Submission in response to the

PRODUCTIVITY COMMISSION DRAFT REPORT

Regulation of Australian Agriculture

Victorian Farmers Federation

Victorian Farmers Federation
Farrer House
24 Collins Street
Melbourne 3000
p 1300 882 833 **f 03 9207 5500**
e vff@vff.org.au **w www.vff.org.au**

August 2016

The Victorian Farmers Federation

The Victorian Farmers Federation (VFF), Australia's largest state farmer organisation and only recognised consistent voice on issues affecting rural Victoria, is pleased to respond to the Productivity Commission's draft report into the regulation of Australian Agriculture.

Victoria is home to 25 per cent of the nation's farms. They attract neither government export subsidies nor tariff support. Despite farming on only three per cent of Australia's available agricultural land, Victorians produce 30 per cent of the nation's agricultural product. The VFF represents the interests of our State's dairy, livestock, grains, horticulture, flowers, chicken meat, pigs and egg producers.

The VFF consists of a nine person Board of Directors, with seven elected members and two appointed directors, a member representative General Council to set policy and eight commodity groups representing dairy, grains, livestock, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peers to direct each of the commodity groups and are supported by Melbourne and Bendigo based staff.

Each VFF member is represented locally by one of the 230 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.

David Johinke
President

Victorian Farmers Federation
Farrer House
24 Collins Street
Melbourne 3000
p 1300 882 833 **f 03 9207 5500**
e vff@vff.org.au **w www.vff.org.au**

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Land Use Regulation

Whilst the VFF supports the general discussion within the Chapter we wish to reinforce that there is an inherent duplication of regulation where land management outcomes are regulated in a land use and development system. Land use controls run with the land irrespective of changes in ownership or production method. Attempting to tie legal use of land to a single production method stifles innovation and duplicates or contradicts existing targeted regulation on environmental management or biosecurity.

The VFF believes land management and environment outcomes are best managed outside the land use and development system by land management and environmental legislation. High level amenity, biosecurity or receiving environment objectives can be codified with each industry can then develop best practice guidelines on how this can be achieved, allowing the flexibility for innovation in method to improve the overall outcome.

This submission will provide case studies which demonstrate the impact of poorly considered land use and environmental regulation on agricultural production, adaptability and a sustainable environment on the landscape level.

DRAFT RECOMMENDATION 2.2

State and territory governments should:

- ensure that, where reforms to Crown lands confer additional property rights on a landholder, the landholder pays for the higher value of the land and any costs associated with the change (including administrative costs and loss of value to other parties)
- set rent payments for existing agricultural leases to reflect the market value of those leases, with appropriate transitional arrangements.

Response to draft recommendation 2.2

Unless clearly articulated this recommendation may establish conflict between the principles underpinning land use planning for public and private land. The issue of rent needs to be clearly separated from the land tenure and use. The general principles underpinning the land use system is that there is neither betterment payment, nor compensation as a change in planning control is not retrospective and does not enforce a change in land use or development. Where land is rezoned for a 'higher' value use there is not a charge to the beneficiary to share the increase in land value with the wider community. Conversely, if a control, such as a flood

overlay, is introduced which reduces development rights in the future and therefore lowers the value of land there is no compensation payable to the land owner.

INFORMATION REQUEST 2.1

What are the advantages and disadvantages of 'right to farm' legislation? Are there any other measures that could improve the resolution of conflicts between agricultural and residential land uses?

Response to information request 2.1

Farmers are frustrated by increasing regulation that impact on their ability to farm sustainably and profitably. "Right to farm" as a concept is born out of this frustration. The VFF agrees with the Productivity Commission belief that achieving "right to farm" as a single piece of legislation is challenging.

There are other ways to achieve the desired outcome of freeing restrictions on well managed farming operations by ensuring all environmental and public health acts that include general duties on nuisance include recognition of "unavoidable consequence of a lawful activity" and refer to industry standards (codes, guidelines or quality assurance systems) as a way to determine if a genuine nuisance has occurred.

The VFF is aware of a recent example where a Local Council issued a litter abatement notice (s45ZB of Environment Protection Act) due to a complaint about mud on a local road in winter. The farm was an operating dairy and there had been significant rain over the preceding four weeks. A litter abatement notice is discretionary and should consider whether the litter was an "unavoidable consequence of a lawful activity". At the same time there was extensive mud on an urban road near the Council offices. This demonstrates that merely referencing considerations does not of itself provide information or knowledge to a regulator to be able to make a common sense decision.

Farmers who operate in accordance with codes and quality assurance systems actively work towards production methods that increase output and reduce externalities. Regulation should encourage innovation and support ongoing agricultural production over non-productive uses of the precious land resource.

Victoria, in relation to intensive industry, is looking to move towards a system of high level standards to be met. Each industry will then have guidelines to demonstrate one path to achieve the standard. Quality assurance systems can then demonstrate ongoing compliance and document production methods which exceed standards. For extensive agriculture quality assurance systems can be used to show that the operation is meeting industry standards.

The time, stress and cost of defending what are generally vexatious complaints in relation to the legal and primary use for which the land is zoned places undue pressure on the agricultural sector. This, coupled with urban encroachment, may force peri urban agricultural producers to locations further from markets increasing costs of production.

Using land use systems or general duties statements to stifle legally operating and well run existing land use is unconscionable conduct. Ensuring regulation is fit for purpose and does not restrict lawful production methods related to the use for which the land is zoned should be implicit in any environmental, land management or land use regulation.

DRAFT FINDING 2.2

Regulation and policies aimed at preserving agricultural land per se can prevent land from being put to its highest value use.

A right of veto by agricultural landholders over resource development would arbitrarily transfer property rights from the community as a whole to individual landholders.

Response to draft finding 2.2

The VFF believes that there is confusion over the concept of 'highest and best use'. In the planning system there is a concept of net community benefit. While there are a range of policy issues to be considered in determining this, the end outcome relates to benefits to be accrued by the community rather than an individual.

Land value / willingness to pay or short term returns that prejudice long term production should not be viewed as "highest and best use". Agriculture is a key contributor to the Victorian economy. Maintaining productive agriculture is essential to the state economy. Encroachment of higher 'land value' uses in to farming land, which then restrict production methods in the farming zone is an example of a perverse outcome from the incorrect application of 'highest and best use'.

Agriculture is a sustainable industry which contributes to the economy in the long term. Ensuring the ability of farmers to produce food and fibre close to markets should be seen as an imperative and as delivering the highest and best use of the land.

Whilst mining, unlike urbanisation, does not take the land permanently out of production, a mineral extraction licence may have short to long term impacts on productivity (ability to farm) or on the productive quality of the land post mining (has

the soil quality, aspect, drainage changed?) Under the present regulatory framework in Victoria it is difficult for farmers to understand the nature of the mining proposed or its impacts in order to determine appropriate compensation. There is no government body to provide advice or to administer grants to seek appropriate advice making this process stressful and costly to land holders. The Mining Warden only has a role in relation to dispute resolution.

Without a clear and transparent process and assistance to ensure impacts are understood the desire to have some form of 'veto' over uses that impact on your land and livelihood is understandable.

The VFF has sought the following changes to the *Mineral Resources Sustainable Development* Act to ensure fairer treatment of the land owner and long term manager of the land. The failure of the regulatory framework to effectively address these issues gives rise to land holders seeking to enforce property rights.

While a 'right of veto' to control uses which impact on your property is not supported by Government, the current planning system allows environmental regulators to exercise a form of 'veto' over primary production[1]. The Weekly Times has run a series of articles regarding the issue of clearance of Native Vegetation, including an editorial which raises concerns about the future of environmental regulation where laws are not administered with common sense and where offsets to change production method may make farming unviable.[2]

Relevant elements of the VFF Policy Position – Mineral Resources Sustainable Development Act

Landholders be given a right of veto over mining activities on their land

Landholders have a right to determine what their land is used for. While the Crown undoubtedly owns the minerals, the land (including the top 15 metres of soil) is often privately owned. In most cases modern mining requires the removal of this soil to access minerals, which landholders should have the power to stop.

Landholders be given the right to sign off on rehabilitation plans

Despite being the end receiver of rehabilitated of land, mining companies do not need to seek agreement from landholders to plans for the rehabilitation of their land. .. The VFF believes landholders should have the right to sign off on rehabilitation plans. This would ensure genuine input from farmers, and ensure that

[1] http://www.weeklytimesnow.com.au/news/national/victorian-government-wants-small-miners-to-pay-900000-for-grass-removal/news-story/ce0c848ad42a38b5e9b3492a4b5b12ce

[2] http://www.weeklytimesnow.com.au/news/opinion/victorian-governments-land-clearing-laws-out-of-whack/news-story/5ec6e494a3456ccd56f6a82ee9723a38

rehabilitation will suite the landholder's preferences for future land use.

Remove the 10 per cent cap on solatium payments – compensation for intangible values of land or assets (e.g. personal values associated with land)

The 10 per cent cap on solatium fails to recognise different land ownership circumstances. For farmers that have been on the same land for multiple generations, this cap on solatium belittles the strong connection they have to their land. Furthermore, a 10 percent cap may prevent adequate compensation for the inconvenience and stress a farmer experiences when faced by minerals exploration or development on their land.

Increase the period of time in which claims can be made following rehabilitation, from three years to five years

When land is rehabilitated following a mining development there can be on-going issues that need to be addressed. The VFF is concerned that a three year limit on claims creates a potential liability for landholders for whom rehabilitation works prove insufficient. For example, land subsidence, lost productivity, and mineral leachates may take more than three years to become evident and longer still to fully address.

Renew the role and powers of the Mining Warden.

Over time the role of the Mining Warden has become unclear, and its powers have been diluted. However, the VFF sees an important role for the Mining Warden to play in arbitrating between mining companies and landholders when there are disputes over land access, compensation, and rehabilitation for exploration activities. As an impartial decision maker, the Mining Warden can offer an out of court means to resolve disputes, and provide independent advice to the Minister regarding mineral development issues.

Example – Intensive Animal Industry in Strategic Area

Existing Intensive Animal Industry is often placed under pressure to relocate due to urban encroachment. Under the Victoria Planning Provisions there are strong protections to avoid encroachment to industrial areas by sensitive uses. Major agricultural production areas are not given the same high order protection. In response some Victorian Councils have undertaken strategic study and planning scheme amendment processes to identify areas for intensive animal industry. As these industries require major capital investment and must meet environmental and biosecurity regulation, it is seen as critical to ensure that this land use is not placed under pressure.

Despite policy recognising the importance of the land use to the economy many local policies are unclear or provide artificial barriers in relation to issues that are better implemented via environmental and agricultural regulation. This may lead to conflict between regulations.

Statements such as “the proper siting and design of this form of use and development is needed to ensure residential amenity and environmental quality is protected” is ill conceived. To establish the strategic area it would need to be isolated from any zoned residential areas and in an area free of environmental risk. Given that the long term zoning of the land would be rural / farming, any dwellings within the area are likely to be in conjunction with farming and any future approvals would need to demonstrate the need for a dwelling to manage the production. Environmental regulation is the best mechanism to achieve environmental protection. Embedding environmental (or land management) outcomes in to a land use permit makes adaptation to improved production methods difficult and leads to perverse outcomes.

Similarly objectives “to ensure the use and development of land for intensive animal husbandry does not impact on the environment” via blunt tools such mandatory set backs from water courses, or from a dwelling on any other property, as well as controls on manure treatment and disposal are better dealt with via specific regulation. They are not performance based. If a proposal and use a production method that meets all biosecurity and EPA regulations, then this should be facilitated. Prescriptive controls that do not relate to performance allow agencies to ‘veto’ legitimate land use without consideration of whether actual detriment will occur.

The area has been identified for uses which potentially have amenity and other impacts. Relevant agencies and land owners have had a chance to comment on the strategic basis and the planning scheme amendment. Wider protection should be given to lawful operation in these land uses strategically identified areas.

Example – existing livestock production in potable water catchments

In Victoria there are many potable water supply catchments that were declared in the 1960s and 70s. These catchment areas apply to private land are often quite extensive, many extending many kilometres. Council areas such as Moorabool and Hepburn have a majority of their council areas within a declared catchment.

Although the specific legislation that created these areas was subsumed into the *Catchment and Land Protection Act*, water authorities are increasingly utilising planning controls to attempt to regulate land management in catchments through land use and development triggers under the *Planning and Environment Act*, as this requires less regulatory scrutiny or consideration of compensation.

By utilising the planning scheme for a declared catchment there is often a different control in place for the same declared catchment – for example ESO1 to the Hepburn Planning Scheme[3] and ESO4 to the Macedon Ranges Planning Scheme[4] apply to the same catchment. They have differing objectives, permit requirements, application requirements and decision guidelines. They do not reflect the land use determination and treat all land the same no matter the distance from the reservoir. Often the information / outcome they seek is predominantly about land management with no

[3] http://planning-schemes.delwp.vic.gov.au/schemes/hepburn/ordinance/42_01s01_hepb.pdf
[4] http://planning-schemes.delwp.vic.gov.au/schemes/macedonranges/ordinance/42_01s04_macr.pdf

clear consideration as to whether this is appropriate. There is no practice note to give clear guidance on how to consider the nexus between the development and the land management outcome expected, and whether this is fair and reasonable or *ultra vires.*

Water authorities are increasingly requiring land holders to fence off and revegetate all waterways on the site. A recent dwelling proposal on a recently subdivided lot (with building envelop) on a lot on which no permit was required for the use was required by water authority condition to fence off 12 acres of stream which impacts on movement of stock (existing use). The dwelling site met all setbacks from waterways and met waste disposal standards. Before applying for the permit the applicant had contacted the water authority who requested that they destock the land and fenced off 40 acres of bush. The agency are relying on a Department of Health document on reducing risk adjoining catchments which is meant to be voluntary in nature and should not be used to mandate land use change.

Regulators should not be able to use the land use system to restrictions on the continuation of existing use on private land or to enforce land management outcomes of no benefit to the land holder.

Land use requirements for certain uses are restricted in these areas. For instance a cattle feedlot of less than 1000 head of cattle in accordance with the particular provision does not require a permit in the Farming Zone unless it is in a proclaimed catchment.[5] This can be misleading as a land owner may assume that a permit can be applied for, however an Attachment to the Code prohibits the use in these catchments as "*Catchments to domestic water supplies may be extremely sensitive to certain activities in the catchment- particularly activities which result in extensive soil disturbance or the concentration of nutrients. The sensitivity of the catchment and therefore the water supply depends upon a range of matters, including the nature of the land, the proximity to the water system, the value of the water resource for consumptive or in-stream purposes, and the activity itself."*
These issues should be properly mapped and considered rather than a blanket ban on a land use on 4% of Victoria's land mass. As these are land management issues the *Catchment and Land Protection Act*, rather than the *Planning and Environment Act*, has the appropriate head of power to manage the issue.

The *Catchment and Land Protection Act*, requires that there should be a special area plan for this outcome. A special area plan requires:

- the identification of the land management issue to be dealt with in the plan
- the action to be taken and the costs and benefits of that action
- responsibilities for undertaking the action and bearing the costs.

If a land use condition is to be established it requires:

- A description of where they will apply;
- The nature of the conditions;
- The cost of compliance including decrease in the value of land or financial loss
- A method for apportioning the cost of compliance between land owners and

[5] http://planning-schemes.delwp.vic.gov.au/schemes/vpps/35_07.pdf

beneficiaries.

Environmental Regulation

Environmental Regulation in Victoria is often achieved under the land use regulatory framework. The VFF believes that a land use and development system is not the appropriate regulatory system for land management. We believe it is favoured as controls can be introduced by the Minister without regulatory impact statements where land management statutes require documentation of costs, benefits and how the costs are to be apportioned.

At its core, the land use and development system relies on main land use controls being able to be mapped, eg zones of overlays. The corresponding zone or overlay then informs you about the nature of the land use or development control and may also identify relevant particular provisions to be considered – such as reference to the Cattle Feedlot Code of Practice against the use of land for a "cattle feedlot" in the land use table of the Farming Zone. This then allows a transparent system where people can determine, by property address, the controls applicable to their land.

There is one key 'development' trigger which no longer meets the general principles underpinning this system - removal of native vegetation. The key state regulation (52.17) is not mapped, nor is removal of native vegetation listed as a permit trigger under Building and Works in any of the standard suite of zones. Native vegetation removal regulations (52.17) are not included on property information certificates, zoning certificates, section 32 statements or planning property reports.

Native vegetation is at its core a land management issue. This is acknowledged in the following information from the Native Vegetation Clearing Regulations Review web site.[6] The objective to be achieved is to sensibly protect sensitive native vegetation. The outcome is not a land use and development issue.

> *In Victoria, the amount and quality of our native vegetation influences the overall health of our natural environment, as it provides habitat for species and is connected to our water and soil quality - things that are essential for Victorian livelihoods.*
>
> *We have a system in place - the native vegetation clearing regulations - that sets out the rules about whether native vegetation can be cleared for development or other land uses and, if it can be, the requirements that need to be followed.*
>
> *The Victorian Government has committed to reviewing the native vegetation clearing regulations to ensure that they sensibly protect sensitive native vegetation.*

[6] http://haveyoursay.delwp.vic.gov.au/native-vegetation-clearing-regulations

Decisions under clause 52.17 are governed by the Permitted Clearance of Native Vegetation: Biodiversity Guidelines[7]. This purpose and introduction of these guidelines reinforce the primary purpose of the regulation is land management.

- *Purpose - how impacts on biodiversity should be considered when assessing an application for a permit to remove, lop or destroy native vegetation.*
- *"the biodiversity benefits delivered by native vegetation are central to the continued functioning of ecosystems. For this reason, maintaining biodiversity is a primary consideration underpinning decisions about whether to permit the removal of native vegetation"*
- *Biodiversity information tools do not focus on land use or development issues but on land management outcomes.*
- *"the native vegetation permitted clearing regulations are designed to manage the risk to biodiversity associated with an application for a permit to remove native vegetation." Neither "extent risk" or "location risk" relate to a core land use / development change. The second reading speech clearly linked controls where a land use /development was not changing to public safety factors relating to that use/ development ie "to regulate development in areas which are or may be hazardous" rather it is designed to undertake a land management result.*

Attachment A outlines the basis of the two regulatory tool utilised and the most appropriate statute the *Planning and Environment* Act (P&E Act) and the *Catchment and Land Protection* Act (CALP Act) The purpose of the *Planning and Environment* Act is to "*establish a framework for planning the use, development and protection of land in Victoria in the present and long-term interests of all Victorians."* The second reading speech clarified that the "*Bill is about the use and development of land. Although this requires taking into account a very wide variety of issues, they are to be taken into account in so far as they affect the use and development of land."*

In comparison the purpose of the *Catchment and Land Protection* Act is: *(a) to set up a framework for the integrated management and protection of catchments; (b) to encourage community participation in the management of land and water resources; (c) to set up a system of controls on noxious weeds and pest animals; (d) to repeal and amend various Acts concerning catchment and land management.* The second reading speech clearly stated the focus was management of land and water issues across landscapes and tenures, of supporting the efforts of farmers to improve the long term productivity of their land and achieving an integrated approach to the management of natural resources. [8]

[7] Chapter 1 http://www.dse.vic.gov.au/_rework/environment-and-wildlife/biodiversity/native-vegetation/?a=180645

[8] This bill reinforces the importance of community involvement in the management and protection of land and water resources. It will support the efforts of farmers and other land-holders throughout the state who are already working individually or as part of Landcare and other land-holder groups to improve the long term

The *Catchment and Land Protection* Act allows a special area plan to be created. This would be a more 'fit for purpose' regulation for native vegetation or catchment management as the legislation specifically requires:

- the identification of the land management issue to be dealt with in the plan
- the action to be taken and the costs and benefits of that action
- responsibilities for undertaking the action and bearing the costs.

If a land use condition is to be established it requires:

- A description of where they will apply;
- The nature of the conditions;
- The cost of compliance including decrease in the value of land or financial loss
- A method for apportioning the cost of compliance between land owners and beneficiaries.

The VFF considers this tool is not utilised by the Government as it does not seek to invest in:

- gaining the knowledge to clarify the extent of the issue (map vegetation);
- understanding of the costs and benefits of any proposed action;
- funding actions to support achieving the outcome.

The VFF believes that specific regulation that is mapped and scientifically based should underpin native vegetation regulation at all levels. It needs to consider all threatening processes and the likely impact of the control on the overall outcome.

Example – relative effectiveness of native vegetation regulation under P&E Act or the CALP Act on EPBC habitat (Red Tail Black Cockatoo (RTBC) Recovery Action Plan)

The difficulty encountered by the current native vegetation regulations in Victoria under the P&E Act (52.17 or ESO) is that they focus on a tree by tree assessment of a complex ecosystem. The focus is on one piece of a jigsaw puzzle rather than what role that piece has in solving the puzzle.

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productivity of their land. It will help ensure a closer link between the management of land and water resources. It applies to the management of public as well as private land and to urban areas as well as rural areas.

A key element of the legislation is the reform of the existing land protection advisory system to reinforce the protection of natural resources and to enable an integrated approach to their management.

The government is committed to encouraging sound land management practices through a range of measures that result in voluntary changes by land managers. These include improved awareness through effective education and extension programs, financial incentives, market mechanism and similar policy instruments. There is, however, a continuing need to require land owners or managers to carry out remedial action in appropriate circumstances through issuing of land management notices

The Recovery Action Plan (RAP) identifies issues to be addressed on a landscape scale. The RAP understands the role that vegetation plays (nesting or feed) and any locational or other issues relating to the vegetation, such as bulokes being between 100-200 years old for seed production. Attachment B includes diagrams indicating the elements of the RAP that can be achieved under either system.

The current regulatory framework only partially allows three of the fourteen recovery actions within the RTBC RAP to be achieved by either "protecting" vegetation or mandating planting of new vegetation to offset loss. The ESO control does not consider whether that vegetation is of an age or a location which is outside it having any habitat value for the RTBC. The control actively discourages ongoing revegetation in areas with on farm benefit. By not understanding the interactions within the ecosystem the control in ineffectual in achieving any improvement in the survivability of the species.

If the CALP Act was the regulatory framework twelve out of fourteen recovery actions could be achieved on an integrated manner (all tenure) across the landscape. The only recovery actions not addressed in this framework is senescence and decrease in illegal trade which is beyond the scope of regulation. It allows other factors such as habitat patches in the landscape, pest plant and animal impacts to be taken into account.

Rigid enforcement of the controls where every tree is seen as being critical to long term survival (without reference to or understanding of the RAP matrix) leads to a situation where farmers are:

- discouraged from removing vegetation which impacts on productivity but has little environmental value due to its age or location;
- are not providing 'offsets' as no vegetation is removed which increases the likelihood of critical food shortage given a 100 year lead time.
- less likely to undertake regular revegetation as this is not counted in a future 'offset'.

A successful on farm revegetation projects of the 1980s and 1990s, Salt Action: Joint Action, demonstrated to land holders the benefit of planting on productivity and on diversification of production. This vegetation also formed habitat links. Successful on ground outcomes require good will and support of land managers and an understanding by regulators that a successful control understands that production methods that sustain farm income are critical to environmental management.

DRAFT RECOMMENDATION 3.1

The Australian, state and territory governments, in consultation with natural resource management organisations, should ensure that native vegetation and biodiversity conservation regulations:

- are risk based (so that landholders' obligations are proportionate to the impacts of their proposed actions)
- rely on assessments at the landscape scale, not just at the individual property scale
- consistently consider and balance economic, social and environmental factors.

Response to draft recommendation 3.1

The VFF supports the general premise of this draft recommendation. Furthermore we believe it is critical that the regulatory regime be able to be mapped in a single location and allow for integrated decision making across all levels of government. Where possible bilateral agreements should be made to provide a single application / decision process.

DRAFT RECOMMENDATION 3.2

The Australian, state and territory governments should continue to develop market-based approaches to native vegetation and biodiversity conservation. Where the community is seeking particular environmental outcomes, governments could achieve them by buying environmental services (such as native vegetation retention and management) from existing landholders.

Response to draft recommendation 3.2

The VFF supports the general premise of this draft recommendation. We believe it is critical that environmental regulators have some 'skin in the game' rather than requiring land holders to provide environmental outcomes for the wider community at the expense of their productivity and viability.

At the same time state (VEAC) and federal (EPBC RAP) studies have highlighted the need for the state to better manage crown land for environmental outcomes, to purchase critical habitat and to assist land holders in environmental management. The response in Victoria has been to: not undertake the recommended reviews of public land; not look at factors behind market failure; not looking at wider use of urban offset payments for purchase of critical habitat statewide; not investing in purchase of or better management

of existing crown land in critical habitat areas. Instead the action has been to focus on one action in isolation of all others by tightening regulation on the removal of native vegetation on private land.

Ensuring that the appropriate regulatory framework is in place helps ensure that the social, economic and environmental benefits and costs of regulation on private land are taken into account and that the wider costs of providing these environmental services to the wider community is fairly apportioned between beneficiaries.

DRAFT RECOMMENDATION 3.3

The Australian, state and territory governments should review the way they engage with landholders about environmental regulations, and make necessary changes so that landholders are supported to understand the environmental regulations that affect them, and the actions required under those regulations. This would be facilitated by:

- recognising and recruiting the efforts and expertise of landholders and community-based natural resource management organisations
- building the capability of, and landholders' trust in, environmental regulators.

Response to draft recommendation 3.3

The VFF supports this recommendation as the expectations on land holders are increasing annually. Over the past two decades there has been a continual increase in environmental regulation on agriculture and an ongoing decrease in extension services offered to land holders. Agriculture extension officers were a large part of the success of Salt Action: Joint Action as they provided tailored on farm advice and recognised the need for environmental management actions to maintain sustainable production.

Where there are shared values and agreed outcomes between regulators and land holders positive outcomes can be achieved. Where there is an inflexible system managed by people without experience in farming there are many opportunities lost to achieve innovative outcomes. Where the regulation is seen as unfair or uneconomic farmers will not invest in land management or improved production methods. In the long term this ensures the perpetuation of the ongoing decline in the health and habitat value of vegetation. A productive farm is a well-managed farm that looks after soil health, implements agroforestry or shelter belt plantings and manages pest plants and animals.

Example –Red Tail Black Cockatoo Habitat (RTBC)

Red Tail Black Cockatoo habitat in Victoria is predominantly located in Glenelg Shire; West Wimmera Shire and the Rural City of Horsham. Currently federal (EPBC) and state (cl 52.17) regulations are not mapped. At the local level, for Glenelg and West Wimmera, this known range of the RTBC is mapped under a local control (ESO) however that nature of the control varies between municipalities. It is important to note the vegetation discussed in the RAP is not mapped.

Although extent of species range have been mapped, this is at a scale that makes it very difficult for a land holder to determine controlled actions under the EPBC Act. At present a catchment level report can be generated which gives a list of species which "may be present". In the Wimmera, this report lists 300 matters of national environment significance which requires the land holder to read over 300 documents and attempt to determine if they have any vegetation listed.

This system is too complex and time consuming. It requires land holders to be able to identify species (or hire consultants) just to understand if a controlled action may be triggered. To be effective and fair each property owner should be able to access an online property information report that identifies all environmental regulation applicable to a site. Bilateral agreements between the Commonwealth and the States should be entered in to allow a single application / decision in areas with state and federal regulation and to remove conflict between controls and exemptions.

A prosecution for vegetation removal has been made in this area which demonstrates the need for accurate data. The prosecution was based on an assertion that species x was removed where the land holders consultant report identified a different species which was not believed to be a controlled action. This process was costly for all parties and was a perverse outcome which demonstrated that there is not the required knowledge on habitat by area to underpin a clear and consistent system where requirements are easily understood by all parties.

By mapping vegetation and allowing public feedback on the mapping a clearer understanding of triggers would be developed.

Example – Isolated paddock trees

Restrictions on the ability to remove an isolated paddock tree are an example of regulation focusing on one tree without understanding the habitat role of the tree in the landscape context. The first image below shows two paddock trees in an area which is legally used for cropping. Tree removal is often required to allow the use of modern production methods such as GPS enabled tractors with wide booms. Paddock trees impact on the efficiency of farming by requiring manual driving to avoid damage to the boom from contact with the paddock tree; increases the distance covered and leads to over and under application of fertiliser . Paddock trees restrict the ability to use GPS technology (self drive or programed drive). This technology is more efficient and reduces risk of death or injury – an important issue with agriculture, forestry and

fishing having the highest work place death rate by Industry in 2015.[9]

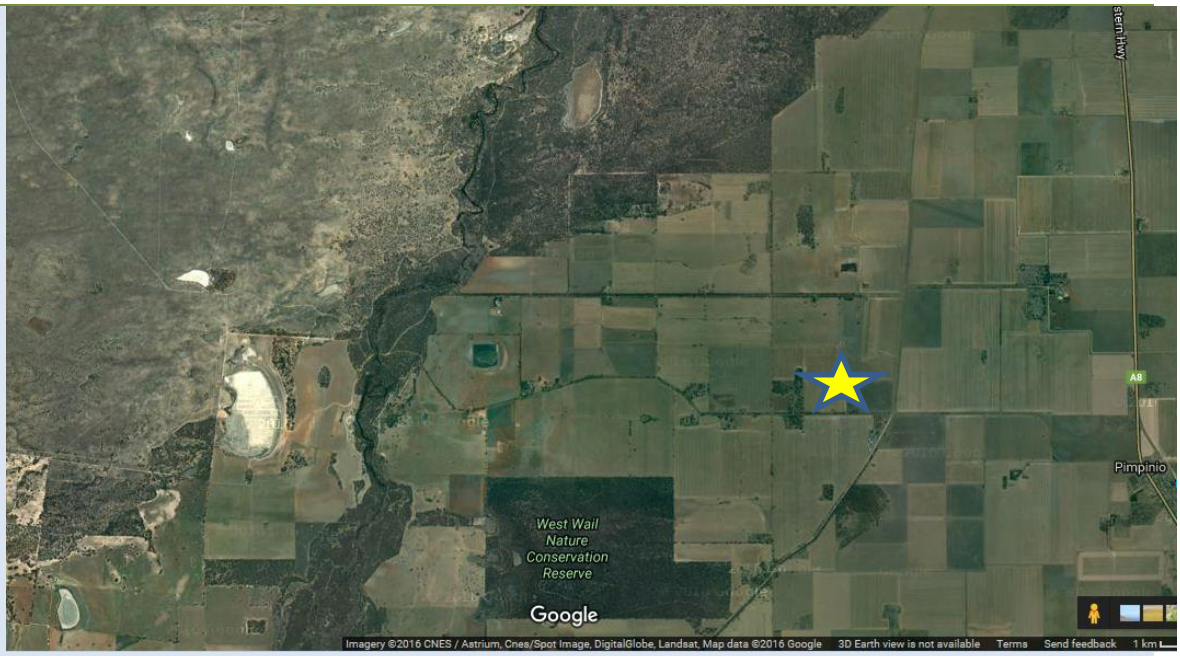
The primacy of “avoidance” does not take in to account the long term survivability of the tree or its ecosystem contribution. Where the cost of removal (via offset) outweighs the benefit there is an opportunity cost of failure to renew vegetation in an area which will encourage good management in the long term.

If the wider context is taken into account there may be improved long term outcomes by allowing the removal of the isolated paddock tree for allowing revegetation of a larger patch of vegetation or replanting small patches of vegetation in locations with minimal impact on crop growth.

By understanding where the tree is in the wider landscape also allows an assessment of the ecosystem role that the vegetation plays and whether removal and offset may actually achieve a long term environmental gain. For example in RTBC habitat a nesting tree needs to be within 5km of a greater than 5ha patch of stringybark and a buloke needs to be between 100 to 200 years old. Fire in the past 9-11 years also restricts production of seed. Would it be better to remove one tree and fence off another area to allow revegetation?

The Victorian system allows native vegetation precinct plans to be prepared. While it would be preferable for a Special Area Plan to be prepared, if the regulation is maintained in the planning system then, at a minimum, the relevant Department should prepare a landscape level precinct plan to deliver a simplified system that facilitates innovation in production method as well as delivering environmental gain.

[9] http://www.safeworkaustralia.gov.au/sites/swa/statistics/work-related-fatalities/pages/worker-fatalities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On-farm regulation of water

DRAFT FINDING 4.1

Complexity and ongoing changes in water regulation contribute to the cumulative burden of regulation on farm businesses. However, the diversity of Australia's river catchments makes streamlining and harmonising regulation difficult. More flexible governance arrangements may be needed to develop locally appropriate regulatory settings for accessing water.

Response to draft finding 4.1

The VFF support the statement that 'diversity of Australia's river catchments makes streamlining and harmonising regulation difficult'. Where appropriate, complexity in water regulation should be reduced. However, any change in water regulation must respect the characteristics of the natural and built environment of the catchment or irrigation district. The Commission has a role to complete (when directed) an inquiry into the Murray-Darling Basin Plan and associated water resource plans, these comments are in response to the approach of the Commission in the draft report with consideration of its future role in conducting this inquiry.

The flow of water to its highest value use in northern Victoria has the potential to impact the viability of irrigation districts and irrigation dependent communities. Significant change is occurring in northern Victoria as the irrigation industry adjusts to the implementation of the Murray-Darling Basin Plan and change in the horticulture and dairy industries. The implementation of the Basin Plan has reduced the amount of water available for productive use, restricted the ability of governments or infrastructure operators to reduce trade out of districts and created a strong distrust of government in many irrigation communities.

Trading rules can be introduced to manage hydrological constraints, third party impacts or environmental impacts, such as aquifer or channel constraints. In Victoria where irrigation districts are facing future viability issues due to loss of entitlement out of district, the Victorian Government has limited powers to impose trade restrictions or limitations to protect government investment in irrigation district infrastructure or manage the impact of trade out of irrigation dependent communities.

In its submission to the Victorian Governments Water for Victoria discussion paper, Goulburn-Murray Water stated (GMW, pp 6,8):

"Unless governments are prepared to substantially change policy settings which facilitate and encourage the movement of water to highest value use, then their role

in the GMID will need to be a strong commitment to helping communities adjust to a post-irrigation future."

"(The GMID's) un-competitiveness will be exposed to market forces and it is unlikely that measures that government might explore will have a material impact on mitigating the impacts of trade out of the GMID."

The GMID is currently undergoing modernisation through the $2 billion GMW Connections Project. The principle of shifting water to its highest value use should be balanced with the need for government to see a return on investment in the modernisation of this irrigation infrastructure.

This example demonstrates the importance of recognising the differences in the environment, both natural and built, in which our agricultural businesses operate. These differences must always be considered and respected. The agricultural industry is unqiue. Whilst farmers are adept at changing farming practices to adjust to changing environmental or market factors some farmers may be shy of change to the fundamentals of their business such as location, business structure and business focus. In rural Victoria farms are families and families are communities. The regulation of farm businesses cannot be viewed purely through a productivity lens; it must also be viewed also through a social lens.

Termination fees

The VFF encourages the Commission to consider termination fees in its other water related responsibilities. The VFF looks forward to contributing to this discussion.

Water market information

The information gap between water resource managers, brokers and water users can impede efficient trade of water resources and create the potential for some market participants to capitalise on this information gap. The Commission notes the role of water brokers (PC, p 156) in reducing the information gap between the water market and water market participants. This role will be reduced as water market information becomes more accessible, markets mature and market participants improve their knowledge. The Victorian Government committed $12.8 million in the 2016/17 budget to improve water information transparency, and at the same time improved water resource management tools such as WaterLine are also assisting farmers manage their entitlement and relationship with their infrastructure operator.

The VFF continues to advocate for transparency in the water market and the efficient and timely publication of accessible water market information by actors including the Victorian Government and resource managers.

Productivity Commission water responsibilities

The VFF looks forward to engaging with the Productivity Commission in in other water related responsibilities including the Inquiry in the National Water initiative and the Inquiry into the Murray-Darling Basin Plan and water resource plans.

DRAFT RECOMMENDATION 4.1

The Australian Government should implement the findings of the Interagency Working Group on Commonwealth Water Information Provision to reduce duplicative and unnecessary water management information requirements imposed on farm businesses.

Response to draft recommendation 4.1

The VFF support this recommendation. Information provision requirements are costly for irrigation infrastructure operators who pass these costs on to their customer base.

The VFF support the recommendations of the Interagency Working Group on Commonwealth Water Information Provision and are confident that their recommendations reduce unnecessary or duplicative information provision whilst still ensuring the integrity of water management information and the provision of relevant, appropriate information.

Regulation of farm animal welfare

DRAFT RECOMMENDATION 5.1

The Australian Government should take responsibility for ensuring that scientific principles guide the development of farm animal welfare standards. To do this, an independent body tasked with developing national standards and guidelines for farm animal welfare should be established.

The body should be responsible for determining if new standards are required and, if so, for managing the regulatory impact assessment process for the proposed standards. It should include an animal science and community ethics advisory committee to provide independent evidence on animal welfare science and research on community values.

INFORMATION REQUEST 5.1

The Commission is seeking feedback on:

- *the most effective governance structure for an independent body tasked with assessing and developing standards and guidelines for farm animal welfare*
- *what the body's responsibilities should include (and whether it should make decisions or recommendations and if the latter, to whom)*
- *what processes the body should use to inform and gauge community values on farm animal welfare*
- *how such a body should be funded.*

Response to draft recommendation 5.1

The VFF supports the basis of scientific principles to guide the development of farm animal welfare standards. Currently Animal Health Australia (AHA) is the body undertaking the review of the 4th Model Code for Poultry. AHA has involvement from the federal government as well as all of the state and territory governments, many of the relevant industry groups and research development corporations as well as the CSIRO and the Australian Veterinary Association. In addition relevant animal welfare groups are heavily involved in the review of welfare requirements. Community feedback is also integrated into the process through public consultation. The VFF support the AHA continuing to serve the function of reviewing national standards and guidelines for farm animals. As such the VFF opposes the formation of an additional national independent body.

The VFF acknowledges that consumers and thus the community are now more interested in our animal welfare decisions and are demanding products that are sustainably and ethically produced, community values are important. The VFF strongly believes that animals need to be managed in a compassionate and humane manner. Meeting community expectations must be tempered with community education on the available scientific evidence of what is genuine best practice animal stewardship. As important as community expectations are it must be ensured that at every level of consultation farmers are providing operable advice on animal welfare practices and scientists are providing the latest research into animal welfare.

As it stands, industry has developed standards through a consultative process involving animal welfare and research organisations, state and federal government, livestock industry representatives and other various stakeholders including a consultation phase open for public comment. The effective development of these standards underpins access to overseas markets and reinforces Australia's international leadership in livestock welfare. Australia has the best animal welfare standards in the world, achieved without the oversight of an independent animal welfare body.

DRAFT RECOMMENDATION 5.2

State and territory governments should review their monitoring and enforcement functions for farm animal welfare and make necessary changes so that:

- there is separation between agriculture policy matters and farm animal welfare monitoring and enforcement functions
- a transparent process is in place for publicly reporting on monitoring and enforcement activities
- adequate resourcing is available to support an effective discharge of monitoring and enforcement activities.

State and territory governments should also consider recognising industry quality assurance schemes as a means of achieving compliance with farm animal welfare standards where the scheme seeks to ensure compliance (at a minimum) with standards in law, and involves independent and transparent auditing arrangements.

Response to draft recommendation 5.2

The VFF encourages state governments to recognise industry quality assurance programs. These programs not only provide commercial pull through to encourage best practice animal welfare standards but promote the compelling story behind the

consumer facing product clearly showing the highest level of social sustainability and animal welfare that the Australian livestock industries are renown for.

The VFF supports the uniform legislative implementation by States and Territories of the endorsed national animal welfare standards which are science-based and minimal legal requirements proportionate to risk. Further improvements in animal welfare outcomes by the adoption of relevant industry recommended husbandry practices are achieved through additional co-regulatory initiatives in industry programs, supplier agreements and on-farm quality assurance measures. These programs involve extension, education and include monitoring and enforcement through commercial incentives and supplier obligations. These industry activities are complementary to the regulatory controls and meet community and international expectations and reflect Australia's position as a leader in modern, sustainable and scientifically based welfare practice.

It is appropriate that the responsibilities in government for monitoring and evaluation have relevant skills and experience without introducing inefficiencies in resourcing by the separation of the responsibility for monitoring and evaluation from agriculture policy activities.

Access to technologies and agricultural and veterinary chemicals

DRAFT Recommendation 6.1

The New South Wales, South Australian, Western Australian, Tasmanian and Australian Capital Territory governments should remove their moratoria (prohibitions) on genetically modified crops. All state and territory governments should also repeal the legislation that imposes or gives them powers to impose moratoria on the cultivation of genetically modified organisms by 2018.

The removal of the moratoria and repeal of the relevant legislation should be accompanied by the provision of accurate information about the risks and benefits to the Australian community from genetic modification technologies. State and territory governments, the Office of the Gene Technology Regulator and Food Standards Australia New Zealand should actively coordinate the provision of this information.

Response to draft recommendation 6.1

The VFF support the cultivation of genetically modified organisms and the subsequent finding of the Commission outlines in Draft Finding 6.1.

However the VFF do not support the draft recommendation as worded.

The VFF supports the rights of state and territory governments to govern within their own right, in accordance to mandated national and commonwealth law. With respect to this view, the VFF does not support the repeal of legislation that provides states and territory governments with the right to enact the GM moratorium.

Draft Recommendation 6.2

The Australian Pesticides and Veterinary Medicines Authority should make greater use of international evidence in its assessments of agricultural and veterinary chemicals (including by placing greater reliance on assessments made by trusted comparable international regulators). Reforms currently underway in this area should be expedited.

Response to draft recommendation 6.2

The VFF support the recommendation for the APVMA to expedite the registration process of agricultural and veterinary chemicals through greater reliance on international evidence and trusted comparable international regulators. The VFF encourages the active engagement of industry in the registration process, in the likelihood of international regulator registration.

In light of the proposed recommendation, the VFF would like to state that support is provided for the expedited registration of agricultural and veterinary chemicals although this support does not extend to the deregistration of chemicals. The deregistration of chemicals by APVMA should continue to utilise the methodology of risk analysis and industry engagement, whilst potentially utilising trusted comparable international data, in order to deem the appropriate deregistration of chemicals within Australian agricultural practices.

The VFF is very supportive of overseas data being taken into consideration for the registration of chemicals in Australia.

The VFF is concerned that relying solely on the overseas decision may have negative implications if the registration is to be removed from the overseas market, and thus the Australian market – particularly considering this decision may not be based on science. Consequently, the VFF would like to see overseas data being included as part of an assessment process that allows for the collection of local data and an independent decision by the APVMA.

The VFF believes that further consideration needs to be given to the determination of ‘trusted’ regulators, as well as the demonstration of equivalence of risk in this particular context.

DRAFT RECOMMENDATION 6.3

The Australian, state and territory governments should expedite the implementation of a national control-of-use regime for agricultural and veterinary chemicals (which includes increased harmonisation of off-label use provisions), with the aim of having the regime in place in all states and territories by the end of 2018.

Response to draft recommendation 6.3

The VFF is strongly opposed to a National control-of-use regime that leads to harmonisation of off-label use provisions. Currently Victorian farmers are the only ones to enjoy off-label use of non S7 (restricted use) chemicals. This access to off-label use gives farmers the ability to access chemicals to control pests and diseases in niche crops, particularly in horticulture.

The VFF's fear is that a push towards harmonisation would lead to Victorian farmers losing access to off-label uses and the flexibility they need to access important and targeted chemical control methods that protect their crops and save them money. Victoria farmers' off-label use of chemicals is backed by a rigorous food testing regime, Agriculture Victoria's oversight and the requirement that farmers obtain Chemical User's Permits to access restricted supply and use chemicals.

Regulation of biosecurity

INFORMATION REQUEST 7.1

Participants raised concerns about farm trespass, particularly as trespass can increase biosecurity risks. What strategies could be used to discourage farm trespass? Are existing laws for trespass sufficiently enforced in relation to farm trespass?

Response to draft recommendation 7.1

Farm trespass is a concerning trend in activism in Australia. Having groups trespass on your property is a distressing experience. Farmers must then deal with additional concerns around whether animals have been interfered with and if there is a biosecurity risk.

The current environment shows that even with the extensive animal welfare legislation, regulation, quality assurance programs and consultation with activists, as noted in the commission's report, trespass incidents have continued. The VFF does not believe that any regulatory system will entice activists to cease their illegal trespass activities. Further deterrents may be the only way to discourage this risky behaviour.

The VFF would recommend that release footage obtained through illegal means to anyone aside from the farm animal welfare complaints regulator in the relevant state, be made an offence. This would be similar to the requirement for a court order in the Surveillance Devices Act 2016 (SA). This would ensure that any claims of bad practices or mistreatment of animals by producers would be thorough checked by the appropriate authority before being disseminated in the public sphere. As several recent cases show, both in Australia and overseas, the footage was investigated and the producer was found to be innocent of any wrong doing. However with the footage already widely viewed by the time the investigation was concluded reputational irrevocable damage had already been done to those producers and their industries. Halting mistreatment should be the primary use of this footage.

Existing laws for trespass are an inadequate deterrent to trespass for the purpose of activism. Given the serious nature of breaching biosecurity, penalties should be higher in order to deter offenders. Under the Livestock Management Act 2010 (Vic) any person managing livestock faces 60 penalty units, a company faces 300, for creating even the risk of a biosecurity breach. A similar level of penalty should be applied to those who trespass on farms. The VFF encourages the commission to look at the Biosecurity Act 2015 (NSW) as an example of appropriate legislation.

Regulation of food safety

Information request 9.1
The Commission is seeking information on whether the new country-of-origin labelling system would deliver higher net benefits to the community as a voluntary system rather than as a mandatory system.

Response to information request 9.1

The VFF supports a mandatory country of origin labelling system across all food products, with the current exemptions in place.

The intent of the regulation is to support Australian business and farming through the mechanism of informing consumers; informing consumers is not the lone intent of this policy and thus the wider benefit of the scheme needs to be taken into account. In the spirit of the regulation those with high compliance costs are those importing ingredients. Indeed the VFF would argue that the additional compliance cost may sway some businesses to source more ingredients locally to reduce this cost, which would be a good outcome of the regulation.

As the commission notes in its report under a voluntary system those importing products would most likely opt out of country of origin labelling. This would mean that those producers, who are most likely sourcing Australian ingredients, alone would face a greater financial burden through increased compliance cost. This is opposite of the intention of the regulation, which is to encourage support for local producers. For the scheme to work as intended the system must be mandatory for all food products.

INFORMATION REQUEST 9.2

The Commission is seeking information on the costs and benefits of egg stamping relative to alternative traceability systems for eggs (such as labelling on egg cartons and requiring food businesses to keep records). Are there examples where the source of an outbreak of salmonellosis caused by eggs could not have been traced in the absence of egg stamping?

Response to information request 9.2

Egg stamping is a policy with the right intention, to provide traceability to those investigating incidents in order to mitigate the risk of another incident occurring. Egg Stamping was also intended to avoid an industry level recall in the case where the issue is on a single farm. While the intention of the policy is supported by the VFF, we recognise that this policy has cost egg producers.

The cost to industry is an ongoing concern, however as the initial cost of implementation was large and only occurred in Victoria two years ago the VFF would not support a wholesale removal of this policy without investigation into the costs of alternative systems for farmers.

If farmers are to continue to use egg stamping the VFF would recommend that egg stamping be required for all eggs that are sold in Victoria. With the current exemption of farms with fewer than 50 hens in place there is a gap where we can be confident of full traceability.

As those with fewer hens are more likely to sell at farmers markets, where reuse of cartons is a known practice, the source of these unstamped eggs may not be identified quickly, in which case the confidence in the entire industry would suffer.

The VFF would welcome further investigation into reducing the cost of traceability for farms, while not penalising those who have invested in stamping equipment.

INFORMATION REQUEST 9.3

The Commission is seeking information on whether there are opportunities to further reduce the burden of regulatory food safety audits while still achieving regulatory objectives, and if so, where these opportunities lie.

Response to information request 9.3

Food safety audits are important to maintain the trust consumers have in food produced in Australia. In order to reduce regulator burden on farmers the VFF would encourage investigation into whether industry accreditation programs which covered food safety, and were independently audited, would be sufficient to ensure Australian food is still produced in a safe manner.

Foreign investment

DRAFT RECOMMENDATION 12.1

The Australian Government should increase the screening thresholds for examination of foreign investments in agricultural land and agribusinesses by the Foreign Investment Review Board to $252 million (indexed annually and not cumulative).

Response to draft recommendation 12.1

The VFF support foreign investment in Australian agriculture provided that it:

- Adheres to all Australian laws, especially tax and competition laws;
- Does not create negative distortions in resource allocation or output returns;
- Does not undermine the existing marketing mechanism, storage or handling facilities, critical infrastructure and logistics or pricing transparency where these underpin farm gate price determination;
- Is not undertaken with the intent or outcome of reducing competition within the marketplace to the detriment of Australian agriculture sector;
- Allows for legislated time frames for assessing foreign investment to be equitable with the regulatory times frames for consideration of domestic investors;
- Ensures compliance with existing and new industry production and/or transaction levies;
- Does not compromise existing trade agreements and is flexible enough to acknowledge the importance of future comprehensive trade agreements to the Australian farm sector.

While the VFF are supportive of foreign investment into Australian agriculture, we do not support draft recommendation 12.1 regarding the increase of the screening thresholds for foreign investment to the $252 million level. We particularly do not support the non-cumulative nature of this increased threshold, as outlined in the recommendation.

As it stands, there are a number of foreign countries who are afforded a higher

threshold level by way of trade agreements between Australia and the foreign entity. These include non-government investors from Chile, New Zealand, Singapore, Thailand and the United States. We would not wish to see this trend continue.

The VFF have developed a comprehensive policy position on foreign investment in Australian agriculture. It is the view of the VFF that the current screening thresholds for foreign investment in agricultural land must remain. In fact, the VFF believe that the threshold trigger for assessment (by the Foreign Investment Review Board) of a purchase of agricultural land or water by foreign persons or enterprises should be reduced to $5 million. The threshold trigger for investment by a sovereign owned entity should remain at nil.

For Australian agricultural land holders and business operators, it is important that there is a comprehensive review undertaken by the Foreign Investment Review Board, to provide confidence to the community about their operation of foreign owned businesses going forward. The National Interest Test process is one measure which is in place to provide additional transparency and confidence to both government and the community about the ongoing business intentions of the investor.

Agricultural land use register

The VFF are strongly supportive of a comprehensive and transparent agricultural land and water register as a means of providing information to the public on the levels of investment occurring

DRAFT RECOMMENDATION 12.2

The Australian Government should set application fees for foreign investment proposals at the level that recovers the costs incurred by the Foreign Investment Review Board in reviewing proposals, and should closely monitor the fees to ensure no over- or under-recovery of costs.

Response to draft recommendation 12.2

The application fees for foreign investment proposals should be commensurate with the costs associated with processing a transaction.

Victorian Farmers Federation
Farrer House
24 Collins Street
Melbourne 3000
p 1300 882 833 **f 03 9207 5500**
e vff@vff.org.au **w www.vff.org.au**