



Australian Government
Productivity Commission

Regulation of Australian Agriculture

Productivity Commission
Inquiry Report
Overview & Recommendations

No. 79, 15 November 2016

© Commonwealth of Australia 2016



Except for the Commonwealth Coat of Arms and content supplied by third parties, this copyright work is licensed under a Creative Commons Attribution 3.0 Australia licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/3.0/au>. In essence, you are free to copy, communicate and adapt the work, as long as you attribute the work to the Productivity Commission (but not in any way that suggests the Commission endorses you or your use) and abide by the other licence terms.

Use of the Commonwealth Coat of Arms

For terms of use of the Coat of Arms visit the 'It's an Honour' website: <http://www.itsanhonour.gov.au>

Third party copyright

Wherever a third party holds copyright in this material, the copyright remains with that party. Their permission may be required to use the material, please contact them directly.

Attribution

This work should be attributed as follows, *Source: Productivity Commission 2016, Regulation of Australian Agriculture, Report no. 79, Canberra.*

If you have adapted, modified or transformed this work in anyway, please use the following, *Source: based on Productivity Commission data, Regulation of Australian Agriculture, Report no. 79.*

An appropriate reference for this publication is:

Productivity Commission 2016, *Regulation of Australian Agriculture*, Report no. 79, Canberra.

Publications enquiries

Media and Publications, phone: (03) 9653 2244 or email: maps@pc.gov.au

The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

Contents

Overview	1
Key points	2
1 Our approach to reviewing regulation	6
2 Benefits, not just costs, are acknowledged	8
3 Some common themes	10
4 Issues by topic area	16
Recommendations and findings	35

OVERVIEW

Key points

- Farm businesses are subject to a vast and complex array of regulations. Regulations are in place at every stage of the supply chain — from land acquisition to marketing — and are applied by all levels of government. The number and complexity of regulations affecting farm businesses means that the cumulative burden of regulation on farmers is substantial.
- The need for regulation is not disputed by farm businesses. In fact, some regulations, such as biosecurity and food safety regulations, were highlighted as providing clear benefits to Australian farmers. Rather, Australian farmers want ‘better’ (or less burdensome) regulation.
- Some regulations lack a sound policy justification and should be removed. Examples include restrictions on the use of land held under pastoral lease arrangements, state bans on cultivating genetically modified crops, barriers to entry for foreign shipping providers, mandatory labelling of genetically modified foods, and the regulated marketing of rice in New South Wales and sugar in Queensland.
- In other cases, regulation is the wrong policy tool. Regulatory changes to address community concerns about foreign investment in agriculture, for example, are costly and likely to be ineffective. A better informed conversation about foreign investment is needed.
- Other regulations and regulatory systems need to be reformed so they can more fully achieve their objectives.
 - Native vegetation and biodiversity conservation regulations need fundamental change so that risks and impacts are considered at a relevant landscape-wide scale. Environmental regulatory decisions also need to take into account economic and social factors.
 - Animal welfare regulations seek to achieve welfare outcomes that (among other things) meet community expectations. However, the current process for setting standards for farm animal welfare does not adequately value the benefits of animal welfare to the community.
 - The process for setting standards would be improved through the creation of a statutory agency responsible for developing national farm animal welfare standards using rigorous science and evidence of community values for farm animal welfare.
 - International evidence could be put to greater use in assessing agricultural and veterinary (agvet) chemicals, reducing the time and cost taken to grant registration.
 - Road access arrangements for heavy vehicles should be streamlined and simplified.
- Inconsistent regulatory requirements across and within jurisdictions make it difficult for farmers to understand their obligations and add to the cost of doing business. A more consistent approach would improve outcomes in the areas of heavy vehicle regulation and road access, and the use of agvet chemicals.
- Governments could also reduce the regulatory burden on farm businesses by:
 - improving their consultation and engagement practices. There is scope to better support landholders to understand environmental regulations, and to reduce duplicative and unnecessary information gathering regarding water management by farm businesses
 - doing more to coordinate their actions, both between agencies and between governments
 - ensuring that good regulatory impact assessment processes are used as an analytical tool to support quality regulation making, not as a legitimising tool or compliance exercise.

Overview

The key task for this inquiry was to identify regulations that impose an unnecessary (and therefore avoidable) burden on farm businesses. And, where there were legitimate policy objectives underlying the regulations, to look at whether the regulatory objectives could be achieved in a more efficient way.

Why regulatory burden matters

Regulatory burden matters because it can weigh heavily on farm businesses and undermine the agricultural sector's productivity and competitiveness.

Reducing regulatory burden, and improving the efficiency of the regulatory environment, is important for all sectors of the economy, but particularly for the agricultural sector given:

- its high dependence on international markets — around two-thirds of Australia's agricultural output is exported (with most producers being price takers in international markets)
- most Australian farms are small businesses, and regulatory burdens can have a significant and disproportionate impact on small businesses.


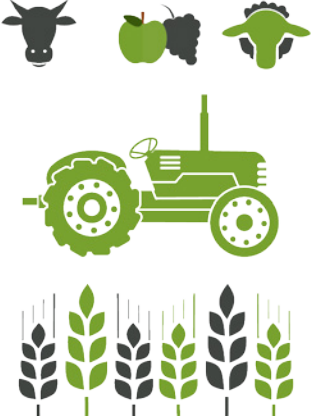


For farm businesses, reducing regulatory burden means less time spent dealing with regulation and more time spent on productivity-enhancing activities. For the community, less regulatory burden can mean lower prices (because farmers face lower costs), fewer taxpayer dollars spent on regulation and improved living standards. For governments, lower regulatory burden means that more resources can be devoted to higher priority areas.

There are regulations at every stage of the supply chain

Farm businesses in Australia are subject to a vast and complex array of regulations.

At every stage of the agricultural supply chain farmers face regulations — including for land acquisition and preparation, production and on-farm processing, transport of inputs and products to market, marketing and product sales (table 1).

Table 1 Regulation across the agricultural supply chain^{a,b}

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of the agricultural cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • native title • environmental protection <ul style="list-style-type: none"> – biodiversity conservation – international treaties – natural, cultural and world heritage 	<p>Acquisition, leasing and preparation of land</p> 	<ul style="list-style-type: none"> • land tenure and use <ul style="list-style-type: none"> – <i>land use planning</i> – <i>building regulations</i> – <i>pastoral leases</i> • environmental protection <ul style="list-style-type: none"> – <i>native vegetation</i> – <i>natural and cultural heritage</i>
<ul style="list-style-type: none"> • agricultural and veterinary chemical standards • biosecurity <ul style="list-style-type: none"> – pest surveillance • export control • environmental protection <ul style="list-style-type: none"> – biodiversity conservation – international treaties – natural, cultural and world heritage • national land transport regulatory frameworks • water access and regulation • welfare of exported animals 	<p>Agricultural production and on-farm processing</p> 	<ul style="list-style-type: none"> • agricultural and veterinary chemicals • animal welfare • biosecurity <ul style="list-style-type: none"> – <i>pest and disease control and response</i> • food certification for export • <i>building regulations</i> • genetically modified crops • land use planning • livestock regulation and identification • transport <ul style="list-style-type: none"> – <i>road access</i> – <i>transport and use of machinery</i> – vehicle licensing • water access and regulation
<ul style="list-style-type: none"> • biosecurity <ul style="list-style-type: none"> – pest surveillance • export control • national land transport regulatory frameworks • shipping and maritime safety laws • welfare of exported animals 	<p>Transport and logistics</p> 	<ul style="list-style-type: none"> • transport regulations <ul style="list-style-type: none"> – <i>road access</i> – <i>transport and use of machinery</i> – vehicle and machinery licensing • animal welfare • livestock regulation and identification
<ul style="list-style-type: none"> • biosecurity <ul style="list-style-type: none"> – pest surveillance • export control • food labelling • food standards • welfare of exported animals 	<p>Marketing</p> 	<ul style="list-style-type: none"> • <i>food safety</i> • food packaging • biosecurity <ul style="list-style-type: none"> – pest and disease control and response • food certification for export • statutory marketing

^A *Italics* denote local government responsibility in at least one jurisdiction. ^b There is also a range of issues and regulations that affect all stages of the agricultural supply chain. Cross-cutting issues include investment opportunities and access to capital, as well as regulations relating to competition, foreign investment, immigration, industrial relations, work health and safety, and taxation.

All levels of government impose regulations that affect the agricultural sector.

- The Australian Government regulates national and interjurisdictional issues, including biosecurity and access to agricultural and veterinary (agvet) chemicals. The Department of Agriculture and Water Resources is responsible for around 90 non-fisheries related Acts. This is a small proportion of the regulations affecting farm businesses. Others include those from the environment, treasury, immigration, infrastructure and industry portfolios.
- State and territory governments administer regulations including in the areas of road transport, environmental protection, native vegetation management, land tenure and land use. As an indicator of the extent of regulation at the state and territory level, AgForce said that in Queensland, agriculture was affected by over 75 Acts and regulations covering 17 590 pages.
- Local governments implement regulations (often on behalf of state and territory governments) in the areas of land use, planning and (in some cases) environmental protection, as well as setting conditions for local road access by heavy vehicles and farm machinery.

Regulations addressing some areas, such as aspects of environmental protection, are covered by all three levels of government. There are also other regulations — such as those relating to water use, transport and temporary labour from overseas — that affect a range of businesses across the economy, but are of particular concern to some farm businesses.

Many farm businesses spoke about the large number of regulations that directly affect them. The Consolidated Pastoral Company (one of Australia's largest beef producers) estimated that it complies with, or takes account of, over 300 Acts, regulations and codes.

The cumulative burden of regulation provoked the most comment in consultations conducted on this inquiry. One participant (AgForce) said that:

The regulatory burden within Australian agriculture is effectively a cumulative one; resulting from the impact of many individual regulations of which each regulation, seen in isolation, does not appear to represent a significant imposition.

Another (the Tasmanian Farmers and Graziers Association) said that:

It is only when we have the accumulated burden of federal, state, local government and regional council associations that we begin to understand that with four or more layers of competing and often contradictory regulation it becomes near impossible to find an economical way through. When coupled with seemingly minor regulatory imposts, the competitive burden can become overwhelming. The malaise of regulation often leads to developments not proceeding on the basis that it is all too hard.

Australian governments have removed many agriculture-specific regulations in recent decades (in the early 1980s, there were more than 60 statutory marketing boards; today just one remains). Over the same period the volume and reach of regulations aimed at addressing environmental and social policy issues increased. Most of the concerns about

regulatory burden raised in this inquiry were about regulations that are not specific to the agriculture sector.

The breadth of regulation gives an indication of the number (and complexity) of regulations that can and do apply to farm businesses. It is clear that the overlay of different agencies and levels of government adds complexity and cost to doing business. This is in part because farmers face regulations across many areas and their farm operations and value chains can span borders.

1 Our approach to reviewing regulation

For the purpose of this inquiry, ‘regulation’ is defined as any laws or other government rules (such as standards and codes of conduct) that influence or control the way people and businesses behave. User charges and taxation are not in scope.

Given the broad scope (and depth) of the regulatory environment affecting farm businesses, the Commission was greatly assisted by inquiry participants to identify specific regulations of concern. We also undertook a number of case studies to get a better sense of the magnitude of the cumulative burden of regulation on farm businesses.

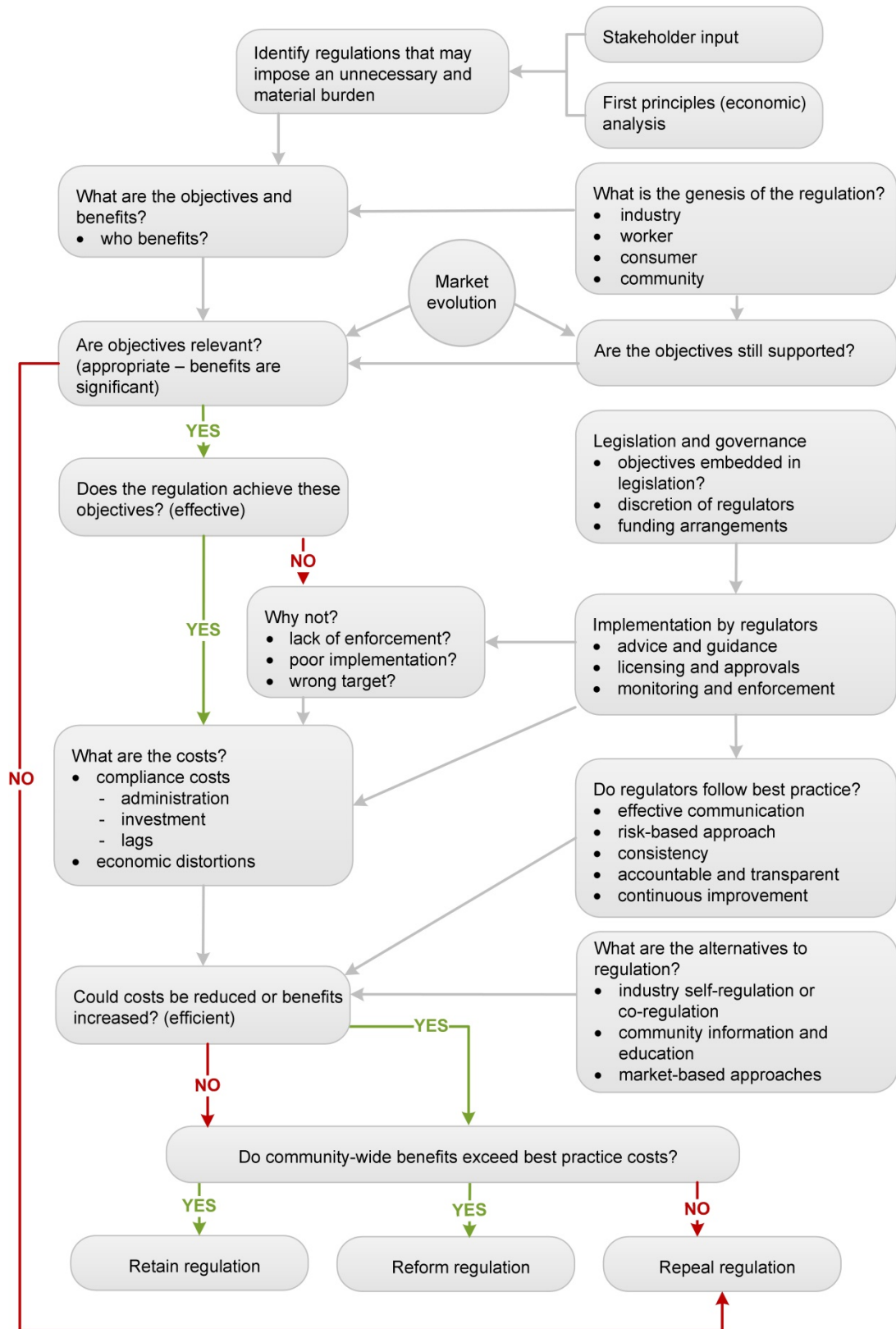
An unnecessary regulatory burden exists when the objective of the regulation can be achieved at a lower cost to the community. To assess whether regulations imposed unnecessary regulatory burdens on the agriculture sector, we asked four questions (figure 1).

- What are the objectives of the regulation?
- Are the objectives of the regulation clear and relevant (that is, do the objectives address an economic, social or environmental problem)?
- Does the regulation achieve these objectives (is it effective)?
- Could the costs of the regulation be reduced or the benefits increased (is there a more efficient way to achieve the same objective)?

The inquiry focused on unnecessary regulations that have a material impact on the competitiveness of farm businesses and on the productivity of Australian agriculture. However, regulations and suggested potential remedies were assessed against providing a net benefit to the Australian community, not just to the agricultural sector.

With only limited quantitative evidence on the costs of regulations, our views about whether regulations have a material impact were based on judgments about the potential gains to the Australian community from removing or amending regulations. Other factors taken into account included the number of businesses and consumers affected (directly and indirectly) and whether the regulation spanned multiple jurisdictions or agricultural industries.

Figure 1 **A framework for reviewing agricultural regulation**



2 Benefits, not just costs, are acknowledged

By design, regulation imposes costs on those affected, including farm businesses. However, the benefits of well-designed and -implemented regulation should outweigh the costs to the community as a whole. Good regulation should also achieve its stated policy objectives at least cost to the community. The agriculture sector openly acknowledged that well designed regulation is critical to its ability to function effectively and can benefit Australian farm businesses (box 1). For example, Australia's biosecurity regulatory arrangements were highlighted as providing a reputational advantage to Australian farmers and access to premium export markets.

Box 1 The agriculture sector recognises the benefits of regulation

National Farmers' Federation:

... acknowledges the need for effective regulation. Often regulation provides important protections for the business owners, workers, and the community, and sets a minimum level of performance required to meet community standards and expectations.

WAFarmers:

Agricultural producers and growers are not adverse to comply with appropriate regulatory obligations as these are seen as being beneficial to production systems and market access ... WAFarmers recognise the importance of effective and necessary regulation to maintain and uphold the industry's reputation as a producer of safe and nutritious food ... we support comprehensive food standards and regulation across the production and processing chain to ensure the integrity of the industry.

Voice of Horticulture:

... regulation can be of benefit to horticulture where it meets economic, social and/or environmental objectives and is designed and implemented efficiently and effectively.

Avoiding pest and disease incursions is critical to the viability of the horticulture industry. Australia's unique biodiversity and relative disease-free status must be maintained, along with horticulture's reputation as a supplier of fresh, high quality, clean produce. Freedom from many of the world's major pests and diseases provides a clear advantage in both domestic and global markets.

Australian Pork Limited:

Australia's favourable biosecurity status enables it to produce premium agricultural goods competitively, efficiently and sustainably. Current biosecurity protocols make Australia one of only a few countries that maintains a high disease-free status for pig herds.

Canegrowers:

Continued effort in biosecurity is important for the productivity and profitability of the Australian sugar industry. Stopping the entry, establishment and spread of exotic diseases and pests is vital for our industry's future. If unchecked, yield losses would be high and devastating to industry productivity and profitability.

Australian Chicken Growers Council:

Food safety is critical to the chicken industry, and regulation in this area is necessary to protect consumers and also the reputation of the product and the industry itself.

However, inquiry participants also identified regulations in a number of areas that impose unnecessary compliance and administrative costs. Farm businesses provided many

examples of unnecessary paperwork and excessive amounts of time and energy spent complying with regulatory requirements, such as applying for permits, filling out forms and reporting to regulators (box 2). Many farmers expressed frustration about delays and uncertainties involved in obtaining regulatory approvals. Some reported that they needed to engage consultants (at considerable cost) to help them comply with regulations.

Box 2 Burdens of regulation — some examples from farmers

A Queensland producer described what was required each time he moved his oversized agricultural machine between farms along 25 kilometres of a public road:

- two transport permits from the state transport department — one for the machine, and one for the route taken
- a railway crossing permit from the state's rail authority (this had to be lodged four days in advance, and the vehicle was required to cross the railway within the nominated time frame otherwise a new permit was required)
- two police drivers (the producer had to pay for the personnel time)
- a permit from the local council and the telecommunications and electricity infrastructure companies. While the permits lasted 12 months, they took five days to process.

These types of application processes are time consuming, administratively burdensome and interfere with weather-dependent farming activities.

A landholder in New South Wales who sought to clear 1.2 hectares of land for a blueberry farm near Coffs Harbour found that state government approval was not required as the clearing was considered to be clearing of 'regrowth' under New South Wales native vegetation laws. However, because the proposed clearing area included the habitat (or potential habitat) of seven species listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), the landholder was required to submit 60 pages of documents and 18 maps to the Australian Government Department of the Environment. The outcome was that Commonwealth assessment and approval was not required, as only five of the protected plants were in the proposed clearing area (and thousands remained elsewhere on the property).

Other regulations were identified as reducing flexibility, constraining the use of more efficient production techniques and discouraging investment. Examples include:

- pastoral leases that require land to be used for a specific purpose
- environmental regulations that can reduce the availability of land for grazing and cropping, and limit farmers' capacity to respond to changes and to use new technologies. The Australian Farm Institute described New South Wales' native vegetation laws as 'a cumbersome and tangled web of productivity-sapping regulations'
- state and territory moratoria (effectively bans) on genetically modified (GM) crops, that deny farmers access to technological advances.

In sum, farmers (and other participants) called for better (or less burdensome) regulation, not the elimination of regulations. And in some areas, such as competition policy, some

farm businesses were seeking more rather than less regulation. The NSW Farmers' Association captured the views of farm businesses when it said:

Regulation should enhance productivity, not impinge it, and this must be the bottom line. Whilst there is often a negative interpretation given to regulatory burden ... many rules and regulations are necessary for the effective operation of business.

3 Some common themes

Questionable, unclear or conflicting regulatory objectives

Some questionable objectives were uncovered when we asked the question: 'is the objective of the regulation affecting farm businesses clear and relevant?' Examples include:

- the regulation of genetically modified organisms (GMO) for *marketing purposes* when there is evidence that industry (both in states without regulatory restrictions and internationally) can successfully manage the co-existence of GM and non-GM crops. There is also limited evidence of GMO-free marketing benefits at the bulk trade level
- the re-regulation of sugar marketing in Queensland has the stated objective of allowing sugar cane growers more choice in who markets their sugar. However, the regulation restricts the marketing choices of sugar millers when they should have the property rights over the sugar that they crush. There is no market failure (or other reasonable objective) to justify the re-regulation. The evidence also suggests that the growers' preferred choice of marketing arrangements is likely to reduce the productivity and profitability of the industry (by constraining investment and structural adjustment)
- one of the Rice Marketing Board's objectives is to secure the best possible price for Australian rice in export markets. However, the Australian rice industry can achieve price premiums in international markets without incurring the costs of single-desk marketing
- coastal shipping regulation — the objective of the reforms made in 2012 was to create a regulatory framework that 'maximises the use' of Australian vessels, but the effect is to increase the barriers to entry for foreign flagged vessels and the price of shipping faced by Australian farmers.

Where regulations were found to lack a sound policy justification, the Commission recommended that they be removed.

In other cases, it was difficult to answer questions about the effectiveness of regulations because the objectives were unclear or conflicting. For example, some states' native vegetation laws outline social and economic interests alongside environmental interests, but also aim to improve native vegetation (with an absence of guidance on how decision makers should weigh the objectives).

In the area of animal welfare regulation, the objectives are unclear because they are tied to community expectations, and these are not well understood or articulated (nor are the welfare implications of various farming practices well understood by the community). Limited understanding and agreement about community values in this area has also contributed to conflicts in the development of animal welfare standards and guidelines, particularly between industry and animal welfare groups.

And in foreign investment policy, there is discord between the Australian Government's stated policy objectives and the likely impact of recent regulatory changes. The government recently made changes to the foreign investment framework for agriculture that impose additional costs on foreign investors (and the wider Australian community), create uncertainty and risk deterring foreign investment.

Duplicative roles and inconsistencies across jurisdictions

When we asked the question, 'is there a more efficient way to achieve the regulatory objectives?', we found that better coordination across jurisdictions and agencies would simplify arrangements and reduce the regulatory burden on farmers.

There is scope to reduce duplicative and overlapping regulation between the tiers of government in a number of areas (while still achieving their regulatory objectives), including:

- overlap and duplication between the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act) and state native vegetation regulations. For example, a farmer wanting to clear trees may need approval from both the Australian Government and the relevant state government. Initiatives such as developing consistent assessment processes for the listing of threatened species and one-stop shops for environmental assessments and approvals should make it easier for farmers to navigate the regulatory requirements in this area
- overlapping Australian and state government responsibilities in the management of water resources. Farmers said that they are required to submit the same or similar data to different agencies. Data sharing should be significantly increased in this area.

In other areas, inconsistent regulation across jurisdictions is a source of an unnecessary regulatory burden that adds to the cost of doing business and makes it more difficult for farmers to understand their obligations. A more consistent approach would improve outcomes in the areas of:

- *animal welfare* — inconsistent regulation makes it difficult to effectively inform consumers, and inconsistent standards create uncertainty for industry
- *biosecurity* — while different regulations across jurisdictions can reflect specific risks, in some cases regulations can unnecessarily hinder access to interstate markets and add to the cost of transporting products between jurisdictions

-
- *agvet chemicals* — differences between control-of-use regimes (such as differences in permitted ‘off-label’ uses) lead to confusion for users and add to compliance costs (and the variation is not always justified on regional factors)
 - *heavy vehicle access regulations* — differences across the road network lead to increased compliance costs for producers, such as costly changes to vehicle configurations and loads to meet different requirements. More should be done to reduce unnecessary restrictions and variations across the road network while still achieving amenity objectives and addressing risks to public safety and infrastructure. This requires building a better understanding of road user needs.

Differences in how rules are enforced (particularly in the area of planning decisions across local governments) can create uncertainty for farm businesses. Leadership from state and territory governments is important to guide local government planning and development and improve consistency in approaches. Accountability could be improved by increasing the transparency of council decisions. Community confidence in local government decisions and processes could also be improved through regular independent auditing.

Excessive prescription and rules that are disproportionate to risk

Less prescriptive regulations in a number of areas could reduce costs to farm businesses without jeopardising the underlying objectives of the regulation. Some regulations are designed with the operation of other industries (like manufacturing) in mind, making them incompatible with the operating conditions of farming businesses. Regulations relating to noise, odour, air emissions and waste discharge can be appropriate in more densely populated areas, but when applied on an isolated farm they can have an unnecessary dampening effect on the productivity of agricultural industries. Cotton Australia, for example, noted that ‘allowed dust limits, which may be entirely reasonable in a coastal city environment, can be lower than the ambient dust levels in areas where cotton gins are located’.

Examples of disproportionate responses to risk were also uncovered in this inquiry, including in the areas of agvet chemicals (not making full use of international evidence in assessments), some native vegetation and biodiversity conservation regulations, and the regulatory requirements for agricultural machines to use public roads.

In other areas (including biosecurity and animal welfare), participants called for greater reliance on industry-led initiatives, such as quality assurance schemes, to improve regulatory outcomes and reduce the costs of complying with regulation.

Ongoing changes to regulations create uncertainty

Changing regulations create uncertainty for those affected. Farmers stressed the importance of clarity and consistency in the objectives of regulation, and having sufficient

time to adjust to regulatory changes. For example, fears of future changes to native vegetation regulations can create perverse incentives by encouraging landholders to plant exotic plants instead of native plants, or to clear native vegetation as insurance against future policy changes. Frequent changes to water regulations also create uncertainty for farmers and can undermine the confidence of farm businesses to innovate and invest.

Regulators need to be better communicators

Governments could also reduce the regulatory burden on farm businesses by improving the way they consult and engage with farmers.

A number of farm businesses (especially small farm businesses) said that they struggled to navigate their way through the complex web of rules. GrainGrowers, for example, said that:

A key issue for farmers navigating the regulatory space is the lack of clarity around what regulations apply to different activities and how best farmers can work within their legal boundaries. The time spent attempting to work out regulatory requirements, including the many potential ‘missteps’ that can occur along the way due to misinterpretations or lack of knowledge, are themselves a form of red tape.

Complexity adds to compliance costs and can lead to a higher incidence of inadvertent non-compliance by farm businesses. Environmental regulations were identified as an area where complexity is a particular concern, as was work health and safety. There is scope in both these areas to better support farm businesses to understand the regulations (and their intent) which could lead to better environmental and work health and safety outcomes.

There is also scope for governments to work more cooperatively with landholders and allow for flexible and innovative ways to meet regulatory objectives. More risk-based decision making has the potential to enhance stakeholder trust in environmental regulators.

Regulatory response when there are differences in risk perceptions

Regulations have been introduced in a number of areas in response to community concerns or incidents, including where some in the community perceive there to be a much higher level of risk than is suggested by the experts (based on scientific, technical and/or economic evidence). Examples include mandatory labelling of GM products and lower screening thresholds for foreign investment in agriculture.

More effective communication and public engagement by government agencies about benefits and risks could help address community concerns in these areas. Better communication strategies could also help to build community confidence in regulators, and provide a basis for more informed, evidence-based debate. A better informed debate could also reduce the likelihood that governments will resort to costly and ineffective regulatory responses to address community concerns.

Good regulatory processes are not always observed in practice

This inquiry (like many other reviews of regulation) found that regulation that imposes unnecessary costs on business can often be traced back to poor regulation-making processes. It is hard to dispute that good regulation-making processes are essential for good quality regulation and evidence-based policy making. Participants to this inquiry strongly supported these processes. The National Farmers' Federation, for example, said:

... adherence to good regulatory impact assessment is essential to limiting unreasonable regulatory creep into the future. ... policy makers should have both incentives to better utilise the [regulatory impact assessment] process, but also disincentives to discourage poor practice.

However, good regulation-making processes are frequently not followed in practice. The Commission found examples of:

- regulatory impact assessments (RIAs) that failed to rigorously assess the costs or benefits of regulations
- RIA processes that did not adequately consider alternative options
- regulations that were put in place despite a finding that the regulation would impose a net cost on the community
- RIA processes that appear to have been disproportionately influenced by particular stakeholders (box 3).

Stronger oversight of the quality of RIA processes is one way to reduce the incidence of regulations being put in place when there is no case for doing so. Wider and more systematic stakeholder engagement is another — drawing on a wider evidence base can improve the assessment of the costs and benefits of any proposed regulations. Stakeholder engagement is also an important step in determining whether regulation is the most appropriate policy tool to use and, where it is, to design it so that it achieves its policy objective in the simplest and most cost-effective way. A number of participants to this inquiry commented favourably on stakeholder engagement on the *Biosecurity Act 2015* (Cwlth).

RIA processes need to be used as an analytical tool to support the quality of regulation making, not as a legitimising tool or compliance exercise. RIAs enable potential regulatory burdens to be considered before they are imposed, and place regulatory burdens in context (that is, against the potential benefits). Some of the regulations that participants were most critical of were the ones that were found not to have been subject to good RIA processes.

However, improving the quality of regulation involves more than good RIA processes. No one-off inquiry (such as this) or red-tape reduction target will be able to eliminate or reduce the regulatory burdens that comprise a 'death by a thousand cuts'. As regulatory burdens (over all levels of government) change because of interactions with other regulations, it is not sufficient to merely examine the impact of new regulations.

Box 3 **Good RIA processes are not always followed in practice**

The Tasmanian Government prepared a regulation impact statement (RIS) to assess an extension of the moratorium on the commercial release of genetically modified (GM) organisms into the environment. A marketing advantage in domestic and international markets was noted as one of the main benefits of maintaining Tasmania's GM organism free status. However, the value of this was not quantified (but was assessed to be 'not insignificant'). The benefits of allowing GM crops were theoretically assessed as being relatively small. The RIS concluded that the (unquantified) benefits were likely to be substantial and to exceed the costs of extending the moratorium from 2014 to 2019. (By contrast, a cost-benefit analysis conducted as part of the review of the moratorium on GM canola in Victoria estimated that the Victorian moratorium imposed a net cost. The moratorium was allowed to expire.)

There were also examples of regulations being introduced despite findings that there would be a net cost to the community. In December 2015, the Queensland Parliament passed the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* which re-regulates the international marketing of Australian sugar. The amendments were introduced despite a highly critical RIS which found no case for the regulation and also that the costs would outweigh the benefits (and the overall returns to the sugar industry could be reduced). Similarly, the RIS for the (recently abolished) Road Safety Remuneration Tribunal found that the road safety remuneration system would lead to net costs.

The Commission found examples where only a limited range of options were considered in RISs. One example was the RIS assessing the value of egg stamping in improving traceability. This RIS did not consider alternative traceability systems, such as egg carton labelling or requiring restaurants and caterers to keep records of the eggs they were supplied with. The Commission found no evidence that egg stamping provides higher net benefits to the community than the alternatives.

Disproportionate industry influence in RISs was also raised as a concern by some participants. For example, for the newly endorsed sheep standards and guidelines, the assessment made in the RIS with respect to pain relief for mulesing was that the net incremental welfare benefits did not justify the additional compliance costs to industry. This assessment was based on the views of a reference group, which comprised representatives of 11 national livestock industry organisations, representatives from the eight state and territory relevant government departments, and the Australian Government, two animal welfare organisations and the Australian Veterinary Association.

Although it has been said many times, it bears repeating: policy makers within all government agencies need to be responsible for actively examining the impact of regulations under their remit, and using the results to implement policy and regulatory reforms that could benefit the community. The price of liberty from unnecessary regulatory burdens is eternal vigilance.

4 Issues by topic area

Land use and access regulations

About half of Australia's land area is used for agriculture, mostly for grazing. Land use for agriculture has come under increased scrutiny in recent years as a result of:

- expanding major urban centres and increasing residential populations in city fringe (peri-urban) areas
- a trend towards more intensive farming practices, which can affect the amenity of nearby residential areas
- growing environmental awareness and the conversion of agricultural land to national parks and conservation areas.

These issues have put pressure on regulators to intervene in land use conflicts, including to curtail particular land use activities. Managing these tensions, while ensuring that land is allocated to its highest value use, is a key challenge for policy makers. It involves balancing land use against other considerations, such as the environment and native title interests.

More effective management of Crown land by reforming leases

Restrictions on the use of Crown land place unnecessary burdens on farm businesses that lease Crown land. Pastoral leases generally require land to be used for a specific purpose, which can hamper the ability of farmers to flexibly respond to environmental, economic and other factors that affect their business.

Reform solutions to improve land use flexibility for leaseholders, and to promote more efficient use of, and investment in, land include:

- extending the length of leases or introducing rolling leases
- allowing the conversion of leases to freehold land
- streamlining land use restrictions, including implementing land management objectives directly through land use regulation, rather than through pastoral lease conditions.

In principle, those who benefit from any additional property rights, such as those from the conversion of leasehold to freehold title, should pay for the higher value of the land and any costs associated with implementing the change (including administrative costs). Aligning the incidence of the costs and the benefits of property rights helps ensure that the land is put to its most valuable use.

Planning, zoning and development processes remain problematic

Planning, zoning and development assessment processes were identified as a significant source of unnecessary burdens for farmers. The regulations and processes are unnecessarily complex, time consuming and costly and the adoption of leading practices has been patchy and slow. Also, planning regulations, such as building codes and the classification of intensive agriculture, can fail to meet their regulatory objectives because they are not adaptable or targeted for managing agricultural land uses. Ensuring that regulation is fit for purpose and implementing outcomes-based (rather than prescriptive) regulation would help address these problems.

Managing conflicts between agriculture and other land uses

Conflict between agricultural and other land uses is another area of concern for farmers, particularly residential land use, and resource exploration and extraction. While there is a role for government in promoting the efficient allocation of land rights and the timely resolution of land rights conflicts, policies that seek to protect existing land uses as an *a priori* objective are unlikely to be consistent with facilitating efficient land use.

Calls for a 'right to farm' and the 'right to say no' to resource development appear to be symptomatic of other concerns.

- Calls for a 'right to farm' arise from broader concerns about land use regulation, including frustrations with planning and zoning regulation, and regulator attitudes towards agricultural land use (especially local governments).
- Calls for a right to veto stem from concerns about the regulatory arrangements governing the allocation of resource exploration and extraction rights. In particular, participants were concerned about how the risks of resource projects are assessed and about compensation arrangements for land access.

Such concerns are more effectively managed through improvements to planning and zoning, and the allocation of resource exploration and extraction rights, rather than indirectly through right to farm or right of veto laws.

Environmental regulations

Farmers, as significant landholders, play an important role as managers of the environment. They have a strong incentive to conserve the environment where doing so benefits their farming operations (for example, by maintaining or improving the productivity of the land). But there are also clear public benefits in conserving native vegetation, biodiversity and threatened species and ensuring there is healthy soil and clear air and water (hence a role for government).

Conservation regulations impose unnecessary costs

Environmental regulations are complex — there are multiple pieces of legislation with many overlapping federal, state and (sometimes) local government requirements, as well as international conventions to which Australia is a signatory. But environmental regulations are essential, and so need to be effectively designed and implemented.

Native vegetation and biodiversity conservation regulations can:

- impose considerable costs on some farm businesses, including the cost of conserving species and ecosystems — farmers can bear a disproportionate share of the financial burden of conservation for the benefit of all Australians
- involve complex and costly processes (including the need to obtain and pay for detailed specialist advice about the presence of protected species on the property)
- in some cases be administered in a very bureaucratic and inflexible way. As the Victorian Farmers Federation put it, the regulations ‘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’
- be rigid and contribute to landholders’ distrust of government, and limit their voluntary participation in environmental programs and actions (box 4). They do not always result in improved environmental outcomes and in some cases may even result in poorer environmental outcomes.

The nature of environmental regulations means that some degree of cost and complexity is an inherent part of effective regulation. But continuous improvement of environmental regulations is both possible and desirable.

Working with farmers to protect the environment

Native vegetation and biodiversity conservation regulations need to be changed so that they:

- consistently consider economic, social and environmental factors
- account for the impact of proposed activities on the landscape or the region (not just the impact on individual properties)
- are based on a thorough assessment of environmental risks.

Box 4 One farmer's experience when trying to improve environmental outcomes

The owner and operator of a large cotton farming business on the Macintyre river in southern Queensland told the Commission about his experience dealing with regulatory agencies and local councils when trying to improve environmental outcomes on his property. A recent flood event led to frog spawning and an increase in the water bird population on the farmer's property. The farmer sought to prolong this natural event by adding water from his farm to the natural flow. Timing was critical because, in order to benefit the bird population, the water from the farm needed to arrive before the natural flow dried up.

It took the farmer six weeks to negotiate with multiple agencies (at considerable cost) before permission was granted to supply water for this ecological application. The lengthy delays reduced the effectiveness of the water flow. According to the farmer, each agency was focused exclusively on its area of responsibility and they were unable to work together. For example:

- the authority in charge of stock routes initially rejected the proposal due to its potential to cause erosion, while the local council was concerned with flood risk
- the farmer had to build a pipeline under a main road to reduce the risk of erosion as well as increase the capacity of the culvert (to allow water flow) that was already in place
- a temporary weir was built at the head of this pipeline to make it more effective, but had to be removed following a complaint from a local resident.

The farmer reported that he had to convince an environment authority of the merits of the proposal. He hired a zoologist to monitor bird species before and after the flow. The farmer was also required to design the activity to fit within the regional irrigation management plan, and to gain permission from other landholders. He was also required to test the water quality before and after the flow.

According to the farmer, the environment agency insisted that the project be labelled as a 'pilot' so that it did not form a precedent committing them to similar projects in future. The farmer, however, would like to do similar projects more efficiently in future.

Although the flow did eventually take place, its biological effectiveness was reduced by the delay. The experience left the farmer with a sense that regulatory agencies exist to inhibit rather than enable innovative projects.

Source: Productivity Commission case study interview (appendix C).

Better use could be made of market-based approaches to native vegetation and biodiversity conservation at times. This could include governments buying environmental services (such as native vegetation retention and management) from private landholders. Requiring governments to fund conservation helps discipline governments' demand for conservation on private land (rather than risk treating it as a 'free good' where more is always better). Importantly, where governments choose to allocate land for conservation, they should provide adequate funding to meet the objective of conservation (this should include to control weeds and feral species which can affect adjoining properties).

The administration of native vegetation and biodiversity conservation regulations could also be improved. Governments need to improve the advice and support they provide to

landholders, and explain how different regulatory requirements interact. This would be facilitated by building the capability of, and landholders' trust in, environmental regulators.

Water regulation

Water is an essential input for farm businesses. It is used for irrigating crops, as drinking water for livestock, and for managing waste in intensive livestock and processing industries. The agricultural sector accounts for around two-thirds of Australia's total water consumption.

An important focus of water regulation has been creating markets in regions where this is viable, to allow surface water to be traded to its highest value uses. Farmers reported that water trading has increased the productivity of their businesses by giving them the flexibility to buy and sell water in response to changing market and seasonal conditions. While farmers said that there is room for improvement, they also said that the process of trading water is gradually becoming faster and more efficient.

As regulation of surface water matures, the attention of regulators is turning to groundwater and the interception of overland flows on farms. The regulation of groundwater and overland flows has the potential to increase the security of the water entitlements held by farm businesses.

Complexity and change in water regulation is contributing to the cumulative burden felt by farm businesses. The diversity of Australia's river catchments limits the potential to address this complexity by making it more uniform. More flexible governance arrangements may be needed to develop locally relevant regulations for accessing water. The Commission will examine these and other water-related matters in its future work program in light of its new responsibilities following the repeal of the *National Water Commission Act 2004* (Cwlth).

Regulation of farm animal welfare

Australians generally accept the rearing of animals for commercial purposes (revealed by their consumption of animals as food or in other products). They also place a value on farm animal welfare and benefit from knowing animals are being treated humanely.

Good animal management practices are an essential part of commercial livestock operations. Many welfare improvements increase the productivity and profitability of livestock operations, and producers have an incentive to improve animal welfare to meet changing consumer demands for higher welfare products. However, some welfare measures, such as those that reduce the intensity of production processes, may increase costs without offsetting gains to the business.

Farm animal welfare is a policy area that is expected to evolve over time as community attitudes evolve and as new scientific evidence becomes available. The policy challenge is to have arrangements in place that can transparently weigh up the costs of improved animal welfare against the benefits (the value of animal welfare to the community).

Farm animal welfare regulation could be improved

Since the 1980s, the welfare of farm animals in Australia has been governed by national Model Codes of Practice, implemented by state and territory governments (many were implemented as voluntary standards). The codes cover a number of categories of livestock (cattle, poultry, pigs and sheep) and include land transport, processing, and saleyard codes. In 2005, Australian governments agreed to convert the codes into mandatory standards and voluntary guidelines that reflect contemporary scientific knowledge and community expectations for animal welfare. However, progress has been very slow and the standard setting process does not adequately value the benefits of animal welfare to the community. A number of concerns about the current arrangements were raised, including that:

- animal welfare regulations are not meeting community expectations about the humane treatment of farm animals — not mandating pain relief for some invasive surgical procedures and unstunned (religious) slaughter were highlighted as examples (and the issue of unstunned slaughter is not being considered as part of the current process for setting standards for livestock at slaughtering establishments)
- there is a risk that regulations will be imposed on farmers based on emotive reactions rather than evidence-based policy (including evidence on what represents an improvement in the welfare of farm animals and how this is valued by the community)
- there is a patchwork of different standards, which imposes costs on businesses operating in more than one state, creates confusion for consumers and reduces competition between producers — free-range hen stocking densities were raised as an example
- conflict of interest is an issue — the main concerns were disproportionate industry influence and perceptions of conflicts of interests of agriculture departments (that are responsible for farm animal welfare policy).

There is scope for greater rigour in the process of developing national farm animal welfare standards, and importantly, for science and (soundly elicited) community values to play a more prominent role. Without reform to the process, there is a risk that the agricultural sector, and the Australian community, will continue to face a patchwork of different regulatory arrangements across jurisdictions that do not rigorously take into account economic and social considerations. There are three main areas where farm animal welfare regulations could be improved.

- The objective of the national standards and guidelines needs to be clearer.

-
- Standards and guidelines should be more evidence-based, drawing on the existing body of evidence on animal welfare science and research on community views of animal welfare. Such evidence should also be used in RIA processes.
 - There should be more independence in the standards development process so that outcomes are not overly influenced by the views of any one group, either industry or animal welfare groups. Judgments made to balance conflicting views should be transparent and apply rigorous scientific principles. Surveys of community values for animal welfare should be statistically robust and transparent.

The Commission considered a number of options, including: establishing an independent animal science and community ethics advisory body to provide independent advice in the standards setting process; establishing an independent body responsible for developing the standards and guidelines; and the Australian Government being responsible for all aspects of farm animal welfare regulation.

After closely considering submissions and evidence from hearings on this matter, the Commission maintains the view that the most effective approach would be to establish an independent statutory agency — the Australian Commission for Animal Welfare (ACAW) — with responsibility for developing the national standards — the standards would be implemented and enforced by state and territory governments. ACAW would be responsible for managing the RIA process for the proposed standards, and would include science and community ethics advisory committees to provide independent and rigorous evidence on animal welfare science and community values. ACAW would also disseminate information to the community on best-practice farm animal husbandry practices and contemporary animal welfare science, including through the development and publication of standards and guidelines. ACAW would be able to offer assured scientific guidance (often missing in debates about animal welfare) which would help facilitate a more proactive, rather than reactive, response to community concerns about animal welfare.

ACAW would not result in a duplication of current regulatory processes or necessarily result in an increase in regulation (a concern that was raised by some industry participants). ACAW would replace (and improve upon) the national structure that is already in place for developing standards and guidelines. Importantly, ACAW would be an advisory body, not a regulatory body, and comprise a small number of members with specified skills and experience.

Live export regulation is costly but has led to some improvements

Following the public response to ABC's *Four Corners* footage of mistreatment of Australian animals in some Indonesian abattoirs in mid-2011, Australian trade of cattle for slaughter to Indonesia was temporarily suspended. During the suspension, the Australian Government and industry developed a new regulatory framework — the Exporter Supply Chain Assurance System (ESCAS). The ESCAS was first implemented in Indonesia in

August 2011 and then extended to all countries receiving Australian livestock during 2012. The ESCAS has the objectives of:

- providing assurance to the Australian community that the welfare of animals exported from Australia is maintained through to the point of slaughter in the importing country
- facilitating the livestock export trade so that exporters can increase market share overseas.

Industry and animal welfare groups support the ESCAS, although some animal welfare and animal rights groups would prefer a ban on live exports, and along with some other participants, argued for the system to be strengthened. There was also a renewed call for a ban on live exports following reports of inappropriate handling and slaughter of cattle at ESCAS facilities in Vietnam in June 2016.

The ESCAS has led to some improvements in welfare outcomes for Australian livestock in some overseas export supply chains. For example, the rate of pre-slaughter stunning has increased in Indonesia, as has awareness of international welfare standards in some overseas countries. LiveCorp said that as a result of the ESCAS there has been ‘widespread transformation across Australia’s markets and the involvement of the industry and exporters in supply chains’. The livestock export industry has made substantial investments in infrastructure, training and systems to meet ESCAS requirements.

However, industry is concerned about the administrative burden of the ESCAS. The regulatory burden on exporters could be reduced through greater cooperation between exporters, including the sharing of audits and implementing an industry quality assurance program.

Whether an industry-developed quality assurance program could be used by exporters to demonstrate compliance with the requirements of the ESCAS depends on whether it can be shown to assure the welfare of Australian live exports, in line with the Australian community’s expectations. It is critical that the community has confidence in the system used to regulate live exports. Incidents of mistreatment of animals in facilities that are within the purview of the ESCAS, and that are overseen by the Australian livestock industry, reduce community confidence in the trade and the regulator’s effectiveness.

Focusing government resources (\$8.3 million has been announced) on the implementation of an industry quality assurance program (the Livestock Global Assurance Program) should not be at the expense of continual review and refinement of the ESCAS.

The performance of the ESCAS should be reviewed on a regular basis (including to identify opportunities for reform to improve its efficiency and effectiveness). Regular, independent reviews will help to address any perceived or actual conflict of interest in livestock export regulatory arrangements, and ultimately help to further improve the welfare of Australian livestock exports. If, as is probable, ACAW is not established in time to review livestock export regulations by 2017, then the Australian Government should appoint an independent expert or committee to undertake the first review.

Genetically modified crops

Genetic modification technology can benefit both the agricultural sector and consumers. It has been used to create crops that are more resistant to weeds and pests, and that increase yields. It has also been used to improve the nutritional value, shelf life and other quality characteristics of food.

However, genetic modification technology may present risks to human health and safety and the environment, and for this reason GMOs are assessed at a national level by the Office of the Gene Technology Regulator (OGTR) — a respected regulatory body that relies on credible scientific evidence. The OGTR conducts risk assessments on GMOs, identifies risk management controls, and grants licences for dealings with GMOs. Before issuing a licence for use of a GMO, the regulator must be satisfied that any risks to health, safety and the environment can be managed.

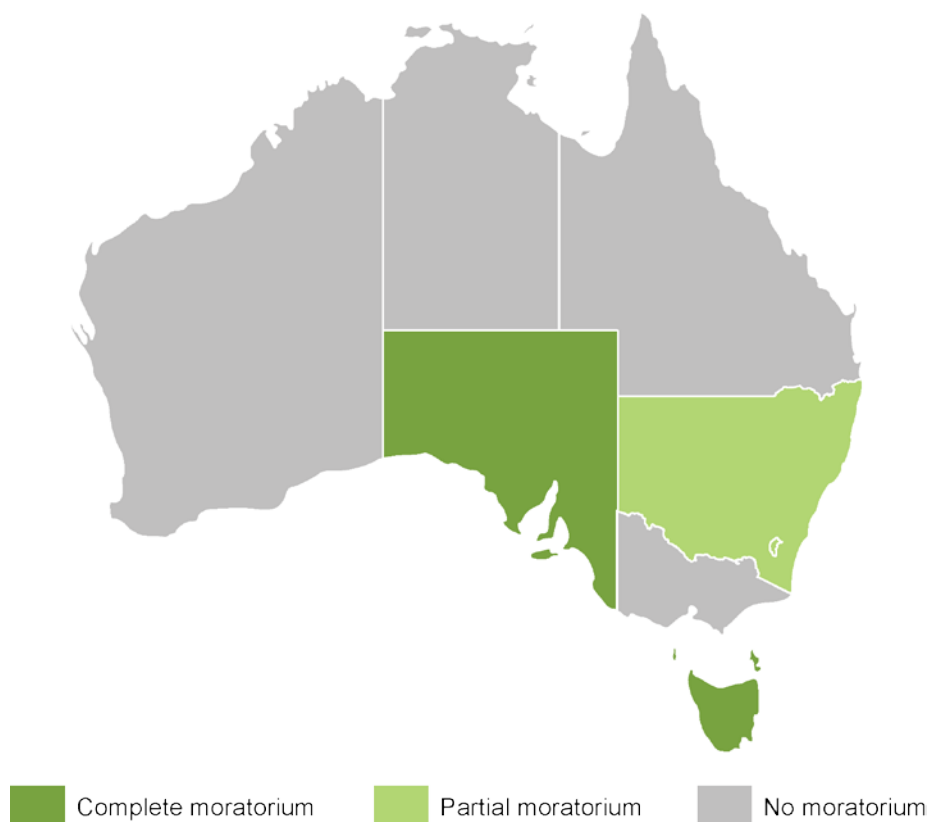
The OGTR has approved certain varieties of GM cotton and canola for release in Australia, having assessed these to be no less safe than their conventional counterparts. Food Standards Australia New Zealand (FSANZ) also assesses GM foods to ensure they are as safe as their conventional counterparts, and has approved some GM foods for release into the Australian food supply.

Despite this, a number of state and territory governments have imposed moratoria (partial or complete) on the cultivation of GM crops (figure 2), on the basis of market access and trade benefits such as price premiums for non-GM crops. There is mixed evidence about these benefits. However, the ability for GM and non-GM crops to coexist has been demonstrated both in Australia and overseas, and therefore the claimed benefits of the moratoria would be able to be achieved even in the presence of GM crops.

New South Wales, South Australia, Tasmania and the Australian Capital Territory should remove their moratoria. State and territory governments should also repeal the legislation that imposes moratoria or gives them the discretion to designate GM-free zones. This will provide certainty to businesses that the moratoria will not be re-introduced in the future.

Removal of the moratoria should also be accompanied by a coordinated communication strategy to improve knowledge in the community about the risks and benefits of GM technology, and the gene technology regulatory framework in Australia (as some consumers remain concerned about GM technology). This should help build confidence in Australia's regulation of GM technology. Government agencies responsible for food policy and regulation (including agriculture and health departments), the OGTR and FSANZ should actively coordinate their communication strategies, aided by trusted, neutral third-party experts or organisations, such as the Office of the Chief Scientist.

Figure 2 **Moratoria on the cultivation of genetically modified crops**



Regulation of agricultural and veterinary chemicals

Farm businesses require access to safe and effective chemicals to manage weeds, diseases and pests and to manage the health and wellbeing of their animals. Access to agvet chemicals depends on an array of regulations administered by the Australian, state and territory governments. At the national level, the Australian Pesticides and Veterinary Medicines Authority (APVMA) is responsible for administering regulatory controls of agvet chemicals up to the point of sale. This includes assessing chemical products for their impact on human health, the environment, and trade, as well as for their efficacy.

Registration and assessment requirements for products already registered overseas are often duplicative, with the result that farm businesses are prevented from, or delayed in, accessing important agvet chemicals. While the APVMA takes into account some international evidence, there is scope to do more. It could make greater use of data and assessments from reputable and comparable international regulatory agencies with similar outcomes in risk management. The Department of Agriculture and Water Resources is considering reform in this area. The Commission considers that this work should be pursued with high priority.

State and territory governments are responsible for controlling the use of agvet chemicals after retail sale. Differences between control-of-use regimes (such as differences in permitted ‘off-label’ uses) has led to confusion for users and added to compliance costs. A national harmonised control-of-use regime has been proposed, but progress has been slow and the proposed scheme only includes minimal harmonisation of off-label use provisions. Work on implementing a single control-of-use regime (that includes increased harmonisation of off-label use provisions) should progress more rapidly. The states and territories should have the regime in place by the end of 2018 — this will be ten years after the Commission’s review of chemicals and plastics regulation recommended moving to a national control-of-use regime. The lack of progress is disappointing.

Coordinating Australia’s biosecurity arrangements

Australia’s biosecurity system is vital to maintaining the competitiveness of the agricultural sector and protecting Australia’s unique environment. The entry of serious exotic pests, weeds or diseases into Australia would have a major impact on Australian farmers, including loss of production and access to premium export markets. Biosecurity activities also protect the community from harmful diseases and the natural environment from exotic threats. An effective biosecurity system should be risk-based, and not used to protect local industries from international competition.

The Australian Government has recently modernised biosecurity legislation by introducing the Biosecurity Act, which took effect in June 2016. The new Act is designed to reduce red tape and provide a more flexible risk-based approach to compliance.

Many inquiry participants were highly supportive of the new Act, but some concerns were raised about self-regulation by industry through approved arrangements and the potential for adverse impacts on Australia’s biosecurity system. Assessing the impact of approved arrangements is difficult given the Act only recently took effect. However, businesses were previously able to apply to self assess risks under the *Quarantine Act 1908* (Cwlth). The new approved arrangements mainly streamline this application process, reducing costs to businesses.

Australia’s biosecurity system will be most effective when resources are targeted to those areas of greatest return to the nation, from a risk management perspective (including whether resources are directed towards pre- and post-border activities or towards particular diseases, weeds or threats). Positive progress has been made towards a more coordinated approach to Australia’s biosecurity arrangements, and developing national priorities for investment. A national biosecurity strategy could improve progress.

The current independent review of the Intergovernmental Agreement on Biosecurity is assessing the effectiveness of the agreement and its capacity to support a national biosecurity system going forward. It is important that this review look at whether clearer national leadership could improve Australia’s biosecurity system, and consider ways to further involve industry in decision making.

Heavy vehicle and other transport regulations

Given the long distances between many of Australia's farms, intermediaries (such as sale yards and abattoirs) and end users, an efficient and cost-effective transport system is critical to the competitiveness of the agricultural sector.

Most transport regulation concerns for farmers related to heavy vehicle road access. Regulations on heavy vehicle road access are in place to address spillover effects from heavy vehicles and their use of the road network (including damage to roads and bridges, safety concerns, traffic congestion and noise pollution). Farm businesses concerns included:

- inconsistent heavy vehicle regulation between jurisdictions
- restrictions on access to the road network, especially on local roads at the start and end of a journey
- processing times for road access permits
- restrictions on moving oversized agricultural machinery.

The adoption of a heavy vehicle national law (HVNL) in most jurisdictions and the creation of the National Heavy Vehicle Regulator (NHVR) is a step in the right direction for improving road access. However, heavy vehicle operators continue to deal with variations in regulations across jurisdictions and delays in obtaining road permits. Improving the visibility of road access decisions across the road network could help to address these concerns. The NHVR should also be reviewed to ensure that responsibilities are appropriately assigned under the national system, and the system is operating efficiently.

It can take a long time to process road access permits because consent is required from state and local government road managers. The states and territories participating in the HVNL should try to increase the number of road routes that are gazetted for heavy vehicle access, for example by allowing industry to propose and undertake road route assessments for gazettal (as is currently the case in South Australia), or by directly funding assessments of state and local roads (as in Queensland). Ideally, permits and conditions would only be used when there is a significant risk to public safety, amenity or infrastructure that can only be managed on a case-by-case basis.

Road access restrictions can be partly attributed to the road funding model which does not link the cost of road use with road investment. A direct (or more cost-reflective) road user charging system could ensure a sustainable revenue base to cover road expenditures, and remove the need for road managers to restrict heavy vehicle access. (Pricing reform would also help address concerns over the effect of pricing distortions on investment in rail networks.) A Road Fund model (an institutional framework that involves a dedicated body responsible for managing the allocation of road revenues to road projects) would assist in ensuring that road investments are directed to where they have the highest value to road

users. Better data on road user needs and the state of road assets — particularly on local roads — is also required.

Farmers are required to obtain multiple permits and comply with other regulatory requirements (such as curfews and police escorts) to move oversized agricultural machinery on public roads. This can interfere with weather-dependent activities that are time sensitive and need to take place at short notice. Issuing permits for longer periods of time or for multiple journeys, or removing the need for permits by making greater use of gazettal notices, would give farmers far greater flexibility (and could be achieved without compromising the safety of other road users).

Heavy vehicle driver safety regulations are necessary to ensure safety on public roads. However, the former Road Safety Remuneration Tribunal imposed costs on businesses, including farm businesses, that were not well justified on the basis of public safety improvements. The system had significant overlaps with other heavy vehicle safety regulations, and poor regulatory processes were followed in its establishment. There was no evidence to suggest that such strong regulation of remuneration in the road transport sector was necessary. There was also no conclusive evidence of the link between remuneration and safety outcomes. The abolition of the Road Safety Remuneration Tribunal has reduced the burden of regulation. The resources reallocated from the Road Safety Remuneration Tribunal to the NHVR are being used to progress road safety initiatives, including some that cover all states and territories, and the review of the NHVR should assess its use of those resources.

Other significant unnecessary transport-related regulatory burdens on farm businesses include:

- coastal shipping regulations which, by giving preference to Australian-flagged ships for transporting domestic cargo between Australian ports, increase costs for farm businesses reliant on sea freight. As an example, Voice of Horticulture said that it costs \$7.00 to ship a box of fruit from Tasmania to Brisbane, but only \$5.60 to ship it from Tasmania to China. To increase competition in coastal waters, coastal shipping laws should be amended to substantially reduce barriers to entry for foreign vessels
- arrangements to support the biofuel industry, such as ethanol mandates and excise arrangements. These should be removed as they deliver negligible environmental benefits and impose unnecessary costs on farmers and the community.

Regulation of food labels

Governments in Australia regulate food to support public health and safety and inform consumer decisions about food. Food labelling regulations seek to ensure that labels convey correct and relevant information to consumers, while regulations regarding the production process protect consumers against unsafe practices. Food labelling concerns were raised in four areas — country-of-origin labelling (CoOL), free-range egg labelling, labelling of GM foods, and gluten-free labelling.

CoOL requirements have been confusing for consumers and have limited Australian producers' ability to differentiate their products. To address these concerns, a new CoOL framework was announced in March 2016. The new system requires products labelled 'made in Australia' to identify the proportion of Australian ingredients they contain. The new system is expected to help clarify the meanings of country-of-origin claims and save consumers time (by providing better visual elements on labels). What is unclear, however, is whether the new arrangements will deliver higher net benefits to the community as a mandatory or a voluntary system.

A voluntary system could result in higher net benefits because a mandatory system imposes costs on all producers, but not all consumers' purchasing decisions are driven by country of origin. It is essential that, as part of any future reforms to the CoOL framework, a RIS is used to assess the costs and benefits of voluntary labelling. This will establish whether a voluntary labelling system would result in higher net benefits to the Australian community compared to mandatory labelling.

The production methods used for eggs labelled as 'free-range' do not always align with consumers' expectations (or understanding) of those methods, and consumers lack confidence that they are getting what they are paying for. The Australian Government recently announced an information standard for free-range eggs to create consistency and allow consumers to compare different 'free-range' eggs. The standard provides a definition for the term 'free-range' (with a maximum outdoor stocking density of 10 000 hens per hectare) and requires producers who claim that their eggs are free-range to prominently disclose the stocking density on the label. Compliance with the information standard provides producers with a safe harbour defence against allegations that they are engaged in false and misleading conduct.

The new standard should provide greater clarity for consumers. However, because poultry welfare outcomes are affected by the production system used (and hen welfare is one of the key reasons why consumers purchase free-range eggs), there should be consistency between animal welfare and egg labelling standards. The new information standard for free-range eggs was established independently of the conversion of the Model Code of Practice for poultry welfare into mandatory national standards and voluntary guidelines, and may need to be revised after this conversion has occurred.

Some participants argued that labelling of GM foods should not be mandatory because GM foods are safe (and labelling imposes a cost on businesses). All GM foods must undergo a safety assessment by FSANZ, and therefore GM labelling is a consumer value issue, not a food safety issue. The Commission is not convinced that GM labelling should be mandatory — if consumers want to avoid GM foods, suppliers have an incentive to voluntarily label their product as 'GM free'.

Despite GM foods being assessed as safe, some consumers remain concerned, and want mandatory GM labelling so they can identify which foods to avoid. Consumers' concerns about the safety of GM foods would be better addressed by governments engaging with the

community, including by communicating the risks and benefits of genetic modification technology.

Gluten-free labels play an important role in ensuring the safety of food for some consumers. Australia's gluten-free labelling regulations are stricter than international standards, and evidence suggests that this is a barrier to the adoption of innovations such as the ultra-low gluten barley. While the Australian Consumer Law does not allow foods with detectable levels of gluten to be labelled 'gluten free' (even if the gluten present is unlikely to be harmful), producers are able to establish other claims to communicate the nature of their products. FSANZ should establish a standard defining the level of gluten that can be generally tolerated by gluten-intolerant consumers, which would provide producers with guidance on the kinds of claims that would not be deemed misleading.

Employing overseas workers

The ability to access overseas workers (particularly working holiday makers) is important for addressing labour shortages in the agricultural sector. Hiring local workers can be difficult because they can be reluctant to work on farms or relocate to rural areas.

The recent proposal to tax working holiday makers as non-residents generated some concern on the basis that it would dissuade overseas workers from coming to Australia. Following a review, the Government announced its intention to reduce the proposed tax on working holiday makers' income and increase the tax on superannuation that working holiday makers can claim when leaving Australia (the Departing Australia Superannuation Payment). Legislation to implement these changes is currently before Parliament. With this change, nearly all working holiday makers' superannuation would be collected as tax, but a portion would be collected by superannuation funds as management fees. Better ways of collecting the tax on working holiday makers' superannuation (such as the Australian Government collecting the superannuation directly) should be explored.

More generally, many temporary residents are unlikely to use superannuation to save for retirement and some farm businesses claimed that being required to pay superannuation for temporary residents is an unnecessary compliance cost. While there are costs to farm businesses in administering superannuation guarantee arrangements for temporary residents, any changes to address these could have broader and unintended economic effects.

Farm businesses also reported high compliance costs associated with the temporary work (skilled) 457 visa programme and noted features of the programme that limit their access to overseas workers. Many of the concerns raised by participants were addressed in a recent independent review of the 457 visa programme (the Azarias review).

Competition policy

Competition is a key driver of innovation and productivity in agriculture.

For most of the 20th century, governments used statutory marketing to shield many of Australia's agricultural industries from competition (a response to concerns about the concentration of market power among a relatively small number of wholesale merchants and/or supermarkets). However, during the late 1980s and early 1990s it became increasingly clear that restricting competition was impairing agricultural industry performance and imposing significant costs on taxpayers, consumers and downstream industries. The legislative review program under National Competition Policy provided the impetus to reform statutory marketing arrangements.

The Rice Marketing Board in New South Wales is Australia's only remaining statutory marketing board. One of the board's objectives is to secure the best possible price for Australian rice in export markets. However, statutory marketing is not necessary for the Australian rice industry to pursue price premiums in international markets. In a deregulated market, competing companies would have an incentive to retain grower loyalty by maximising price premiums without incurring the costs of statutory marketing. Repealing the *Rice Marketing Act 1983* (NSW) would create incentives to innovate and reduce marketing costs, and is likely to result in higher returns for rice growers.

The marketing of potatoes in Western Australia was deregulated in September 2016. The regulation of Western Australia's potato industry had its origins in concerns about reliable food supplies during World War II, but in recent years has reduced the choice of potatoes available to consumers and increased their cost. Deregulation should improve the future responsiveness of the industry to changing consumer preferences and reduce the cost of potatoes in Western Australia.

Legislation was passed in Queensland in December 2015 to enable sugarcane growers to direct how millers market sugar internationally. The legislation restricts competition and will deter structural adjustment in sugarcane farming, investment in milling capacity and innovation in sugar marketing. Reduced or degraded milling capacity is likely to reduce the productivity of the industry and if existing sugar millers decide to leave the industry there will be less competition.

Queensland Sugar Limited (QSL) was granted charity status in late 2015. Its stated charitable purpose is to 'promote the development of the Australian sugar industry' and support its 'long term prosperity and sustainability' for the benefit of the 'general community in Australia'. However, QSL's main activity is exporting raw sugar for the commercial benefit of 14 mills and around 3600 commercial sugarcane farming businesses in Queensland.

QSL's charity status provides it with tax concessions that benefit a small number of commercial milling and farming businesses (which affects the competitive neutrality of the market) in an industry which has cost Australian taxpayers almost \$2 billion since 1990.

Charity status also reduces the transparency of QSL's financial performance, and is likely to further impede structural adjustment in the sugar industry.

There were calls from the agricultural sector to amend the *Competition and Consumer Act 2010* (Cwlth) (CCA) to increase the adoption of collective bargaining by farm businesses (and in so doing help empower farm businesses to negotiate on more equal terms with traders and supermarkets).

Adoption of collective bargaining in the agricultural sector is low. However, this is not surprising as collective bargaining is only likely to be attractive to small groups of farm businesses with similar production characteristics. In diverse groups of farm businesses, the benefits to larger and more efficient farms of bargaining individually are likely to outweigh the costs of bargaining collectively. As such, government efforts aimed at encouraging the use of collective bargaining under the CCA are unlikely to significantly increase adoption by farm businesses.

Perceptions in the agricultural sector that the introduction of an effects test to section 46 of the CCA is likely to shield farm businesses from intense competition — passed on by traders and supermarkets — are not well supported by evidence. In any event, even if the perceptions were accurate, shielding farm businesses from these competitive pressures would not be in the interest of consumers. Competition serves the interests of consumers by lowering the cost, and improving the quality, of food.

Foreign investment in Australian agriculture

Australia, as a small open economy, relies (and has historically relied) on foreign investment to bridge the gap between national savings and investment. The benefits of foreign investment to Australia's agricultural sector, including access to new technology, skills, knowledge and global supply chains, were readily acknowledged by participants. However, many Australians are concerned about foreign investment in agriculture. The 2016 Lowy Institute Poll found that 87 per cent of those surveyed (1202 respondents) were against foreign investment in agricultural land, an increase of 6 percentage points from the 2012 poll.

Australia's foreign investment review framework aims to balance the benefits of foreign investment against any risks to the national interest. The Treasurer's prior approval is required for acquisitions of agricultural businesses and land valued above prescribed thresholds (which trigger review of foreign investment proposals by the Foreign Investment Review Board).

In 2015, the Australian Government made a number of changes to the foreign investment review framework for the agricultural sector, including:

- significantly lowering the screening thresholds for agribusiness (to \$55 million) and agricultural land (to \$15 million, based on cumulative land holdings) for private (non-government) investors from most countries
- establishing a national register of foreign ownership of agricultural land to provide more public information on foreign investment in Australian agricultural land
- introducing application fees for all foreign investment proposals.

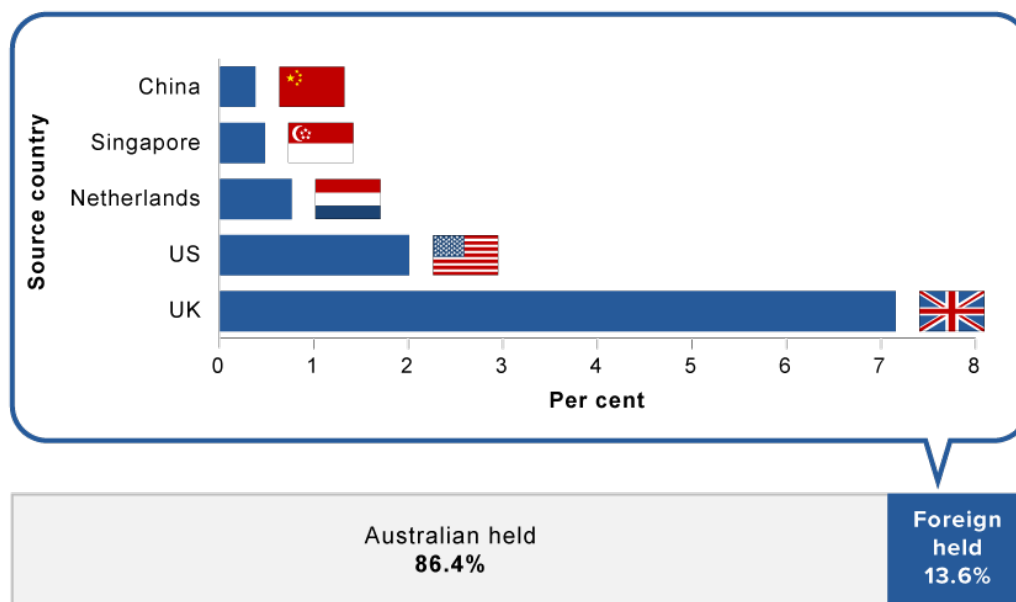
Prior to the changes, there were no agriculture-specific thresholds and agricultural proposals were assessed in the same way as general business acquisitions and private investment in developed commercial land.

The lower screening thresholds (combined with different thresholds depending on the investor's country of origin) increases the cost and complexity of investing in Australian agriculture. This ultimately risks deterring foreign investment in the sector without offsetting public benefits, particularly as other measures (such as the agricultural land register) are in place to provide information and increase transparency about foreign investment in Australian agriculture (figure 3).

It is difficult to objectively demonstrate that national interest considerations are different for foreign investors proposing to invest in agriculture compared to other sectors of the economy that have a higher screening threshold of \$252 million (including acquisitions in sensitive businesses, such as telecommunications, transport, defence and military related industries). Consistent policy is important for its credibility.

Accordingly, the Commission is of the view that the Australian Government should return the screening thresholds for agricultural land and agribusiness to \$252 million.

Figure 3 **Top 5 countries, proportion of Australian agricultural land that is foreign held**



Lower thresholds are not the most effective (or efficient) policy tool to address community concerns about foreign investment in agriculture. And in fact, if anything, public opposition to foreign investment in agriculture appears to have increased since the change to the thresholds in 2015.

The Australian Tax Office's report on the register of foreign ownership of agricultural land should help dispel *some* of the myths about foreign ownership of agricultural land (for example, on the extent, distribution and origin of foreign ownership, figure 3). But facts can only go so far and may not address many of the concerns (such as those relating to food security and national sovereignty). Facts need to be effectively translated otherwise myths and misinterpretation will prevail.

To facilitate a more informed public conversation about foreign investment in agriculture, the Australian Government should request that the Productivity Commission, through its annual Trade and Assistance Review, analyse and report on the trends, drivers and effects of foreign investment.

Recommendations and findings

Land use regulation

RECOMMENDATION 2.1

Land management objectives should be implemented directly through land use regulation, rather than through pastoral lease conditions. State and territory governments should reform land use regulations to enable the removal of restrictions on land use from pastoral leases.

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.

RECOMMENDATION 2.3

The Tasmanian Government should repeal the *Primary Industry Activities Protection Act 1995*.

FINDING 2.1

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.

Environmental regulation

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 environmental, economic and social factors.

RECOMMENDATION 3.2

The Australian, state and territory governments should continue to develop market-based approaches to native vegetation and biodiversity conservation. Governments could achieve desired environmental outcomes by buying environmental services (such as native vegetation retention and management) from private landholders.

RECOMMENDATION 3.3

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

- recognise and recruit the efforts and expertise of landholders and community-based natural resource management organisations
- build the capability of, and landholders' trust in, the organisations that administer environmental regulations (including local governments).

On-farm regulation of water

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 relevant regulatory settings for accessing water.

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.

Regulation of farm animal welfare

RECOMMENDATION 5.1

To facilitate greater rigour in the process for developing national farm animal welfare standards, the Australian Government should take responsibility for ensuring that scientific principles guide the development of farm animal welfare standards. To do this, a stand-alone statutory organisation — the Australian Commission for Animal Welfare (ACAW) — should be established. The functions of ACAW should include:

- determining if new standards for farm animal welfare are required, and if so, to develop the standards using good-practice public consultation and regulatory impact assessment processes
- publicly assessing the efficiency and effectiveness of the implementation and enforcement of farm animal welfare standards by state and territory governments
- publicly assessing the efficiency and effectiveness of the livestock export regulatory system and making recommendations to improve the system to the Australian Government Minister for Agriculture.

ACAW should comprise no more than five members (including a Chair) appointed by the Australian Government following consultation with state and territory governments. Members should be appointed on the basis of skills and experience, not as representatives of a particular industry, organisation or group.

It should also include animal science and community ethics advisory committees to provide independent, evidence-based advice on animal welfare science and community values.

RECOMMENDATION 5.2

State and territory governments should review, by the end of 2017, the way in which their farm animal welfare regulations are monitored and enforced, 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 demonstrating compliance with farm animal welfare standards, provided that the scheme complies (at a minimum) with standards in law, and involves independent and transparent auditing arrangements.

RECOMMENDATION 5.3

The Australian Government should appoint an independent expert or committee to publicly inquire and report, by the end of 2017, on the efficiency and effectiveness of the livestock export regulatory system.

The review should include an assessment and make recommendations for reform on:

- industry-developed initiatives, such as quality assurance programs, as a means of compliance with livestock export regulations
- recognition of equivalence of regulatory arrangements in livestock export markets
- the effectiveness of the auditing arrangements used to demonstrate compliance with livestock export regulatory requirements, including mandatory rotation of auditors and requirements for auditors to have expertise in animal welfare and animal husbandry.

If the Australian Commission for Animal Welfare (recommendation 5.1) is established in time, it should undertake the first review. It should also undertake subsequent regular reviews of the livestock export regulatory system.

Regulation of technologies

FINDING 6.1

There is no economic or health and safety justification for banning approved genetically modified (GM) organisms.

- The Office of the Gene Technology Regulator (OGTR) and Food Standards Australia New Zealand (FSANZ) assess GM organisms and foods for their effect on health, safety and the environment. Scientific evidence indicates that GM organisms and foods approved by the OGTR and FSANZ are no less safe than their non-GM counterparts.
- The successful coexistence of GM and non-GM crops is possible and has been demonstrated both in Australia and overseas. This means that if there are any market access or trade benefits (including price premiums for non-GM products), they would be achieved regardless of whether GM crops are in the market.

RECOMMENDATION 6.1

The New South Wales, South 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 genetically modified organisms by 2018.

The removal of the moratoria and repeal of the relevant legislation should be accompanied by coordinated communication strategies designed to increase public knowledge about the benefits and risks to the Australian community from genetic modification technologies. The Australian, state and territory governments, the Office of the Gene Technology Regulator and Food Standards Australia New Zealand should actively coordinate their communication strategies.

Agricultural and veterinary chemicals

RECOMMENDATION 7.1

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

RECOMMENDATION 7.2

The Australian, state and territory governments should implement a national control-of-use regime (including harmonisation of off-label use provisions) for agricultural and veterinary chemicals by the end of 2018.

Transport

FINDING 9.1

Despite the commencement of the Heavy Vehicle National Law and the establishment of the National Heavy Vehicle Regulator, there remain significant variations and inefficiencies in heavy vehicle regulation, including costly delays in processing road access permits.

RECOMMENDATION 9.1

States and territories that are participating in the Heavy Vehicle National Law should, as a high priority, increase the number of routes that are assessed and gazetted for heavy vehicle access. Permits should only be required in locations where there are significant risks to public safety or infrastructure that must be managed on a case-by-case basis.

There are arrangements in South Australia to allow road users to propose and undertake road route assessments for gazettal, and in Queensland to fund road route assessments and gazettals on both state and local roads. These arrangements should be considered for adoption in other jurisdictions or expansion in respective states.

RECOMMENDATION 9.2

The Australian, state and territory governments should pursue road reforms to improve the efficiency of road infrastructure investment and use, particularly through the introduction of direct road-user charging for selected roads, the creation of Road Funds, and the hypothecation of revenues in a way that incentivises the efficient supply of roads.

RECOMMENDATION 9.3

The National Heavy Vehicle Regulator, road managers, and relevant third parties (such as utilities and railway companies) should ensure that requirements for moving oversized agricultural machinery are proportionate to the risks involved. To achieve this they should, wherever possible, make greater use of gazettal notices or other exemptions for oversized agricultural machinery, and issue permits that are valid for longer periods and/or for multiple journeys.

FINDING 9.2

The road safety remuneration system (including the former Road Safety Remuneration Tribunal) imposed costs on businesses, including farm businesses, without commensurate safety benefits, and its abolition has reduced this burden.

RECOMMENDATION 9.4

The Australian, state and territory governments should review the National Heavy Vehicle Regulator (NHVR) as part of the planned review of the national transport regulation reforms. The review should:

- assess the efficiency and effectiveness of heavy vehicle regulations, including the scope to improve the allocation of responsibilities under the national system
- identify ways in which new funds allocated following the abolition of the Road Safety Remuneration Tribunal could best be used by the NHVR to improve road safety in all states and territories.

FINDING 9.3

Privatisation of major ports has the potential to increase economic efficiency, provided the public interest is protected through structural separation, regulation or sale conditions. Increasing the sale price of ports by conferring monopoly rights on buyers is not in the public interest.

RECOMMENDATION 9.5

As a matter of priority, the Australian Government should amend coastal shipping laws to substantially reduce barriers to entry for foreign vessels, to improve competition in coastal shipping services.

RECOMMENDATION 9.6

Arrangements to support the biofuel industry — including excise arrangements and ethanol mandates — deliver negligible environmental benefits and impose unnecessary costs on farmers and the community. The Australian, New South Wales and Queensland Governments should remove these arrangements by the end of 2018.

Food regulation

RECOMMENDATION 10.1

The Australia and New Zealand Ministerial Forum on Food Regulation should amend its policy guidelines to make labelling of genetically modified foods voluntary, and Food Standards Australia New Zealand should remove the requirement in the Food Standards Code to label genetically modified foods.

RECOMMENDATION 10.2

Food Standards Australia New Zealand should establish a standard defining the level of gluten in foods that can be generally tolerated by gluten-intolerant consumers, taking into account:

- the varying levels of gluten sensitivity among gluten-intolerant consumers
- scientific evidence on the risks of gluten to these consumers
- the costs and benefits to the Australian community.

RECOMMENDATION 10.3

Food Standards Australia New Zealand should remove the requirement for egg stamping under the Primary Production and Processing Standard for Eggs and Egg Products, unless it can be shown through a transparent and rigorous cost–benefit analysis that egg stamping is more effective and confers higher net benefits compared to alternative traceability methods.

RECOMMENDATION 10.4

The Department of Agriculture and Water Resources and state and territory food safety authorities should determine whether regulatory food safety audits could be reduced by recognising compliance with commercial quality assurance programs.

Competition regulation

RECOMMENDATION 12.1

The New South Wales Government should repeal the *Rice Marketing Act 1983*.

FINDING 12.1

Statutory marketing of potatoes in Western Australia reduced consumer choice and increased the price of potatoes in Western Australia. Deregulation of the industry will allow potato production in that state to better respond to changing consumer preferences and reduce the cost of potatoes for consumers.

FINDING 12.2

There is no market failure or other reasonable objective to justify the re-regulation of the Queensland sugar industry.

RECOMMENDATION 12.2

The Queensland Government should repeal the amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

RECOMMENDATION 12.3

The Australian Government should legislate to exclude agricultural commodity trading companies from being granted charity status and receiving the associated tax concessions.

FINDING 12.3

Collective bargaining arrangements are only likely to be attractive to small groups of farm businesses with similar production characteristics. Government efforts to encourage collective bargaining under the *Competition and Consumer Act 2010* (Cwlth) are unlikely to result in a significant increase in adoption among farm businesses.

FINDING 12.4

The perception in the agricultural sector that introducing an ‘effects’ test to section 46 of the *Competition and Consumer Act 2010* (Cwlth) is likely to shield farm businesses from intense competition in retail grocery markets is ill-founded. In any event, doing so would not be in the interest of consumers.

Foreign investment in agriculture

RECOMMENDATION 13.1

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

RECOMMENDATION 13.2

The Australian Government should request that the Productivity Commission, in its annual Trade and Assistance Review, analyse and report on the trends, drivers and effects of foreign investment.

RECOMMENDATION 13.3

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.