area is likely to be of benefit to the agriculture sector.

Food regulation

The department notes that the Department of Industry, Innovation and Science has primary responsibility for the country of origin labelling reforms. Introducing the elements of the new country of origin labelling system as voluntary is highly unlikely to result in any improvement to the information already available. As outlined in the Decision Regulation Impact Statement, retaining the status quo will not satisfy consumers already dissatisfied with country of origin labelling. The mandatory new system will allow country of origin labelling to fulfil its intended role in providing information to Australian consumers about the origin of the food they consume.

The department agrees with the Commission's recommendation for Food Standards Australia New Zealand (FSANZ) to remove the requirement in the Food Standards Code to label genetically modified foods and that FSANZ should review the standard for the level of gluten allowed in foods labelled as 'gluten free'.

Competition regulation

Sugar marketing in Queensland is the responsibility of the Queensland Government. The department notes the Commission's recommendation that the Queensland government should repeal the amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

Rice marketing in New South Wales (NSW) is the responsibility of the NSW Government. The NSW Department of Primary Industries is currently conducting a review to examine whether an extension of vesting by the Rice Marketing Board beyond 2017 can be justified because of the realisation of premium returns to growers on export sales. The outcome of that review will guide what, if any, action should be taken by the Australian Government.

The department notes the Commission's comments in relation to amendments to Section 46 of the *Competition and Consumer Act 2010*. The department also notes the Harper Review found Australia's current misuse of market power provision is not reliably enforceable and permits anti-competitive conduct. The Australian Government has stated that the proposed changes to section 46 of the *Competition and Consumer Act 2010* will more effectively focus on the long-term interests of both small businesses and consumers, improving the law's clarity, effectiveness and force.

Foreign investment

The department notes the Commission's recommendations regarding foreign investment in agriculture and that the Australian Government recently lowered some screening thresholds foreign investment proposals for the agriculture sector.