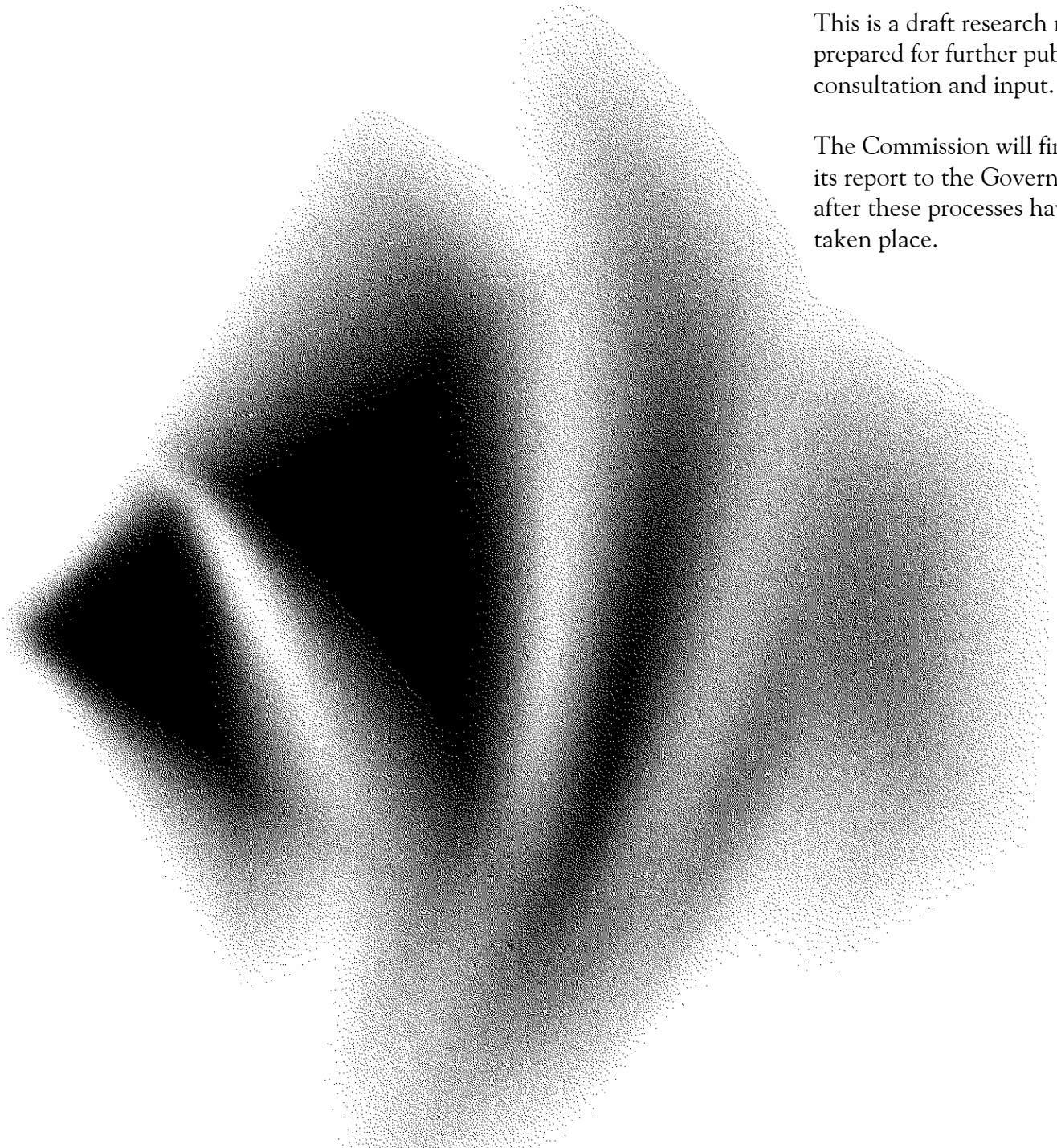
Australian Government
Productivity Commission

Annual Review of Regulatory Burdens on Business: *Primary Sector*

Productivity Commission Draft Research Report

This is a draft research report prepared for further public consultation and input.

The Commission will finalise its report to the Government after these processes have taken place.



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The Productivity Commission

The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

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

Information on the Productivity Commission, its publications and its current work program can be found on the World Wide Web at www.pc.gov.au or by contacting Media and Publications on (03) 9653 2244.

Opportunity for further comment

You are invited to examine this draft report and to provide written comments to the Productivity Commission.

Written comments should reach the Commission by **Friday, 5 October 2007**. If possible, please provide your comments by email. After comments have been received and some discussions with interested parties have been held, a final report will be prepared.

The Commission is to present its final report to Government by the end of October.

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Terms of reference

ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS

Productivity Commission Act 1998

The Productivity Commission is asked to conduct ongoing annual reviews of the burdens on business arising from the stock of Government regulation. Following consultation with business, government agencies and community groups, the Commission is to report on those areas in which the regulatory burden on business should be removed or significantly reduced as a matter of priority and options for doing so. The Commission is to report by the end of October 2007, and the end of August each following year.

The Commission is to review all Australian Government regulation cyclically every five years. The cycle will commence with a review of regulatory burdens on businesses in Australia's primary sector. In subsequent years, the Commission is to report sequentially on the manufacturing sector and distributive trades, social and economic infrastructure services, and business and consumer services. The fifth year is to be reserved for a review of economy-wide generic regulation, and regulation that has not been picked up earlier in the cycle. The Commission's programme and priorities may be altered in response to unanticipated public policy priorities as directed by the Treasurer.

Background

As part of the Australian Government's initiative to alleviate the burden on business from Australian Government regulation, on 12 October 2005, the Government announced the appointment of a Taskforce on Reducing Regulatory Burdens on Business and its intention to introduce an annual red tape reduction agenda. This agenda incorporates a systematic review of the cumulative stock of Australian Government regulation. The Government approved this review process to ensure that the current stock of regulation is efficient and effective and to identify priority areas where regulation needs to be improved, consolidated or removed.

Furthermore, the regulatory reform stream of the Council of Australian Governments (COAG) National Reform Agenda focuses on reducing the regulatory burden imposed by the three levels of government. On 10 February 2006, COAG agreed that all Australian governments would undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform

would provide significant net benefits to business and the community. COAG also agreed that these reviews should identify reforms that will enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role of regulatory bodies.

Scope of the annual review

In undertaking the annual reviews, the Commission should:

1. identify specific areas of Australian Government regulation that:

    a) are unnecessarily burdensome, complex or redundant; or

    b) duplicate regulations or the role of regulatory bodies, including in other jurisdictions;

2. develop a short list of priority areas for removing or reducing regulatory burdens which impact mainly on the sector under review and have the potential to deliver the greatest productivity gains to the economy;

3. for this short list, identify regulatory and non-regulatory options, or provide recommendations where appropriate to alleviate the regulatory burden in those priority areas, including for small business; and

4. for this short list, identify reforms that will enhance regulatory consistency across jurisdictions, or reduce duplication and overlap in regulation or in the role of regulatory bodies in relation to the sector under review.

In proposing a focused annual agenda and providing options and recommendations to reduce regulatory burdens, the Commission is to:

- seek public submissions at the beginning of April in 2007, and at the beginning of February in each following year, and consult with business, government agencies and other interested parties;

- have regard to any other current or recent reviews commissioned by Australian governments affecting the regulatory burden faced by businesses in the nominated industry sectors, including the Australian Government's response to the report of the Taskforce on Reducing Regulatory Burdens on Business;

- report on the considerations that inform the Commission's annual review of priorities and reform options and recommendations; and

- have regard to the underlying policy intent of government regulation when proposing options and recommendations to reduce regulatory burdens on business.

The Commission's report will be published and the Government's response announced as soon as possible.

PETER COSTELLO

[received 28 February 2007]

Foreword

This draft research report has been prepared by the Commission as part of a study requested by the Treasurer, on behalf of the Australian Government.

The reduction of unnecessary regulatory burdens has become an increasingly important part of the economic reforms to improve the competitiveness of business and the overall performance of the Australian economy. The Commission has been asked to conduct annual reviews of the burdens on business arising from the stock of Australian Government regulation, over a five year cycle. This study of the primary sector is the first in that series.

Each farmer, mining company or other producer is faced with a significant array of complex, and often overlapping, regulation. In undertaking this review, the Commission has focused on identifying those regulatory burdens placed on primary sector businesses which are unnecessary within the current policy settings. It has put forward proposals for reducing these burdens, as well as for the better design of future regulatory frameworks affecting the primary sector.

The study was overseen by Commissioner Mike Woods and Associate Commissioner Matthew Butlin, with a staff research team led by Sue Holmes.

The Commission has been greatly assisted by many discussions with, and nearly 50 submissions provided by, participants. The Commission welcomes feedback on this draft. The final report is scheduled to be submitted to the Government at the end of October.

Gary Banks
Chairman
August 2007

Contents

Abbreviations

AAWS	Australian Animal Welfare Strategy
ANAO	Australian National Audit Office
ABARE	Australian Bureau of Agricultural and Resource Economics
APPEA	Australian Petroleum Production & Exploration Association
APVMA	Australian Pesticides and Veterinary Medicines Authority
AQIS	Australian Quarantine and Inspection Service
AusBIOSEC	Australian Biosecurity System for Primary Production and the Environment
COAG	Council of Australian Governments
DAFF	Department of Agriculture, Fisheries and Forestry
DEH	Department of Environment and Heritage
DEW	Department of Environment and Water Resources
DITR	Department of Industry, Tourism and Resources
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999*
MCA	Minerals Council of Australia
NChEM	National Chemicals Environment Management
NEPM	National Environment Protection Measure
NFF	National Farmers Federation
NWI	National Water Initiative
PC	Productivity Commission
QFF	Queensland Farmers Federation
VFF	Victorian Farmers Federation
WTO	World Trade Organisation

OVERVIEW

Key points

- From the perspective of each farmer, mining company and other primary sector business, governments impose a significant array of complex, and at times overlapping, regulatory burdens.
- Many Australian Government agencies now have processes in place to identify and reduce or remove some of the unnecessary burdens while meeting policy objectives.
- Through this study the Commission has identified a further set of actions which can be taken without delay, including:
  - removing duplication in applying for drought assistance
  - amending Part IIIA of the Trade Practices Act to make public the reasons for all decisions
  - consolidating the assessment of environmental export approvals for uranium into the Environment Protection and Biodiversity Conservation Act
  - ensuring the technical capacity of visa verification systems
  - improving the risk assessment of the importation of live animals.
- Although some reforms have been agreed at policy level, primary sector businesses are not seeing any tangible results. Examples of where the implementation processes are taking too long include:
  - adoption and implementation of the National Mine Safety Framework
  - establishment of bilateral agreements on environmental approvals
  - recognition of skills acquired across borders or through Vocational Education and Training
  - removal of regulatory barriers that impede the efficiency of the bulk commodity export infrastructure.
- A number of unnecessary regulatory burdens can only be removed after a full policy and framework review, including those in relation to:
  - market arrangements for wheat exports
  - the regulatory framework for onshore and offshore petroleum and its administration
  - coastal shipping as part of the national transport market reform agenda
  - a science based assessment of the risks involved in uranium mining.
- There is range of unnecessarily burdensome regulations relating to agricultural and veterinary chemicals and these are being addressed in the Commission's study into chemicals and plastics regulation.
- Regulatory design issues of particular relevance to the primary sector include:
  - incorporation of evidence-based assessments of risks
  - explicit identification of the loss of property rights imposed by regulatory changes aimed at achieving community-wide objectives.
- The new national frameworks for water and for greenhouse gas emissions provide an opportunity to address the unnecessary burdens imposed by the multitude of existing piecemeal interventions. These new frameworks should:
  - facilitate market transactions to establish prices that reflect scarcities and encourage the allocation of scarce resources to their highest value uses
  - only allow exemptions where fully justified.

Overview

In October 2005, as part of the Australian Government's initiative to alleviate the burden on business from Australian Government regulation, the Government announced the appointment of a Taskforce on Reducing Regulatory Burdens on Business and its intention to introduce an annual red tape reduction agenda.

In February 2006, as part of the National Reform Agenda, the Council of Australian Governments (COAG) agreed:

- all Australian governments would review, annually and publicly, existing regulation to identify priority areas where reform would provide significant net benefits to business and the community
- these reviews should identify reforms that will enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and regulatory bodies.

To fulfil aspects of both of these agendas, the Australian Government has requested the Productivity Commission to conduct ongoing annual reviews of the burdens on business arising from the stock of Australian Government regulation in a five year cycle. This report for the primary sector is the first of that cycle.

The Commission has included, within the ambit of the review, regulatory regimes of a national character that involve the Australian Government. It has also assessed, within the range of options for reducing the unnecessary burdens, non-regulatory instruments or approaches that may be more effective.

Conduct of the Review

The terms of reference are set out on page iv. The process adopted for the review has been to invite submissions from, and to consult widely with, a wide range of interested parties, including industry associations, state and territory governments and individual farmers, mining and energy companies and other primary sector enterprises. The issues examined in this review were all identified through this process.

Where interested parties did not raise any concerns in relation to an area of Australian Government regulation, the review took this as prima facie evidence that there were no perceived problems of excess burden.

There are several other review processes that are currently underway regarding aspects of Australian Government regulation. To avoid duplication, any concerns raised in submissions and consultations during this review will be referred to the relevant officials.

Due to the considerable regulatory reform activity in COAG and in individual jurisdictions in recent years, many issues have only just been reviewed and the effects of any policy changes have yet to be worked through. Given their early stage of implementation, it would be inappropriate to include them in this process.

The terms of reference set important boundaries on the scope of the review and its recommendations. First, the specific focus on the primary sector has the potential to miss important interactions with other parts of the economy. For example, there are significant constraints on the mining industry from infrastructure, especially transport and power, neither of which is part of the primary sector. To overcome this, the review has extended its focus to Australian Government regulations which apply to the parts of the economy that have a major impact on the primary sector.

Second, the review was required to operate within the constraints of existing public policy. In a number of cases, significant costs of regulation were identified that arose from the policy itself, rather than the way regulations were designed or administered. In these cases — which have been noted — the appropriate course is to re-appraise the policy.

Third, there are many regulatory areas where the Australian Government is involved along with multiple state and territory jurisdictions but where the Australian Government's role is quite minor. In these cases, while there may be issues of excessive regulatory burdens, there is little the Australian Government can do unilaterally that will have a practical outcome.

A final observation on the scope of this review is that while all jurisdictions are undertaking their own reviews, there is no overall coordination of this activity. As a result, the opportunity to reach collective agreement on ways to enhance the consistency and reduce the duplication of regulations and their administration across jurisdictions has been diminished.

Industries and regulation under reference

The regulations under reference in this first year are those Australian Government instruments which mainly impact on the primary sector. The primary sector encompasses businesses engaged in or which provide support services to:

- agriculture
- aquaculture
- forestry
- fishing
- mining
- oil and gas extraction
- petroleum and mineral exploration.

The diverse industries constituting the primary sector face quite different market characteristics and challenges:

- Mining and oil and gas extraction are in a super cycle of growth and face several capacity constraints, such as with skilled labour and export infrastructure.
- Farming has been suffering from severe droughts — exacerbated by uncertain water rules — and tighter land-use and native vegetation rules.
- Fishing is experiencing declining stocks and faces uncertainties regarding the sustainability of fish populations.
- Aquaculture has been growing, partly from its ability to supplement the decline in wild stock fishing.
- Forestry, based on both private and public forests, has been promoting its role in absorbing greenhouse gases.

In 2005-06, the primary sector accounted for 10 per cent of GDP ($94 billion), over 60 per cent of exports ($121 billion), and 5 per cent of employment (478 000 persons) in the economy. Within the primary sector, the mining sector contributes the most to GDP (71 per cent) and total exports (74 per cent) while agriculture, forestry and fishing account for the majority of employment (72 per cent). Throughout this decade, the trend has been for mining to contribute an increasingly greater proportion to output and exports and for agriculture, forestry and fishing's relative contribution to decline.

Significant structural change has been occurring in all of the industries making up the primary sector. Some of the major forces at work include: very rapid growth in demand for mining exports from China and India; growing demand for water combined with severe droughts; increasing demand for skilled labour combined

with an ageing workforce; declining wild fish stocks to possibly unsustainable levels; and increased competition to agriculture, fishing and forestry from imports of food, fibre and wood. In addition, growing concern over global warming is leading to the development of greenhouse gas emissions trading schemes, and greater attention is being given to uranium as an alternative energy source.

These fundamental changes will result in some primary industries contracting and others expanding. Ensuring the clarity, simplicity and even-handedness of the regulatory regimes for water, labour, land use and greenhouse gas emissions will be crucial to ensuring that, as industries compete over scarce resources, those resources go to their highest value uses and enhance the wellbeing of Australians as a whole.

Concerns raised by participants have covered a wide range of regulations, including: marketing schemes, infrastructure access, animal welfare, restrictions on land use, existing and future greenhouse gas and energy controls, the National Mine Safety Framework, export controls, transport including export infrastructure, fish stock preservation, and hiring temporary labour. The burden imposed on the agricultural sector through the regulation of farm chemicals was raised more than any other concern.

In addition to the identification of unnecessarily burdensome aspects of regulations, and overlaps between regimes, some participants also focused on regulatory reform agendas for the future. This was particularly the case for mining, and as a result, in places the report offers a more prospective assessment of some regulatory issues.

Increased awareness of the need to reduce regulatory burdens

For more than 15 years, successive Australian governments have been increasing the requirements on regulation makers to fully consider the impacts of new or changed regulations. While there is still room for improvement, many agencies appear to have a greater awareness of the need to address the complexities and unintended side-effects of regulations.

This is evident in the large array of reviews to date and which is ongoing. For example, the Native Title Act and the Petroleum Submerged Lands Act were both recently reviewed explicitly to identify and remove duplication and unnecessary burdens. In addition, the Commission has commenced a study on chemicals and plastics which will address, amongst other matters, the regulatory burden on farmers, horticulturalists and the like from their use of agricultural chemicals.

The impacts of piecemeal regulations applied by various jurisdictions to address concerns relating to water scarcities and climate change also impose unnecessary burdens that are likely to be avoided by a nationally coordinated approach. The regulation of water and greenhouse gas abatement has wide-ranging impacts across the primary sector. This increased awareness of the need to improve regulation needs to be applied equally to the development of the new national regulatory frameworks for water and greenhouse gas emissions. Harnessing the market to establish prices which reflect scarcities and provide incentives to manage resources well will encourage the allocation of those resources to their highest value uses.

Another important principle in regulation is to minimise the extent of any special treatments or exemptions by fully justifying them against national interest criteria. The larger the number of exemptions — from paying the full price for water or the full cost of greenhouse gas emissions — the greater the burden on others and the more difficult to achieve the underlying environmental and economic goals as some least cost options for achieving outcomes will be missed.

The effective operation of vocational education and training, and transport infrastructure (especially for exports), are also fundamental to the nation's economic performance. While regulatory reform can play some role in removing bottlenecks along the delivery chain and in achieving consistency across jurisdictions, funding and pricing are equally important. Reforms should aim to remove those interventions by governments which prevent the industries from recouping the full value of their output, within the constraints of the underlying policy objectives.

The regulatory impact of federalism

All mining, gas, oil and other primary sector businesses are subject to both Australian Government and state/territory regulation. A number also operate in two or more states or territories, as do some farm enterprises.

Although there are many areas of strong national policy consensus through COAG and Ministerial Councils, regulatory inconsistencies and duplication across state borders persist. Sensible and pragmatic changes which would significantly reduce unnecessary burdens on business, while continuing to serve agreed policy goals, regularly falter before full implementation, undermined by the variations each jurisdiction introduces when creating its own specific body of regulation.

A recent COAG decision requires Regulation Impact Statements to assess whether a uniform, harmonised or jurisdiction-specific model for a particular regulatory framework would achieve the least burdensome outcome. This may go some way to

ensuring Ministers and regulators more often select a uniform model unless there are good reasons for adopting jurisdiction specific features.

Three lessons emerge from this study:

- tight timeframes should be set for the delivery of results in order to avoid additional reviews of processes (where the policy objectives have been settled) and thus delays to productive change
- the practice of each jurisdiction adopting variations to meet specific local interests, when implementing nationally agreed positions, negates many of the benefits of national regimes
- implementation is regularly frustrated by a succession of contemporary circumstances to the point that the prospect of achieving the outcomes originally agreed by COAG diminishes. An example, which has been highlighted in this report, is the very slow progress with implementing a National Mine Safety Framework.

Regulatory issues facing the primary sector

Some of the regulatory issues raised by farmers, fishers, aquaculturalists, foresters and miners apply particularly to industries within the primary sector.

One sector-focused concern is that some regulatory changes which have been implemented to achieve national objectives can effectively impose a loss of property right by limiting the way land or other resources can be used. As a result the value of those resources can be reduced. Participants have:

- questioned why they should carry the cost of pursuing national objectives such as meeting climate change objectives, preserving native vegetation or improving the efficiency of water markets which are for the benefit of the community as a whole
- argued that where compensation is provided, it is often much lower than the loss imposed.

Another concern arises from the formulation of regulatory responses which reflect popular opinion, without adequate reliance on scientific assessment of the risk, or of ways to manage it (as part of the cost-benefit analysis). Evidence-based hazard identification, risk assessment and risk management should be central to the regulatory approach taken for uranium mining and the like. This could provide the basis for the rationalisation of, and improvement to, a number of regulations and leave open the pursuit of economic opportunities within acceptable policy frameworks.

Finally, the costs of regulatory differences between jurisdictions fall particularly heavily on those living and working near state borders (or Commonwealth/state borders in instances such as offshore fisheries and petroleum regulation). Often these are farm and mine operations where different regulatory requirements, for example for transport and water, must be adhered to every day.

Some of the other concerns of the primary sector are regularly seen across the broader regulatory landscape:

- overuse of regulation to manage risk
- the high costs imposed on businesses when regulators fail to make timely interim and end date decisions for: policy development and implementation (such as for water policy, carbon emissions trading, national mine safety); and regulatory actions (such as for environmental approvals and water allocations)
- differences in how the same regulation is administered and enforced in different parts of the country
- overlaps and inconsistencies between jurisdictions — for a range of definitions, timing and instruments to achieve the same objective — limit the capacity of businesses operating in more than one jurisdiction from reaping economies of scale and impose additional costs anytime a new venture is started in another state or territory.

Where regulations administered by different agencies within the one jurisdiction overlap and/or conflict, there may be a case for having a Memorandum of Understanding, a coordinator who can adjudicate on conflicts, and /or a one-stop-shop 'window to government'. These approaches may also have a place across jurisdictions.

Limitations on quantitative evidence

In developing a database for its analysis, the Commission benefited from the cooperation of various peak groups and from individual farmers, mining and energy companies and other primary sector enterprises. Overall, however, there is very limited quantitative evidence regarding the size of the unnecessary burden from regulation. Much of the information provided, while helpful, related to the overall costs of regulation by all governments, including the necessary costs inherent in meeting policy objectives. Indeed, bureaucratic red tape was seen by some to include all of their accounting and legal costs, and even bank fees.

As a result, the Commission has little data which relates specifically to Australian Government regulation, and more relevantly, to the smaller subset of costs of

regulators which were unnecessarily burdensome. Hence, and in accordance with the terms of reference, the Commission has based its prioritisation of reforms on informed judgments about:

- the size of the unnecessary burden
- potential gains in productivity to the whole economy.

Overview of case-by-case assessments

The concerns and recommended responses can be grouped according to any further actions that are warranted.

Unnecessary burdens which can be removed immediately

This report identifies some specific reforms that can be implemented without delay, including:

Agriculture

- removing duplication in applying for drought assistance
- consolidating information requirements in order to reduce time spent by agriculture producers in completing surveys
- addressing misconceptions surrounding the testing requirements for on-farm-produced biodiesel
- improving the risk assessment of the importation of live animals

Mining and petroleum

- establishing fora to address concerns over the inconsistent administration of regulations applying to offshore petroleum
- embedding timeline commitments for regulators in petroleum regulation
- improving public awareness of the National Pollutant Inventory (NPI) and monitoring the quality and use of data
- amending Part IIIA of the Trade Practices Act to require all parties, including the Minister, to publish reasons for decisions
- consolidating the assessment of environmental export approvals for uranium into the Environment Protection and Biodiversity Conservation Act (EPBC Act)

All sectors

- ensuring the technical capacity of visa verification systems
- giving all businesses access to Centrelink's eBusiness system for transferring employment information, if introduced.

Reforms that are progressing

Partly as a result of recommendations made by the Regulation Taskforce, a number of concerns raised during this study are the subject of a specific review that is already underway or has recently been finished and reform is generally seen as progressing:

Agriculture

- clarification of the significant impact trigger under the EPBC Act
- reforms to the NPI to reduce the compliance burden on agricultural intensive operations
- implementation of announced reforms to import risk analysis
- reduction of duplication concerning the importation of veterinary vaccines among the Australian Quarantine and Inspection Service, Biosecurity Australia and the Australian Pesticides and Veterinary Medicines Authority
- the Commission's recently commenced study on chemicals and plastics will address some concerns raised in this review:
  - the regulation of agricultural chemicals and ammonium nitrate
  - inconsistencies over maximum residue levels in fresh food between food standards and chemical regulation
- national coordination of biosecurity and quarantine requirements
- regulation of other security sensitive materials which is currently being addressed by COAG
- reduction of inconsistencies and improving timeliness with regard to food regulation is being examined by the Bethwaite Review

Mining and petroleum

- reduction in delays in reaching agreement under the Native Title Act
- streamlining of specific uranium regulations

- consolidation and streamlining of offshore petroleum legislation managed by the Department of Industry, Tourism and Resources, although this review should also address cross-portfolio issues within the Australian Government
- removal of the use of investigation thresholds by the Assessment of Site Contamination National Environment Protection Measure where inappropriate
- harmonisation of multiple greenhouse gas and energy reporting requirements
- reduction of inconsistency in the regulation of access regimes across the jurisdictions
- finalisation of bilateral agreements on assessments under the EPBC Act.

Reforms that have commenced but are taking too long

In other cases, while the need for reform has been acknowledged, its implementation is taking too long:

- reducing inter-jurisdictional inconsistencies in road transport
- implementing the Australian Animal Welfare Strategy
- reforming water rights and trading
- removing regulatory barriers to the recognition of skills both acquired under the Vocational Education and Training framework and from across borders, including for those impacting on the mining sector
- adopting and implementing the National Mine Safety Framework
- achieving bilateral agreements on environmental approvals under the EPBC Act.

Reviews that are already in prospect

In response to some concerns, the Commission notes that reviews of the issues are already in prospect:

Agriculture

- national standards and procedures for the Interstate Certification Assurance Scheme
- animal welfare requirements on exports of livestock.

Some time should pass before assessing recent reforms

For some concerns, a period of time should pass in order to bed down recent reforms. Any further change to arrangements should only occur after an assessment of progress at an appropriate time in the future. These include:

Agriculture

- the National Livestock Identification Scheme
- access thresholds for Part IIIA of the Trade Practices Act
- the Horticulture Code of Conduct.

Conduct a fundamental policy review

In several cases, the Commission considers that there is a need to revisit the underlying policy objectives before the regulatory regime can be streamlined. This applies particularly to:

- wheat export marketing arrangements
- the regulatory framework and its administration for onshore and offshore petroleum
- coastal shipping in the context of COAG's broad national reform agenda for transport
- using scientific assessments of the physical properties of uranium, and the environmental and health and safety risks they pose during mining, to decide whether uranium should continue to be an automatic trigger for national environmental assessments
- the National Pollutant Inventory with regard to:
  - reporting thresholds for all substances on the inventory
  - aggregation of pollution data to geographic locations
  - funding its administration.

Draft responses

In this section, concerns raised by participants are stated and each is followed by the Commission's response. The Commission does not necessarily agree with each concern.

Agriculture

Environment Protection and Biodiversity Conservation Act (EPBC Act)

Concern: Inadequate risk assessment of the importation of live animals.

DRAFT RESPONSE 3.1

The Department of Environment and Water Resources should take a greater role in determining who undertakes environmental risk assessments for the importation of live animals under the EPBC Act.

Concern: Overlap and duplication concerning the importation of live animals under the Quarantine Act.

DRAFT RESPONSE 3.2

The Department of Environment and Water Resources should assess whether there is further scope for accrediting Biosecurity Australia's risk assessment processes in relation to the importation of live animals under the EPBC Act.

Concern: Lack of clarity about what constitutes 'significant environmental impact' under the EPBC Act.

DRAFT RESPONSE 3.3

Actions to clarify the definition of significant impact under the EPBC Act ***for businesses in the agriculture sector are progressing.***

National Pollutant Inventory (NPI)

Concern: Intensive agricultural operations — burden of NPI reporting for individual farmers.

DRAFT RESPONSE 3.4

Reforms are progressing to reduce the compliance burden on individual farmers in intensive agricultural operations resulting from the reporting requirements in the NPI National Environment Protection Measure. The Environment Protection and Heritage Council should also consider expanding the role of industry associations in meeting reporting requirements.

Concern: Intensive agricultural operations — the NPI reporting threshold for ammonia adversely affects small beef feedlots.

DRAFT RESPONSE 3.5

The Environment Protection and Heritage Council should commission a review of reporting thresholds for all NPI substances. The review should occur by 2009.

Concern: Public access to facility-based information in the NPI.

DRAFT RESPONSE 3.6

The Environment Protection and Heritage Council should review whether facility-based data collected under the NPI could be aggregated before being made available to the public without unduly reducing the value of the information or the incentive for businesses to reduce their emissions.

Biosecurity and quarantine

Concern: Range of concerns about Biosecurity Australia's import risk analysis.

DRAFT RESPONSE 3.7

The Department of Agriculture, Fisheries and Forestry is progressively implementing reforms to the import risk analysis process which should address many of the concerns.

Concern: Overlap between regulatory agencies over the importation of veterinary vaccines.

DRAFT RESPONSE 3.8

Recent initiatives by the Australian Quarantine and Inspection Service, Biosecurity Australia and the Australian Pesticides and Veterinary Medicines Authority should result in reduced duplicative requirements governing the importation of veterinary vaccines.

Concern: Duplication and inconsistency in biosecurity and quarantine regulations across jurisdictions.

DRAFT RESPONSE 3.9

Reforms on the development of a national approach to coordinating biosecurity and quarantine requirements across jurisdictions, through the Australian Biosecurity System for Primary Production and the Environment, are progressing.

Concern: Range of concerns about the operation of the Interstate Certification Assurance Scheme.

DRAFT RESPONSE 3.10

A review of the Interstate Certification Assurance Scheme to develop national standards and procedures is planned and will address some concerns.

Concern: Range of concerns about the 2004 amendments to livestock export controls

RECOMMENDATION 3.11

A review of the Australian Meat and Livestock Industry (Export Licensing) Regulations is planned.

Security sensitive chemicals

Concern: Regulation has limited the use of ammonium nitrate by farmers.

DRAFT RESPONSE 3.12

The recently commenced Commission study into chemicals and plastics is examining the efficiency of the arrangements for regulating ammonium nitrate.

Concern: Range of concerns about the burdens of regulating other security sensitive chemicals.

DRAFT RESPONSE 3.13

The regulation of other security sensitive materials is now being developed by COAG and workable and effective regulation should be put in place as soon as practicable.

Transport issues in agriculture

Concern: Interjurisdictional inconsistencies in road transport.

DRAFT RESPONSE 3.14

Although there are institutional arrangements in place to address interjurisdictional inconsistencies in road transport, there remains a large agenda that needs to be progressed in a more timely manner.

Wheat marketing

Concern: Costs imposed by the single desk for exporting wheat.

DRAFT RESPONSE 3.15

The Wheat Marketing Act should be subject to a review in accordance with National Competition Policy principles as soon as practicable.

Animal welfare

Concern: Slow progress in implementing rule harmonisation.

DRAFT RESPONSE 3.16

There appears to be scope to implement the Australian Animal Welfare Strategy more quickly. The Commission seeks views on this matter.

Drought support

Concern: Duplication and unnecessary burdens in applying for drought support.

DRAFT RESPONSE 3.17

To avoid duplication and reduce unnecessary burdens in the application process:

- ***Centrelink and state and territory government rural adjustment authorities should provide applications for both Exceptional Circumstances (EC) income support and EC interest rate subsidies***
- ***applicant information should be able to be used across different Centrelink administered programs***
- ***a single application form for EC interest rate subsidies should be adopted by state and territory governments.***

The Commission seeks views on whether drought support, by all governments, should be reviewed.

Occupational health and safety

Concern: Complex and inconsistent regulation across jurisdictions.

DRAFT RESPONSE 3.18

COAG has developed a strategy to develop a nationally consistent occupational health and safety framework. Its progress will be reported on during the 2011 review of generic regulation.

Food regulation

Concern: Inconsistency and lack of timeliness in food regulation.

DRAFT RESPONSE 3.19

Food regulation concerns are currently being examined by the Bethwaite Review.

Concern: Inconsistencies in regulation between FSANZ and APVMA.

DRAFT RESPONSE 3.20

The inconsistencies between food standards and chemicals regulation in regard to maximum residue levels in fresh food and produce will be examined by the recently commenced Commission study of chemicals and plastics.

National Livestock Identification Scheme (NLIS)

Concern: Industry dispute over the need for NLIS in its current form.

DRAFT RESPONSE 3.21

The NLIS should be subject to ongoing government monitoring of its efficiency and effectiveness in meeting the needs of industry and the community.

Temporary labour

Concern: Delays and difficultly in assessing the working eligibility of overseas visitors.

DRAFT RESPONSE 3.22

The technical capacity of the Department of Immigration and Citizenship's visa verification systems should be sufficient to enable employers to promptly and effectively assess the work eligibility of overseas visitors.

Concern: Costs and delays in administering compulsory superannuation requirements for overseas visitors engaged in casual and seasonal work.

DRAFT RESPONSE 3.23

Compulsory superannuation requirements for overseas visitors engaged in casual and seasonal work reflects government policy and there appears to be no lower-cost alternative way to achieve the policy objective.

Concern: The higher taxation of non-residents versus residents adversely affects productivity and retention of overseas workers and increases compliance costs for farmers and growers.

DRAFT RESPONSE 3.24

Any changes to the taxation treatment of non-residents, should be made as part of any broader review of the taxation regime.

Concern: Burdens in meeting Centrelink reporting requirements.

DRAFT RESPONSE 3.25

Centrelink has taken steps to address concerns. In addition, it is exploring the use of an electronic information transfer or 'eBusiness' system. If introduced, it should be available to all businesses, including small business.

Biodiesel

Concern: Costly requirements to test biodiesel produced on farm.

DRAFT RESPONSE 3.26

There are misconceptions surrounding the testing requirements for on-farm-produced biodiesel. The Australian Taxation Office should clarify these with rural producers.

Agricultural and veterinary chemicals

Concern: Delays, inconsistencies and complexity in agricultural and veterinary chemicals regulation.

DRAFT RESPONSE 3.27

There are many agricultural and veterinary medicines regulatory issues that require detailed examination. The recently commenced Commission study into chemicals and plastics provides that opportunity.

Horticulture Code of Conduct

Concern: Omissions from the Code.

DRAFT RESPONSE 3.28

The Horticulture Code of Conduct has only recently commenced and is scheduled to be reviewed in 2009.

Farm surveys

Concern: Time involved in completing farm surveys.

DRAFT RESPONSE 3.29

Improved coordination between ABARE and other government agencies in collecting farm data could reduce the time spent by agricultural producers completing surveys.

Genetically modified crops

Concern: Lost commercial opportunities due to moratoria on commercial release of genetically modified crops approved by the Gene Technology Regulator (GTR).

DRAFT RESPONSE 3.30

The national framework for assessing the health, safety and environmental risks of genetically modified organisms was recently reaffirmed by all governments. Moratoria on genetically modified crops approved for release by the GTR are matters for the states and territories.

Water issues

Concern: Insufficient progress in establishing property rights and trading regimes and uncertainties regarding water allocations, ownership and trade.

DRAFT RESPONSE 3.31

Development of the national framework for water has the capacity to address concerns and avoid unnecessary burdens provided that best practice policy design is applied. In particular, the new national framework for water should facilitate market transactions so that scarce resources go to their highest value uses and any exemptions from the framework should be fully justified. Ongoing monitoring and evaluation of progress will be important.

Mining, oil and gas

Uranium-specific regulation

Concern: Complexity of uranium regulations.

DRAFT RESPONSE 4.1

Following three recent reviews of uranium regulation, reform is progressing to implementation. There appears to be little to gain from further examination of general uranium regulation at this stage.

Concern: The scientific basis for including uranium mining as a national trigger under the Environment Protection and Biodiversity Conservation Act (EPBC Act) is not clear.

DRAFT RESPONSE 4.2

There should be a science-based assessment of the risks involved in uranium mining. This should form the basis for evaluating whether uranium should continue to be an automatic trigger for national environmental assessments under the EPBC Act. This review should be conducted by the Chief Scientist of Australia, with the involvement of the Chief Medical Officer.

Concern: Duplication in export permits.

DRAFT RESPONSE 4.3

The assessment of environmental conditions for export permits should be consolidated into approvals under the EPBC Act, ensuring that approval from the Department of Environment and Water Resources is sufficient to satisfy any environmental requirements for export permits.

Petroleum regulation

Concern: Too many approvals, regulatory bodies and too much duplication.

DRAFT RESPONSE 4.4

A review of the whole Australian onshore and offshore petroleum regulatory framework, endorsed by the Council of Australian Governments, would provide the best mechanism for evaluating how regulations can be restructured to reduce

compliance costs and for assessing the case for a national authority to oversee onshore and offshore petroleum regulation throughout Australia.

Concern: Some transitions costs with moving from prescriptive to objective-based regulation.

DRAFT RESPONSE 4.5

Reforms to offshore petroleum regulation have gone some way toward reducing compliance costs, but more needs to be done. The current Department of Industry, Tourism and Resources' consolidation exercise has the potential to streamline regulations and reduce duplication, but the necessary reforms should be implemented as soon as possible.

Concern: Inconsistent administration of regulation affecting petroleum.

DRAFT RESPONSE 4.6

In the absence of establishing one regulator, or alternative reforms based on a wide-ranging review, jurisdictions should extend the model established with the Environment Assessors Forum to other areas where concerns arise over inconsistent application of regulations affecting petroleum.

Concern: Long and uncertain approval time lines.

DRAFT RESPONSE 4.7

Petroleum regulators should commit to clear time frames for making decisions and this requirement should be reflected in relevant legislation.

Access to land

Concern: Lengthy and uncertain timelines involved in native title processes.

DRAFT RESPONSE 4.8

Recent Australian Government reforms to the native title system are being progressively implemented. They should be subject to evaluation within five years of their implementation.

Concern: Complexity, duplication and inconsistency in Aboriginal cultural heritage processes across Australia.

DRAFT RESPONSE 4.9

In the course of current reforms, there appears to be scope to consolidate access to information regarding Aboriginal cultural heritage areas listed in all jurisdictions. The Commission seeks views on this matter.

Environment Protection and Biodiversity Conservation Act

Concern: Overlap and duplication with state and territory processes.

DRAFT RESPONSE 4.10

Reforms which will harmonise environmental assessments through bilateral agreements are progressing. Governments should give high priority to completing all assessment and approvals bilateral agreements.

National Pollutant Inventory (NPI)

Concern: Inclusion of transfers in the NPI.

DRAFT RESPONSE 4.11

No further action is required in relation to the inclusion of transfers in the NPI at this stage.

Concern: Limited public awareness of the NPI.

DRAFT RESPONSE 4.12

The Department of Environment and Water Resources should give high priority to monitoring public awareness of the NPI and to take action to increase its profile as appropriate.

Concern: Quality of the data of the NPI

DRAFT RESPONSE 4.13

The Department of Environment and Water Resources should give high priority to monitoring the quality and use of data reported to the NPI.

Concern: Inadequate resourcing of the NPI.

DRAFT RESPONSE 4.14

The adequacy of funding for the administration of the NPI by the Department of Environment and Water Resources should be reviewed. There should not be any further expansion to the NPI until this has been done.

Assessment of site contamination

Concern: Inappropriate use of investigation thresholds as clean-up triggers

DRAFT RESPONSE 4.15

Reforms to the Assessment of Site Contamination National Environment Protection Measure to deal with the inappropriate use of investigation thresholds are progressing.

Greenhouse gas and energy

Concern: Excessive compliance burdens arising from multiple greenhouse gas and energy reporting requirements.

DRAFT RESPONSE 4.16

Reform is progressing to harmonise multiple greenhouse gas and energy reporting requirements through national purpose-built legislation.

Concern: Uncertainties regarding the proposed greenhouse gas emissions trading scheme.

DRAFT RESPONSE 4.17

Development of the Australian greenhouse gas emissions trading scheme has the capacity to address red tape and reduce unnecessary burdens provided that best practice policy design is applied. In particular, the new scheme should facilitate market transactions so that rights to emit greenhouse gases go to their highest value uses and any exemptions should be fully justified. Ongoing monitoring and evaluation of progress is important.

Labour skills and mobility

Concern: Vocational Education and Training does not give sufficient heed to industry needs and contributes to the shortage of skilled workers in the minerals sector.

DRAFT RESPONSE 4.18

While reforms in the Vocational Education and Training area, that are being implemented or under consideration, have the potential to alleviate skills shortages, progress has been slow and there needs to be a commitment to accelerated implementation.

Concern: Limitations in the mutual recognition of skills.

DRAFT RESPONSE 4.19

COAG's initiative to improve the mutual recognition of some trade qualifications should be broadened to cover all trades experiencing severe skills shortages, including those specifically affecting the mining sector.

Transport infrastructure

Concern: Disagreements among stakeholders about the impacts of Part IIIA of the Trade Practices Act on investment in, and access to, infrastructure and lack of clarity over recent decisions.

DRAFT RESPONSE 4.20

The proposed 2011 review of Part IIIA is the appropriate forum to assess the national access regime. In the interim, to further improve transparency, clause 44H(9) of the Trade Practices Act 1974 should be amended to require the designated Minister to publish reasons as to why the service has not been declared following the expiry of the 60 day time limit.

Concern: High costs due to cabotage restrictions.

DRAFT RESPONSE 4.21

Given its importance within Australia's freight transport task, coastal shipping should be included in COAG's national transport market reform agenda.

Safety and health

Concern: Slow progress in implementing the National Mine Safety Framework.

DRAFT RESPONSE 4.22

Despite in principle agreement between Ministers, reform in this area is taking too long. Governments should maintain a strong commitment to the implementation of the National Mine Safety Framework as soon as possible. Transparent, clear and staged timelines should be agreed and adhered to. Further, individual jurisdictions should not undertake initiatives which would have the effect of impeding the introduction of a national regime and authority.

Forestry, fishing and aquaculture

Forestry

Concern: Adverse effects from building regulations and the energy rating schemes on the demand for timber.

DRAFT RESPONSE 5.1

Matters relating to the energy efficiency of timber construction and its recognition in building codes and energy rating schemes should be revisited in the 2008 review year.

Concern: Constraints on using native waste wood for power generation reduce demand for forest products.

DRAFT RESPONSE 5.2

The Government recently reviewed this matter and was concerned to avoid promoting increased harvesting of native forests to supply wood waste for electricity generation.

Fishing

Concern: Duplication in fish stocks management.

DRAFT RESPONSE 5.3

There appears to be scope for rationalising requirements under the Fisheries Management Act and the EPBC Act. The Commission seeks views on this matter.

1 About the review

In response to undesirable social, economic and environmental events, groups within the community often make calls on governments to take action. One of the responses can be the imposition of more regulation. However, as the sheer volume of regulation has grown over time, particularly in recent years, there have been concerns that the overall body of regulation has become in many cases excessive, inconsistent, poorly designed and/or overlapping — both within and between jurisdictions.

Governments in Australia have undertaken many important reforms over recent decades to improve the competitiveness of business and improve the overall efficiency and productivity of the Australian economy. As part of this reform agenda, the Australian Government and the Council of Australian Governments (COAG) have set in train a broad range of measures to consider the extent to which the regulatory burden on businesses should be removed or significantly reduced. Such actions have the potential to increase overall productivity and community living standards.

1.1 What the Commission has been asked to do

As part of this process, the Commission has been asked to undertake a series of annual reviews of the burdens placed on business from Australian Government regulation. This ongoing process will focus on different sectors of the economy in each year of a five year period.

The review's objective is to identify priority areas where regulation needs to be improved, consolidated or removed in order to raise productivity while not compromising the underlying policy objectives. The Commission is required to identify regulatory and non-regulatory options that will lower costs for industry.

The regulations to be assessed in each year of the review process will be determined according to the sector on which they mainly impact. In the 2007 review, the Commission is required to focus on those regulations that impact on the primary sector, including businesses engaged in agriculture, forestry, fishing, aquaculture, mining, oil and gas. In subsequent years, the Commission will report on:

- the manufacturing and distributive trades in 2008 (year 2)
- social and economic infrastructure services in 2009 (year 3)
- business and consumer services in 2010 (year 4)
- economy-wide generic regulation and any regulation missed in earlier reviews in 2011 (year 5).

The full terms of reference are set out in the front of this report.

1.2 Previous and current reviews and inquiries concerning regulatory reform

This review has drawn on earlier studies which have focused on identifying and reducing the overall burden placed on business from the existing stock of regulation and on others which have addressed a specific area of regulation with a wider remit to improve efficiency.

The Commission also notes that governments now have processes to assess regulations before they are implemented, such as through the Regulation Impact Statements used by the Australian Government and the Business Impact Statement and Regulatory Impact Statements used by the Victorian Government.

Taskforce on Reducing Regulatory Burdens on Business

In October 2005, the Australian Government appointed a Taskforce, the Regulation Taskforce (2006), to identify practical options for alleviating the compliance burden on business from Australian Government regulation. As with the present study, the Taskforce was directed to focus on areas that were predominantly the responsibility of the Australian Government, but was also asked to identify key areas in which the regulatory burden arises from overlaps of Australian Government regulation with that of other jurisdictions.

The Taskforce reported in January 2006 and recommended:

- 99 reforms to specific areas of regulation
- 51 reviews to be undertaken by the Australian Government or under COAG
- 28 systemic reforms to improve regulation-making and enforcement.

The Government accepted many of the report's recommendations in April and August 2006. As a consequence, some issues have now been addressed and further reviews have been announced or set in train.

Benchmarking regulatory burdens on business

The Commission was requested by COAG in August 2006 to assess the feasibility of regulatory benchmarking and put forward options to do so. The Commission concluded that the benchmarking of regulatory compliance burdens across all jurisdictions in Australia was technically feasible. It also found that this could highlight where and how regulatory burdens might be reduced, while still meeting the underlying objectives.

The Commission also proposed a program to benchmark compliance costs involved in establishing and running businesses both within and across jurisdictions. In April 2007, COAG agreed to the Commission benchmarking compliance costs of regulations in targeted areas. The progressive development of the benchmarks will occur in parallel with this study and will extend across all jurisdictions and a wide range of sectors of the economy.

Other reviews of regulation

In addition to examining the overall regulatory burdens placed on business through a 'stock take' approach, governments have also initiated more broadly based reviews of specific regulation. For example, the Commission has undertaken a number of inquiries and commissioned research into specific areas of regulation including, the pricing regulation for airport services (PC 2006), Australian and New Zealand competition and consumer protection regimes (PC 2004a), native vegetation and biodiversity regulations (PC 2004b) and building regulation (PC 2004c).

Other impacts of regulation have also been subject to examination. For example, under the auspices of the National Competition Policy all jurisdictions agreed to identify, review and, where appropriate, reform legislation which restricted competition.

There have been numerous reviews related to the primary sector. For example, agricultural policy was reviewed by the Agriculture and Food Policy Reference Group (2006), chaired by Peter Corish, and uranium mining was reviewed by the Prime Minister's Taskforce (2006). Food regulation has been subject to the Blair Review (1998) and the Bethwaite Review, which is currently in progress. A more detailed listing of reviews related to the primary sector is contained in appendix B.

1.3 COAG's National Reform Agenda

In 2006 and in 2007, COAG agreed to a National Reform Agenda, one component of which seeks to reduce the regulatory burden imposed by the three levels of government. The Agenda includes measures to promote best practice regulation making and review processes and targeted annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant benefits to business and the community.

In 2006, COAG agreed to take action to reduce the regulatory burden in ten 'hot spots' where cross-jurisdictional overlap and/or unnecessarily burdensome regulatory regimes are impeding economic activity. In 2007, it agreed to the following actions for nine of the hot spots (there was no progress on development assessment arrangements):

- implementation of national rail safety legislation and a nationally-consistent rail safety regulatory framework
- a timetable for achieving national occupational health and safety (OHS) standards and harmonising elements in principal OHS Acts, subject to maintenance of current OHS standards
- establishment of a national system of trade measurement
- a Productivity Commission study into the regulation of the chemicals and plastics sector
- ensuring best practice regulation making and review processes apply to the Building Code of Australia and removal of unnecessary state-based variations to the Code
- the development of a more harmonised and efficient system of environmental assessment and approval as soon as possible
- a process for developing a model to deliver a seamless, single online registration system for Australian Business Numbers and business names, including trademark searching
- an in-principle agreement to the establishment of a national system for registration of personal property securities by 2009
- the development of a uniform approach to product safety within 12 months.

In line with their COAG commitments, state and territory governments have also been active in undertaking reviews of existing regulation to reduce business compliance costs.

For example, the Victorian Government has recently undertaken a stocktake of regulation as part of its strategy to reduce the burden and complexity of business regulation in that state (VCEC 2007). In New South Wales, the Independent Pricing and Regulatory Tribunal has undertaken a review to identify areas of significant and unnecessary regulatory burden on business and provide recommendations to reduce such burdens. The New South Wales Government has also undertaken a series of sector by sector reviews of small business regulation and a review of internal government red tape (New South Wales Government 2006). The Queensland Government has indicated it will develop a new reform agenda to reduce the regulatory burden for business where possible and has undertaken a review of regulatory hot spots and industry specific reviews of the impact of regulation on the retail, manufacturing and tourism sectors (Department of State Development 2006).

However, there has been a lack of coordination and timing between the Australian Government, states and territories in relation to many of these reviews.

1.4 The approach and rationale of this review

The cost of poorly designed and implemented regulation

Regulation *necessarily* imposes costs on those affected, including on business. However, where the objectives of regulation are sound, and it is effectively designed and implemented, it could be expected that those costs are outweighed by the benefits, if not for those directly affected then at least for the community as a whole. But *unnecessary* burdens — that is, where the objective of the regulation could be achieved with lower compliance costs — arise where regulation is poorly designed and implemented. Further, even where benefits outweigh costs, even higher net benefits might well be obtained from better design and more effective implementation.

Such unnecessary burdens can arise in a number of ways, including through:

- excessive regulatory coverage
- overlap or inconsistency
- unwieldy approval and licensing processes
- heavy-handed regulators
- poorly targeted measures
- overly complex or prescriptive measures
- excessive reporting requirements

- creation of perverse incentives.

These imposed burdens can impact on business in several ways. These range from relatively 'simple' imposts on administrative and operational costs; to changing the way things are produced (altering inputs to production; altering production processes or technology); to changing what is produced (cessation of particular production, altering the characteristics of goods or services, missed production and marketing opportunities).

Leaving aside questions relating to the soundness of the underlying objectives — an issue that the terms of reference have placed largely beyond this rolling review — the central focus of this review is on *unnecessary and duplicative* regulatory costs, including the costs of poor administration. Although no reliable quantitative estimate of their aggregate level has been made for Australia, the informed judgment of the 2006 Regulation Taskforce suggested they may well total billions of dollars. (The forthcoming regulatory benchmarking study to be undertaken by the Commission for COAG may shed further light on the possible extent of the overall regulatory burden.) Accordingly, a reduction of these unnecessary costs could result in considerable benefit for the Australian economy and community.

A focus on business impact

This review is concerned with the regulatory burdens on *business*. Of course, the characteristics of any particular business can vary widely in terms of its legal form, size, industry and market orientation. At one end, the concept extends to the Australian operations of multinational companies and at the other, it includes unincorporated farming operations.

Many forms of regulation affect business. These include regulations imposed for economic, financial, environmental and business affairs reasons. While regulation in other areas, for example in health, education or other social areas, might have a different orientation it can, nonetheless also affect business, either directly or indirectly.

The main areas of impact of regulation on business tend to be the following:

- *Time* – additional time or delays required to meet standards set by regulatory authorities. Depending on the nature of the business activity — such as a major project approval to meet an export market — time delays may have a far larger impact than cost increases. In such circumstances, regulatory processes that have *serial* decision-making (as opposed to decision-making in *parallel*) will impose additional costs on business.

- *Cost* – both administrative costs to meet the reporting and other requirements of the regulators and also additional costs through requirements to undertake processes in a less than optimum way (for example, by effectively prohibiting the use of certain production inputs that have potentially highly undesirable alternative uses).
- *Forgone or delayed opportunities* – regulations may prevent or delay the introduction of new products (such as a new crop) or new/modified inputs that enhance productivity.

The relative importance of these different impacts can vary greatly, depending on the type and stage of the business. For example, for a mining or oil and gas company that undertakes a small number of large projects, time at the project approval and land access stages is critical, but this primary emphasis switches to costs when the project moves to the production and operational stages.

A focus on business impact highlights issues relating to the *cumulative impact* of regulation. Business is subject to regulation at a number of stages including the establishment of a new enterprise, production phase, marketing and reporting. Additional regulatory burdens can also arise when a business operates across jurisdictional boundaries. Each form of regulation can cascade onto others — even where each individual impact is small the combined burden, including the unnecessary component, can be significant. In turn, this provides justification for seeking to remove even the smaller unnecessary burdens.

Limitations of the review process

The terms of reference set important boundaries on the scope of the review and its recommendations. First, the specific focus on the primary sector has the potential to miss important interactions with other parts of the economy. For example, there are significant constraints on the mining industry from infrastructure, especially transport and power, neither of which are part of the primary sector. To overcome this, the review has extended its focus to Australian Government regulations which apply to the parts of the economy that have a major impact of the primary industry.

Second, the terms of reference require the Commission to have regard to the underlying policy intent of regulation when proposing options and recommendations. The Commission interprets this to mean that its prime concern should be on the translation of objectives into regulation, rather than with the objectives themselves. Accordingly, while some comment might be made on objectives when the Commission considers them to be demonstrably inadequate, the Commission is concentrating its deliberations on the unnecessary costs and burdens

of regulation, and whether there are options to reduce its impact while maintaining consistency with the relevant policy objectives and the improvement of community welfare overall. In a number of cases, significant costs of regulation were identified that arose from the policy itself, rather than the way regulations were designed or administered. In these cases — which have been noted — the appropriate course is to re-appraise the policy.

Third, there are many regulatory areas where the Australian Government is involved along with multiple state and territory jurisdictions (and where the Australian Government's role is quite minor). In these areas, whilst there may be issues of excessive regulatory burdens, there is little the Australian Government can do unilaterally that will have a practical outcome.

A final observation on the conduct of this review is that while all jurisdictions are undertaking their own reviews, there is no overall coordination of this activity. As a result, the opportunity to reach collective agreement on ways to enhance the consistency and reduce the duplication of regulations and their administration across jurisdictions, for certain activities, has been greatly diminished.

Defining regulation

'Regulation' can be broadly defined to include laws or other government-influenced 'rules' that affect or control the way people and businesses behave. It is not limited to legislation and formal regulations, but also includes quasi-regulation and co-regulation (box 1.1).

As the terms of reference refer to Australian Government regulation, the Commission is not examining regulation which is solely the responsibility of state, territory or local governments. Nevertheless, any duplication or overlap of regulatory responsibilities between the Australian Government and other jurisdictions does fall within the terms of reference — in particular this includes circumstances where national initiatives or agreements exist to coordinate or harmonise matters that would otherwise be the regulatory responsibilities of the states and territories. This is of particular relevance for this first year of the review cycle, given that much of the ultimate regulatory responsibility for the primary sector lies at that level, rather than at the national level.

Box 1.1 **Types of regulation**

Common categories of regulation are as follows.

- Acts of Parliament, which are referred to as *primary legislation*.
- *Subordinate legislation*, which comprises rules or instruments which have the force of law, but which have been made by an authority to which Parliament has delegated part of its legislative power. These include statutory rules, ordinances, by-laws, disallowable instruments and other subordinate legislation which is not subject to Parliamentary scrutiny.
- *Quasi-regulation*, which encompasses those rules, instruments and standards by which government influences business to comply, but which do not form part of explicit government regulation. Examples include government-endorsed industry codes of practice or standards, government-issued guidance notes, industry government agreements and national accreditation schemes.
- *Co-regulation*, which is a hybrid in that industry typically develops and administers particular codes, standards or rules, but the government provides formal legislative backing to enable the arrangements to be enforced.

The primary sector includes agriculture, forestry, fishing, aquaculture, mining, oil and gas, as well as relevant associated support services. A regulation is considered to be within scope for this first year when its *main* direct impact is on businesses in that sector. But, as explained further below, other regulation can also be considered to be in scope — for example, when it has a significant but indirect impact on the primary sector even though the main impact could be considered to lie in another sector.

The allocation process

The allocation to review years and the development of the short list of the potentially most significant concerns and issues raised by participants is a matter for analysis and judgment. In responding to the draft report, participants are invited to provide the Commission with their views on the Commission's draft conclusions on these matters.

The approach used by the Commission is as follows:

- A concern or complaint is ruled out of scope entirely if it does not relate to existing regulation which impacts on business and it cannot be related to Australian Government regulation or to a national agreement or arrangement. Generally, also, a matter is ruled out of scope if it clearly relates to the *objectives* of regulation rather than its business impact.

- Those concerns and complaints which have been *adequately* reviewed have also been ruled out of scope. In considering what is adequate, the Commission takes into account such factors as the terms of reference of any review, its independence and transparency, the nature of its recommendations, the degree to which actual or foreshadowed change responds appropriately to the issue or that the matter is progressing following the review.
- Where interested parties did not raise any concerns in relation to an area of Australian Government regulation, the review took this as prima facie evidence that there were no perceived problems of excess burden.
- On occasion, the Commission has chosen to view a narrowly expressed concern with relatively low impact in a wider context. Usually, this results in reassigning the issue to consideration in the final year of the cycle (2011), which will address generic issues. However, in some instances, a general issue has been split into segments which impact directly or indirectly on a number of sectors. While this can have advantages in bringing forward some gains which would be delayed if the issue was completely postponed to 2011, care needs to be taken that early changes made in the context of a particular sector do not create untenable distortions between it and other sectors of business.
- With the above qualifications, an issue has generally been allocated to a review year on the basis of its main sector of impact, or to 2011 if it was judged better to assess it in a wider generic context.
- A short list of priority areas was then developed from those matters allocated to 2007.

However, the determination of an appropriate review year and the short-listing of priority areas have required considerable judgment.

Quantifying impacts

Ideally, a major factor in determining the priority areas for reform would be the relative magnitude of the unnecessary cost burdens associated with each issue, and the likely productivity improvements from change. However, the Commission has found that the available quantitative information is very limited. Further, even where some information about cost burdens is available, judgment needs to be made about what proportion of it constitutes an *unnecessary* burden in terms of the relevant objectives of regulation.

So as to improve the information base, the Commission, in its issues paper, requested participants to provide as much data as possible about the cost burdens, direct and indirect. Examples of relevant items include the following:

- the cost of materials and equipment specifically purchased to meet regulatory requirements
- on-going as well as start-up costs associated with regulation
- the time of management and employees devoted to regulatory matters, and the cost of that time
- opportunity costs in terms of such matters as the value of forgone sales, and any added costs from using less preferred inputs or technology.

In response, some information was provided by participants and, although helpful, related to the overall costs of regulation by all governments including the necessary costs inherent in meeting policy objectives.

The Commission would welcome any further quantitative information on the cost burdens associated with unnecessary Australian Government regulation.

Detailed consideration of priority areas

Priority areas have been subject to greater analysis and more detailed consideration. Generally, the first step has been to examine the relevant regulatory objectives and, where necessary, clarifying them in terms of the underlying economic, social and/or environmental objectives for intervention. Consideration is then given to possible alternative regulatory means of meeting those objectives, including an analysis of the associated benefits and costs, including business costs, and conclusions reached accordingly.

All relevant concerns raised by participants were examined by the Commission and the response to each concern, based on an assessment of what further action was required, can be broadly categorised as follows:

- make changes to the regulation now
- a detailed review of the underlying policy is required
- reform is underway, but is too slow
- reform of the regulation is taking place in a satisfactory manner
- no further action is required.

1.5 Conduct of the study

In preparing this draft report, the Commission has provided various opportunities for interested parties to provide input. Following receipt of the terms of reference on

28 February 2007, the Commission placed advertisements in major newspapers announcing the review and calling for submissions from the beginning of April. Following initial consultations, an issues paper was released in early April to assist those preparing submissions.

The Commission has held informal consultations with governments, peak industry groups in the primary sector as well as with a number of mining companies and individual farmers. To date, the Commission has spoken to more than 50 groups and individuals.

The Commission has also had the benefit of nearly 50 submissions from participants to this review. A full list of those who have made submissions and/or participated in informal discussions is contained in appendix A. The Commission wishes to thank those who have participated so far and looks forward to their continued involvement in the remainder of the review.

Following further consultations and submissions on this draft report, the Commission will prepare and submit a final report to the Government by 31 October 2007.

1.6 Structure of the report

The following chapter provides a snapshot of the characteristics of the primary sector.

Chapter 3 provides an overview of the concerns raised by participants in the agricultural sector, chapter 4 in relation to the concerns raised by the mining, oil and gas sector and chapter 5 in regard to forestry, fishing and aquaculture.

2 Primary sector characteristics

Over the last decade, there has been significant growth in output and exports in the primary sector. However, trends within the sector have been mixed. Favourable commodity prices, strong overseas demand and increased output have combined to substantially improve the performance of the mining industry in recent years. At the same time, the performance of the agricultural sector has been adversely affected by drought.

This chapter presents a broad statistical overview of the primary sector including the sector's contribution to economic activity and its performance over time.

2.1 Industry characteristics

The primary sector is a significant contributor to economic activity in Australia. In 2005-06, the sector accounted for 10 per cent of GDP ($94 billion), over 60 per cent of exports ($121 billion), and 5 per cent of employment (478 000 persons).

Within the primary sector, mining contributes the most to GDP (71 per cent) and exports (74 per cent) while agriculture, forestry and fishing account for the majority of employment (72 per cent) and number of businesses (97 per cent) (table 2.1).

The whereabouts of mining activity is largely determined by the location of deposits of non-renewable resources and the commercial viability of their extraction, together with related processing and transhipment facilities.

Within Australia, Western Australia ($34 billion or 36 per cent) and Queensland ($27 billion or 29 per cent) have the largest shares of value added in the primary sector. This reflects their dominance of economic activity in the mining sector, due to large mineral deposits. In 2005-06, almost half of Australia's value added from mining was sourced from Western Australia and over 30 per cent was from Queensland (table 2.2).

Table 2.1 **Primary sector summary statistics**
2005-06

	Agriculture, forestry and fishing[a]	*Mining*	*Primary sector*
Gross value added			
$ million	27 318	66 507	93 825
Contribution to primary sector (per cent)	29.1	70.9	100
Contribution to GDP (per cent)	2.8	6.9	9.7
Exports[b]			
$ million	31 292	90 533	121 825
Contribution to primary sector (per cent)	25.7	74.3	100
Contribution to total (per cent)	16.3	47.1	63.4
Employment			
number of persons ('000)	343.9	134.5	478.4
Contribution to primary sector (per cent)	71.9	28.1	100
Contribution to total (per cent)	3.4	1.3	4.7
Businesses			
number operating at end of financial year	214 879	6 997	221 876
Contribution to primary sector (per cent)	96.8	3.2	100
Contribution to total (per cent)	10.9	0.4	11.3

a Fishing includes aquaculture. **b** Forestry sector exports include paper and paperboard.

Sources: Gross value added, ABS Australian National Accounts, catalogue no. 5204.0; exports, ABARE, Australian Commodity Statistics 2006, http://www.abareconomics.com/interactive/acs_dec06/htm/auseco.htm#farmemployment; employment, ABS Australian labour market statistics catalogue no. 6105.0; number of businesses operating at end of financial year ABS Counts of Australian businesses including entries and exits catalogue no. 8165.0.

Table 2.2 **Primary sector employment and value added by state/territory**
2005-06

	Value added $ million (% total)						*Employment '000 persons (% total)*					
	Agriculture, forestry and fishing[a]		Mining		Primary sector		Agriculture, forestry and fishing[a]		Mining		Primary sector	
NSW	5 250	(20)	7 182	(11)	12 432	(13)	93.9	(27)	20.1	(15)	114.0	(24)
Vic	6 173	(24)	3 477	(5)	9 650	(10)	79.1	(23)	7.2	(5)	86.3	(18)
Qld	6 758	(26)	20 341	(31)	27 099	(29)	66.3	(19)	38.3	(28)	104.6	(22)
SA	3 032	(12)	1 792	(3)	4 824	(5)	36.2	(11)	10.2	(8)	46.4	(10)
WA	3 708	(14)	29 799	(45)	33 507	(36)	48.0	(14)	54.6	(41)	102.6	(21)
Tas	1 042	(4)	332	(1)	1 374	(1)	16.5	(5)	2.1	(2)	18.6	(4)
NT	285	(1)	3 014	(5)	3 299	(4)	3.1	(1)	1.9	(1)	5.0	(1)
ACT	8	(0)	2	(0)	10	(0)	0.9	(0)	0.0	(0)	0.9	(0)
Total	26 256	(100)	65 940	(100)	92 196	(100)	343.9	(100)	134.5	(100)	478.4	(100)

a Fishing includes aquaculture.

Sources: Value added, Australian National Accounts State Accounts 2005-06; employment, ABS Australian Labour Market Statistics, catalogue no. 6105.0.

Employment in the primary sector is more evenly distributed.

- New South Wales has the largest share of employment — 114 000 persons or 24 per cent in 2005-06 of which the majority (94 000 persons) were employed in agriculture, forestry and fishing.
- Queensland, Western Australia and Victoria, each account for around 20 per cent of employment in the primary sector (table 2.2).

Box 2.1 **A snapshot of Australia's primary sector**

Agriculture

Australia's agricultural industry is predominantly based on extensive pastoral and cropping activities including beef cattle, dairy cattle, sheep farming, and grain growing. There is also an increasing trend into intensive livestock and horticulture.

In recent years, the most valuable commodities produced in the agricultural sector have been beef, veal, wheat, milk, wool, vegetables, fruit and nuts, lamb and mutton.

Australian exports of wool, beef, wheat, dairy, cotton and sugar contribute significantly to the world economy. Their prime destinations are Japan, the United States, China, Republic of (South) Korea, Indonesia and the Middle East.

Australian agriculture utilises a large proportion of natural resources — accounting for 70 per cent of water consumption and nearly 60 per cent of Australia's land area.

Forestry

Forestry and logging activities include growing, maintaining and harvesting forests as well as gathering forest products.

Australia's native and plantation forests provide the majority of timber and paper products used by Australians and support other products such as honey, wildflowers, natural oils, firewood and craft wood. Australia's native forest is over 162 million hectares (about 20 percent of Australia's land area) of which 75 per cent is on public land. Plantation forests cover an area of 1.7 million hectares.

A range of ownership arrangements apply to plantation forests including a variety of joint venture and annuity schemes between private and public parties.

Fishing and aquaculture

Australian fisheries production is valued at around $2 billion a year with exports valued at $1.5 billion a year. The major commercially harvested products include prawns, rock lobsters, abalone, tuna, other fin fish, scallops and oysters. Major markets include Hong Kong, Japan and the United States, with high value products such as rock lobster, pearls and abalone ensuring that Australia is a net exporter of fisheries products.

(Continued next page)

Box 2.1 **(continued)**

Fishing activity has increased over the last two decades to the point where many of the well known species of fish are considered to be over fished. Some major species such as southern bluefin tuna, eastern gemfish and school shark have suffered serious biological depletion.

Reductions in total allowable catches and changes in access arrangements in response to this depletion as well as cost increases (particularly fuel) have resulted in a decline in the real value of fisheries production and exports. Since 1999, fisheries production and exports have declined 25 and 36 per cent respectively.

Aquaculture is becoming increasingly important as an alternative to harvesting naturally occurring fish stocks. In 2005-06, total fisheries production fell 13 per cent, while aquaculture production increased 16 per cent. Further, between 1996-97 and 2005-06, aquaculture's share of fisheries production grew from 25 to 35 per cent.

Minerals, oil and gas

Mining concerns the extraction of minerals occurring naturally such as coal, ores, petroleum and natural gas. Australia is one of the world's leading mining nations with significant deposits of major minerals and fuel close to the surface. In 2005, it had the world's largest demonstrated resources of brown coal, lead, mineral sands (rutile and zircon), nickel, tantalum, uranium and zinc. Further, it was the largest producer of bauxite, mineral sands (ilmenite, rutile and zircon) and tantalum and was one of the largest producers of uranium, iron ore, zinc and nickel.

Australia's mineral exports make a significant contribution to the world economy. Australia's most valuable mining exports include coal, iron ore and pellets, crude oil and gold. Major markets include Japan, China, Republic of (South) Korea, and India. In recent years, rapid economic growth from developing economies (predominantly China) has resulted in significant increases in the demand for and price of mineral resources. Much of the boom has been concentrated in coal and iron ore.

Increasing demand for world steel has driven the price of metallurgical coal and iron ore higher. Between 2003-04 and 2005-06, the export price of metallurgical coal increased 142 per cent and iron ore increased 98 per cent. Production volumes also increased over these two years — the volume of metallurgical coal exports increased 8 per cent and iron ore export volumes increased 23 per cent. These price and volume increases have been reflected in higher export values. Between 2003-04 and 2005-06, Australia's metallurgical coal exports nearly trebled in value ($6.5 billion in 2003-04 and $17 billion in 2005-06) and Australia's exports of iron ore and pellets more than doubled in value ($5.3 billion in 2003-04 and $12.8 billion in 2005-06).

In comparison, the value of exports of other mineral commodities (other than iron ore and pellets and metallurgical coal) also increased significantly. However, growth was considerably lower at 45 per cent ($41.8 billion in 2003-04 and $60.7 billion in 2005-06).

Sources: ABS Year Book, 2007 catalogue no. 1301.0, ABARE, Australian Fisheries Statistics 2006, www.abareconomics.com/publications_html/fisheries/fisheries_07/07_fishstats.pdf, and ABARE, Commodity Statistics 2006, www.abareconomics.com/interactive/acs_dec06/excel/Resources.xls.

2.2 Industry performance

Gross value added and the value of exports in the primary sector almost trebled between 1989-90 and 2005-06. Much of this growth has occurred since 2003-04 and been driven by the mining sector.

- Gross value added in the mining sector increased from $18 billion in 1989-90 to $33 billion in 2003-04 and then doubled in two years — to $67 billion in 2005-06.
- The value of mining exports also increased significantly over these two periods — $25 billion in 1989-90, $54 billion in 2003-04 and $91 billion in 2005-06 (figure 2.1).

This substantial growth has been fuelled by increasing demand for mineral resources from growing economies such as China and India. And it has mainly been the result of rising commodity prices rather than increasing export volumes. Figure 2.1 shows that when price effects are removed from the data, growth in industry value added and exports have been significantly lower. For example, between 2003-04 and 2005-06, gross value added in the mining sector increased 2.4 per cent and export values grew 2.6 per cent, in chain volume terms. This compares with an increase of 101 per cent in gross value added and 69 per cent in export values over the same two years, when the data are expressed in current prices.

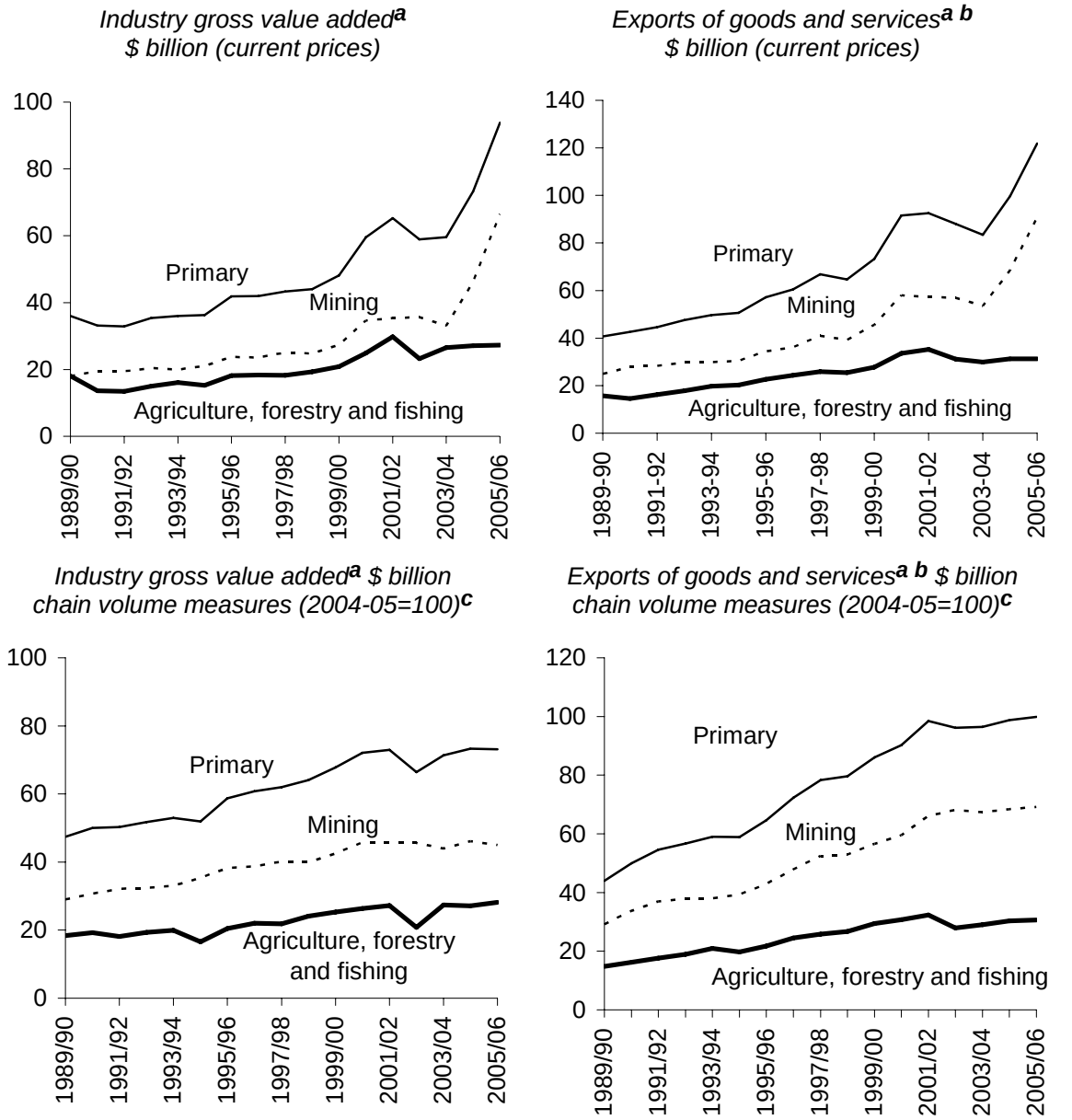
Between 1989-90 and 2001-02, the agriculture, forestry and fishing sector also achieved significant growth in gross value added and exports. Gross value added increased from $18 billion in 1989-90 to $30 billion in 2001-02 and exports more than doubled — from $16 million in 1989-90 to $35 million in 2001-02.

Agricultural production is characterised by volatility in output over time as a result of fluctuations in climatic conditions such as droughts. In the 2002-03 drought, gross value added fell over 20 per cent to $23 billion and exports fell 12 per cent to $31 billion. Although there was an upturn in 2003-04, gross value added and exports are still below their 2001-02 levels (figure 2.1).

Output volatility has consequences for employment. Between 1989-90 and 2001-02, employment in agriculture, forestry and fishing averaged 420 000 people. The 2002-03 drought resulted in a fall in employment of 12 per cent or 52 000 people employed. In 2005-06, employment was lower again with 344 000 people employed, 91 000 fewer people employed than in 2001-02 (figure 2.2).

Figure 2.1 **Industry performance, value added and exports**

1989-90 to 2005-06

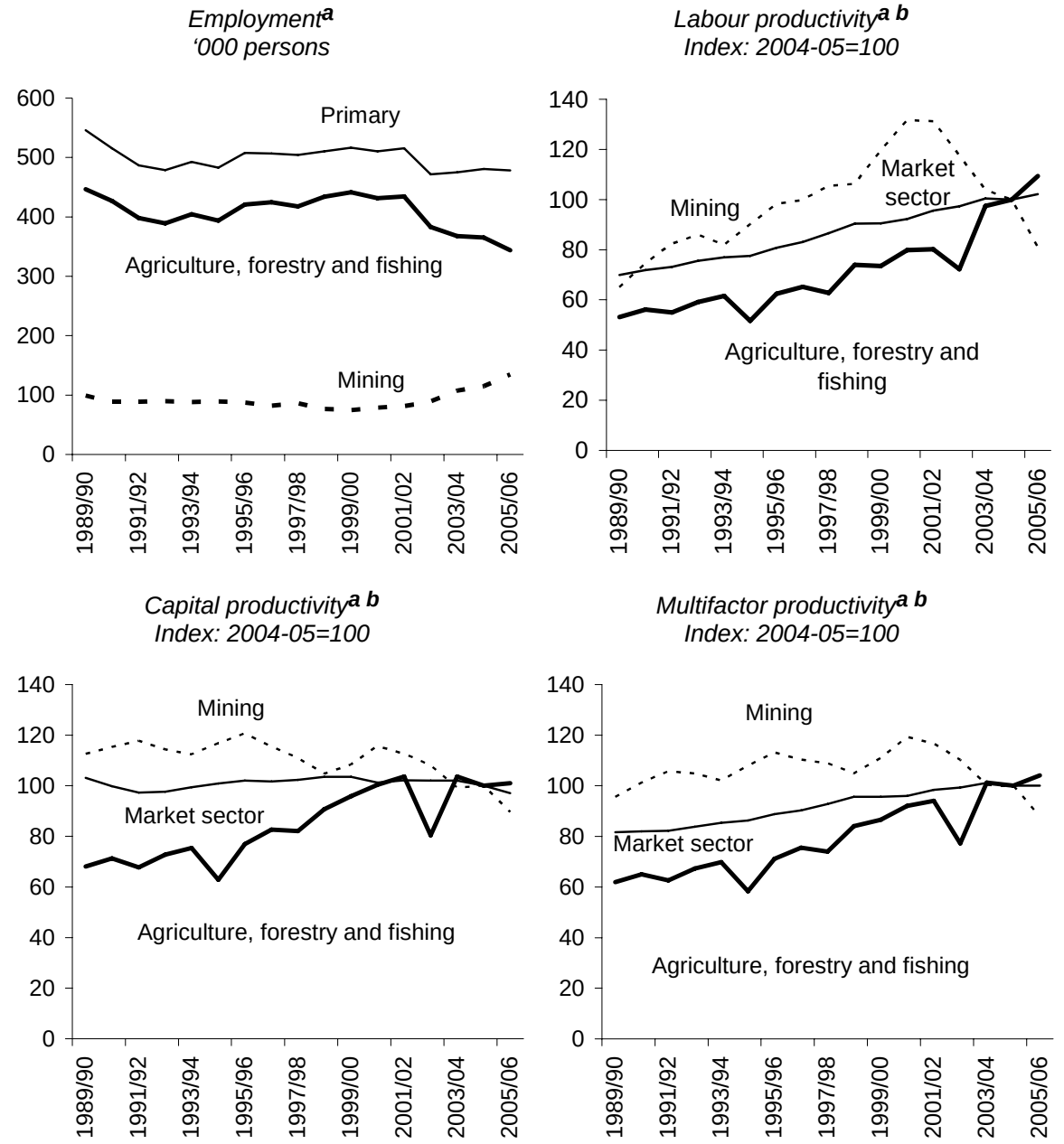


a Fishing includes aquaculture. **b** Forestry sector exports include paper and paperboard and fishing includes aquaculture; **c** Chain Laspeyres volume measures are compiled by linking together (compounding) movements in volumes, calculated using the average prices of the previous year and applying the compounded movements to the current price estimates of the reference year. In general, chain volume measures provide better indicators of movement in real output and expenditures than constant price estimates because they take account of changes to price relativities that occur from one year to the next. For more information, see ABS Introduction of Chain Volume measures in the Australian National Accounts, catalogue no. 5248.0.

Sources: Gross value added, ABS Australian National Accounts catalogue no. 5204; exports, ABARE Australian Commodity Statistics 2006, http://www.abareconomics.com/interactive/acs_dec06/htm/auseco.htm#farmemployment.

Figure 2.2 **Industry performance, employment and productivity**

1989-90 to 2005-06



a Fishing includes aquaculture. **b** The market sector is the sector for which there are reasonably well defined output measures. The industries excluded from the market sector include property and business services, government administration and defence, education, health and community services, personal and other services. Productivity in the market sector of the economy provides a more accurate indication of aggregate productivity than measures of productivity for all industries.

Sources: Employment, ABS Australian labour market statistics, catalogue no. 6105.0, June quarter values; productivity, PC estimates, http://www.pc.gov.au/commission/work/productivity/performance/aggregate/marketsector2006.xls.

This fall in employment was partly offset by employment growth in mining. Between 2001-02 and 2005-06, employment in mining increased 66 per cent, an increase of 53 000 people employed. However, for the primary sector as a whole, employment was 7 per cent lower (a decrease of 37 000 people employed) in 2005-06 than in 2001-02 (figure 2.2).

Trends in productivity

The patterns of productivity growth in the two parts of the primary sector are quite different. Labour productivity growth in mining (2.6 per cent a year) has been above the market sector average (2.2 per cent a year) over the long term, whereas multifactor productivity growth (0.4 per cent a year) has been well below average (1.2 per cent a year). This suggests that strong capital deepening is the main source of labour productivity growth in mining. Agriculture, on the other hand, has shown very strong growth in both labour productivity (3.5 per cent a year) and multifactor productivity (2.8 per cent). Improved efficiency, as reflected in multifactor productivity growth, has been the major source of labour productivity growth.

It is important to interpret movements in productivity with care. While productivity growth in agriculture has been strong over the long term, it has also shown volatility from one year to the next. Climatic factors such as drought, or even the timing and amount of rain in more normal years, mean there are good years and bad. These are reflected in output yields more than in the use of capital and labour. The impact of drought is readily seen in the productivity downturn in 2002-03. There was a relatively good season in 2003-04 but, as conditions then returned to drought and persisted, farmers were able to maintain productivity by reducing their labour hire (especially) and their capital (machinery and livestock) (figure 2.2).

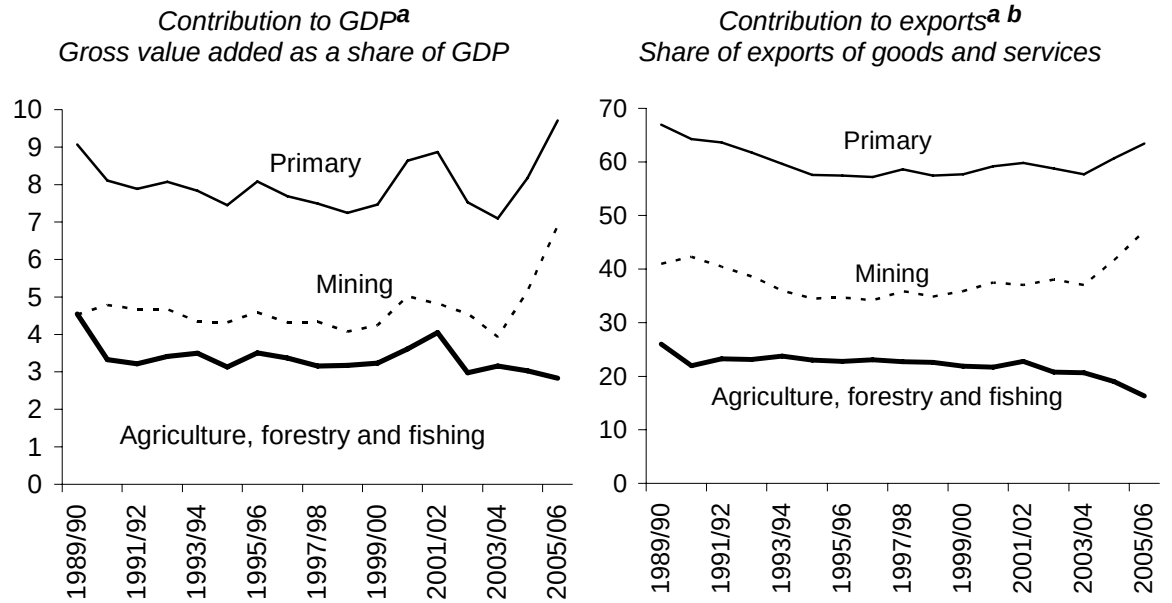
Productivity in the mining sector has tended to move in long swings associated with a period of investment, which is spread over a number of years of installation (without production), followed by a period of high rates of extraction, and then a period of decline as reserves move toward depletion. Mining productivity has declined in the 2000s due to a combination of lower oil production and heavy investment in new capacity to meet heightened demand for a range of commodities.

Sectoral contributions to growth

Disparities in growth rates between agriculture, forestry and fishing and mining have resulted in a change in their relative contributions to economic activity over time. For example, in 1989-90, agriculture, forestry and fishing and mining contributed the same amount to GDP, 4.5 per cent each. By 2005-06, agriculture,

forestry and fishing's share had fallen to 2.8 per cent while mining's contribution to GDP had increased to 6.9 per cent. Similarly with exports, while agriculture, forestry and fishing's share fell from 26 per cent to 16 per cent, over the same period, mining's share increased from 41 per cent to 47 per cent (figure 2.3).

Figure 2.3 **Primary sector contribution to GDP and exports**
1989-90 to 2005-06



a Fishing includes aquaculture. **b** Forestry sector exports include paper and paperboard and

Sources: GDP, ABS Australian National Accounts, catalogue no. 5204.0; exports, ABARE Australian Commodity Statistics 2006, http://www.abareconomics.com/interactive/acs_dec06/htm/ auseco.htm# farmemployment;employment.

Overall, growth in mining activity (over the period 1989-90 to 2005-06) has broadly offset falls in the agriculture, forestry and fishing sector. While volatile on a yearly basis the primary sector's contribution to GDP and exports is broadly similar in 2005-06 to that in 1989-90.

- In 1989-90, the primary sector contributed 9.1 per cent to GDP and 67 per cent to exports.
- In 2005-06, the primary sector contributed 9.7 per cent to GDP and 63 per cent to exports (figure 2.3).

3 Agriculture

3.1 Introduction

The agricultural subdivision of the *Australian and New Zealand Standard Industrial Classification* covers business units engaged in horticulture and fruit growing, livestock farming including sheep, beef, dairy, pig and poultry as well as grain, sugar cane, cotton and other crop growing. Given the diverse nature of the outputs produced by the sector, and a structure based on small family-based enterprises, the regulatory concerns raised by participants to this review were similarly diverse.

There were concerns surrounding the regulation of the inputs used by the sector such as agricultural and veterinary chemicals, water and the employment of temporary labour. Other concerns related to the regulation of on-farm operations such as environmental regulation and occupational health and safety. Post-farm-gate regulations surrounding transport, food safety, marketing arrangements and livestock traceability were also a concern.

Agriculture value chain

To attempt to capture the range of Australian and state and territory government regulatory requirements placed on individual economic units (businesses) in the agricultural sector, the Commission has constructed an illustration of the value chain of agricultural production (table 3.1).

This value chain indicates the key regulatory requirements that farmers can face at each stage of production. It commences with the regulatory compliance surrounding the acquisition of arable land, then to the preparation of the land, the operations of cropping and animal husbandry, the on-farm processing operations, the transportation of the product to market and concludes with the marketing and sale of the product.

Other areas of regulation, such as taxation, corporations and industrial relations legislation, that affect the agricultural sector are not included in the table as they are of a generic nature and do not apply to any particular stage of the value chain. These areas of regulation are a potential source of burden for the agricultural sector, but

they do not have a particular or discriminatory impact on the agricultural sector. Consequently, the Commission has taken the view they would not be looked at in this year's review. Moreover, there is an inherent risk in recommending reforms in such areas without careful consideration of the possible impacts on other areas of the economy.

Nevertheless, there are certain regulations surrounding the regulation of chemicals, water, temporary labour and food which, although having impacts on businesses across the economy, are of particular concern to the agricultural sector. This chapter includes an analysis and response to those issues as raised by participants.

Also, the relative importance of state and territory regulation became evident during the consultation process (box 3.1) as it is that tier of government that is more closely involved with the agriculture sector through its responsibility for land and natural resource management. Reflecting this, many concerns raised by participants focused on the lack of regulatory consistency between jurisdictions. This was of particular concern in relation to transport-related regulation, food standards and certain security sensitive chemicals.

To the individual farmer, regulations are often confusing and contradictory. For example, one landholder told the Commission that meeting the regulatory requirements on fire mitigation is difficult as, although stacks of timber on their property had created a fire hazard, they were unable to burn the timber due to fire control and environmental regulations, but when weeds grew in the timber stack, they were unable to spray the weeds due to habitat protection regulations.

The National Farmers Federation (NFF) provided a report prepared by Holmes Sackett (2007) as to the expenses and labour costs incurred by family farms in meeting all bureaucratic red tape or regulatory requirements (sub. 43). This was a benchmarking exercise based on selected farm businesses conducted between 1998 to 2006 operating throughout the sheep–wheat belt of New South Wales, Victoria, South Australia and Tasmania. The report emphasised that it did not represent the average of the industry as a whole. The expenses incurred in dealing with bureaucratic red tape were assumed to relate to all accounting services, legal services, bank fees, charges and taxes. The on-farm labour costs were determined using the proportion of time related to those regulatory tasks.

The report found that on average the expenses and labour costs related to these services as a whole accounted for 3 per cent of farm income, 4 per cent of total expenses and 14 per cent of net farm profit each year. The actual time involved in the related tasks accounted for around 18 days per year or 7.5 per cent of the working year.

Table 3.1 **Agriculture value chain and the impact of regulations**

Key Australian Government involvement/regulation	*Key stages of agricultural cycle*	*Key state/territory government involvement/ regulation*
• Aboriginal land rights/native title • environmental protection and biodiversity conservation	**Acquisition of arable land**	• land use and planning regulation • Aboriginal land rights/native title
• Aboriginal and Torres Strait Islander cultural heritage • natural heritage, world heritage • international treaties and conventions covering natural and cultural heritage • licensing and approval of chemicals, fertilizers and pesticides • environmental protection and biodiversity conservation	**Preparation of land**	• land use and planning regulation • native vegetation legislation • water regulation • weed and vermin control regulation • laws relating to Aboriginal and Torres Strait Islander cultural heritage, archaeological and Aboriginal relics, sacred sites • use of chemicals, fertilizers and pesticides • natural heritage • environmental protection/assessment • building regulations
• chemicals and pesticides • access to drought support • fuel tax regulation • national pollutant inventory • biosecurity regulation • immigration regulation • water access and regulation • research and development funding and support	**Farming** **- cropping** **- animal husbandry**	• animal welfare regulation • transport regulation impacting on use of farm machinery • vehicle and machinery licensing regulation • livestock regulation and identification • access to drought support • OHS regulation • fire control regulation • weed and vermin control regulation • livestock disease control regulation • livestock movement regulation • water access and regulation
• export certificates • industrial relation regulations • immigration regulation • environmental regulation • industrial relations regulation • national pollutant inventory	**On-farm processing**	• building regulations • machinery operations • certification and labelling • industrial relations regulation • OHS regulation

(Continued next page)

Table 3.1 **(continued)**

Key Australian Government involvement/regulation	*Key stages of agricultural cycle*	*Key state/territory government involvement/ regulation*
• national land transport regulatory frameworks • shipping and maritime safety laws • international maritime codes and conventions • competition laws/access regimes • animal welfare	**Transport and logistics**	• transport regulations • government owned public/private transport infrastructure • access regimes
• marketing legislation (mandatory codes and acquisition) • food safety regulation • quarantine regulation • export controls • export incentives • WTO obligations • market access and trade agreements • taxation	**Marketing** **- boards** **- customers**	• interstate certification arrangements • taxation

In drawing on this data, the Commission was mindful that the costs were not limited to government regulation or the sub-set of Australian Government regulation. In particular, it was not disaggregated to identify the unnecessary or burdensome component of Australian Government regulation.

The Commission explored other avenues to quantify the extent to which Australian Government regulations are unnecessarily burdensome, as discussed in chapter 1.

Role of the Australian Government

In broad terms, Australian Government regulation of agricultural activities underpins the following objectives:

- improving the profitability and competitiveness of the agricultural sector
- natural resource management
- environmental protection
- biosecurity.

Box 3.1 **Case study — key regulatory burdens on the agricultural sector**

As part of its consultation process the Commission convened a meeting with a small number of farmers and landholders engaged in sheep, cattle and grain production around Grenfell in the central west of New South Wales.

The following discussion does not represent all farming operations or provide a comprehensive and detailed quantification of the unnecessary regulatory burden placed on those in the agricultural sector. However, it provides practical examples of some of the regulatory burdens placed on those engaged in farming in this particular region and paints a picture of how the burdens of regulation from different sources add up and affect the individual farmer. As noted in the chapter, many of the regulatory problems identified by the participants involved state rather than Australian Government regulation. There were also concerns relating to general taxation issues, business activity statements and the taxation treatment of superannuation which are outside the scope of this review and will be examined in subsequent years.

Chemicals

There were concerns surrounding poorly run and inadequate courses in chemical use which required farmers to pay $180 to attend and give up a day from the farm for a 'refresher' course which contained nothing new. Moreover, not all farmers would undertake chemical training. As a result, a farmer who was on the training register would be fined if they did not undertake the refresher courses, while those that had never undertaken a chemical training course were never pursued. Mixing chemicals to enable farmers to only have to spray once was a large saving, but involved obtaining a local use permit from the New South Wales Department of Primary Industries. Using generic chemicals could similarly lower operating costs. For example, using a generic weed chemical could equate to a treatment cost of $6 per hectare compared to $1800 to upwards of $6000 per hectare to use a registered chemical. However, often with inadequate labelling information there was the risk that the crop could be damaged or destroyed. A further regulatory burden was the requirement to prepare material safety data sheets for each chemical purchased when such information could be attached to the label.

National Livestock Identification System (NLIS)

There was support for the NLIS provided the tags were durable and the integrity of the system was maintained to avoid sheep being wrongly identified. Electronic tags would have advantages, but cost of just over $2.00 rather than the current $0.39 per tag.

Wheat marketing arrangements

Those attending the meeting strongly supported the retention of the single desk marketing arrangements for bulk wheat exports, although there were concerns relating to the high management fee charged per tonne of wheat by AWB International and the time involved in preparing submissions and attending forums relating to the recent Wheat Consultation Committee Review.

(Continued next page)

Box 3.1 **(continued)**

Plant breeders rights

There was concern regarding the paperwork required to meet the intellectual property (IP) rights surrounding seeds (plant breeders rights) to ensure royalty payments were received by the owner of the IP. This required additional record keeping to determine the foundation seed used, when the crop was sold and who to. An agricultural supplier estimated it took 38 hours to prepare the paperwork before the seed was sold whether one bag or 100 tonnes were sold. In many cases there was confusion as to who should collect the end point royalties. It also made it difficult for farmers to trade seed with other farmers.

Importantly, the IP system surrounding seeds worked against the introduction of new species to respond rapidly to disease in existing crops. (The Advisory Council on Intellectual Property, an independent body appointed by the Australian Government, has recently commenced a review of the enforcement of plant breeders rights.)

Other

Other matters raised relating to Australian Government regulation included:

- drought assistance — the duplication of paperwork and information provided to Centrelink to access Exceptional Circumstances payments.
- fuel tax credits — the complexities involved in apportioning off road usage. It was estimated that around half the time spent by an individual farmer in calculating and in meeting these requirements was additional to the needs of the business.
- biodiesel testing — the high cost of testing commercially produced biodiesel.
- national vendor declaration forms — because of poor design the vendor had to complete personal details a number of times.

Other matters relating to New South Wales Government regulation included:

- OHS — these regulations were a disincentive to employ staff as the duty of care required was so onerous as to require the farmer 'to be responsible for others stupidity'. One farm operation estimated that around 70 per cent of the time used in meeting OHS requirements was additional to business needs.
- 'paper roads' — the complexity of purchasing additional land where there were surveyed, but unmade roads included on the land title.

In comparison to the states and territories, the Australian Government does not have a large role in directly regulating the agriculture sector, but its responsibilities in relation to quarantine, environmental protection, chemical regulation and other areas do have a direct impact. Further, there is a range of regulation that affects the agriculture sector flowing from the Australian Government's corporations powers,

regulation of immigration, taxation powers, regulation of interstate trade and commerce and obligations involving international treaties.

The remainder of this chapter looks at Australian Government and related national issues raised in submissions that have an impact on agricultural producers, provides a response to those issues and, where possible, identifies areas where there is scope to remove or significantly reduce the regulatory burden.

3.2 Environment Protection and Biodiversity Conservation Act

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was introduced to protect Australia's environment and heritage, particularly matters of 'national environmental significance'. The Act provides for the referral, assessment and approval of actions likely to have a 'significant impact' on:

- matters of 'national environmental significance' (Wildlife Heritage properties, National Heritage places, wetlands of international importance, nationally listed threatened species and ecological communities, listed migratory species, the Commonwealth marine area, and nuclear actions
- the environment of Commonwealth land
- the environment (inside or outside of Australia) if the action is undertaken by the Australian Government.

The Act also contains provisions dealing with wildlife and other permits (for example, permits for activities that affect listed species or communities in Commonwealth areas and for the import and export of wildlife), biodiversity conservation mechanisms (for example, the preparation of management plans and the issuing of conservation orders), and enforcement and compliance mechanisms.

Amendments were introduced to the Act in December 2006 (with effect from February 2007) to improve aspects of its operation including to:

- cut red tape in government
- increase flexibility in setting conditions on developments
- increase certainty for industry and the community
- strengthen compliance and enforcement
- increase public consultation and information (Campbell 2006; DEW 2007a).

In terms of the agriculture value chain presented in table 3.1, the EPBC Act is most relevant to the 'preparation of land', 'farming, cropping and animal husbandry', and 'on-farm processing' stages.

Several concerns were raised by participants in the agriculture sector as well as in the mining, oil and gas sector (dealt with in chapter 4).

Overlap and duplication with state and territory processes

Concerns have been raised about ongoing overlap and duplication of the EPBC Act with state and territory environmental assessment and approval processes (NFF sub. 11, p. 9; Growcom sub. 15, p. 19; VFF sub. 13, p. 14). For example, the NFF considered that:

> In addition to the Commonwealth approval process, Australian farmers must also gain environmental approval through their State accreditation processes for the same on-farm actions. Each State has a completely separate set of guidelines, rules and requirements to that outlined within the EPBC Act, adding another tier of complexity to the farmer's requirements. In many instances, the State approval process has no set timeframe under which it is required to provide certainty back to the farmer on whether they can proceed.
>
> As a result, many farmers are reluctant to go through the process of changing their existing land practices as the regulatory steps that they must undertake are deemed to be too onerous and time consuming. Regrettably this has placed pressure on some farmers to take land use decisions into their own hands, with instances of poor judgement leading to convictions or bad environmental outcomes. (sub. 24, pp. 7–8)

This is of even greater concern to the mining, oil and gas sector and has been dealt with more fully in chapter 4. As noted in that chapter, reform in relation to bilateral assessment agreements is progressing, although reforms in relation to bilateral approvals agreements are taking too long.

Import of live animals — conflict of interest in environmental risk assessment

Concerns were raised that provisions under the EPBC Act governing the import of live animals are imposing a burden on rural industries and businesses because of inadequate risk assessment procedures. The Western Australian Department of Agriculture and Food noted:

> Inadequate risk assessment procedures for the import of exotic animals in Australia are likely to result in the import of potentially serious animal pests, which may be subject to lax keeping requirements and therefore have the potential to escape and establish natural populations. This would impose significant costs on the production sector

through stock and crop losses and increased production costs, the environment and public amenity and safety. (sub. 35, p. 9)

The Department was particularly concerned about the conflict of interest that applicants would have in preparing the terms of reference and risk assessment reports. It recommended that a suitably qualified and independent person be appointed by the Department of Environment and Water Resources (DEW) to conduct the risk assessment, paid for by the applicant (sub. 35, p. 10).

The EPBC Act regulates the international movement of wildlife, wildlife specimens, and products made or derived from wildlife, including the import of live animals and plants into Australia. Among other things, permits are required to import live animals or plants. All species permitted for import are included in the live import list. Species not identified on this list cannot be legally imported. There are two parts to the live import list: part 1 contains species that can be bought into Australia without a permit, and part 2 contains species that require a permit. (Any live import is also subject to approval from the Australian Quarantine and Inspection Services (AQIS) from a quarantine perspective — this area of overlap is considered in the next sub-section.)

Anyone can apply to the Minister to amend the live import list to include a new species. DEW manages applications under the EPBC Act to amend the live import list to include animals, whereas AQIS[1] manages applications in respect of live plants.

DEW's process to amend the live import list for animals involves the following steps:

- Applicants submit to DEW an application form and draft terms of reference for a report assessing the potential risk on the proposed amendment to the live import list. Standard terms of reference for different species groups are published by the Department for guidance.
- If DEW considers that the terms of reference provided are appropriate for the species, the process is streamlined and the applicant prepares the assessment based on the terms of reference. However, DEW may publish the draft terms of reference for public comment.
- If the draft terms of reference is published for public comment, DEW collates the comments received and sends them to the applicant along with suggested changes (if any).

[1] The AQIS process for amending the live import list for plants under the EPBC Act was accredited by the predecessor to DEW in 1997. The accreditation has been reflected in amendments to the EPBC Act made in February 2007.

- The applicant prepares a draft report assessing the relevant impacts on the environment and addressing the terms of reference and submits it to DEW for review.
- DEW publishes the draft assessment report for public comment. At this time, the Minister seeks comment from appropriate state, territory and Australian Government ministers. Additional consultation may be undertaken by DEW including seeking expert advice.
- DEW collates comments received on the draft assessment report and forwards them to the applicant to take into account in the draft report.
- DEW advises the Minister and provides the final assessment report and other relevant information for consideration of a decision on whether or not to amend the live import list. The applicant is informed of the decision.
- If the Minister approves an addition of a species to part 2 of the live import list, anyone may apply for a live import permit.

Assessment

DEW's process has a reasonable level of public consultation and departmental supervision of the applicants' preparation of risk assessment reports, including the drafting of the terms of reference. That the applicant prepares risk assessment reports is a model that is generally applied by environmental protection agencies.

That said, there continues to be a question about the bias and rigour of the risk assessments. This comes about from the ability of the applicant, rather than the administering department, to choose who does the risk assessment and the manner in which the results are presented.

If a risk assessment understates the real environmental risk (the likelihood of adverse consequences for the environment) of importing live animals, thus leading to a Government decision to import the live animal, an added burden is potentially imposed on affected businesses.

Although errors in, and uncertainty about, risk assessment estimates are always present (because of data limitations, for example), their robustness could be improved through imposing extra safeguards. One safeguard is to ensure that the person undertaking the risk assessment is appropriately qualified and independent of the applicant.

The Commission considers that DEW should take a greater role in determining who undertakes the environmental risk assessment of applications to amend the live import list for animals. This could involve DEW nominating or accrediting suitable

experts for this purpose. Proponents seeking to amend the live import list would still continue to bear the cost of the environmental risk assessment. This would reduce concerns about the conflict of interest associated with the risk assessment.

DRAFT RESPONSE 3.1

The Department of Environment and Water Resources should take a greater role in determining who undertakes environmental risk assessments for the importation of live animals under the EPBC Act.

Import of live animals — overlap and duplication with the Quarantine Act

An issue that emerges from the previous discussion is the overlap and duplication between the EPBC Act and the *Quarantine Act 1908* (Western Australian Department of Agriculture and Food sub. 12, p. 9). The EPBC Act requirements focus on the import of live animals from an *environmental impact* perspective. The requirements under the Quarantine Act govern the import of live animals from a *pest or disease risk* perspective. AQIS administers many of these requirements. Biosecurity Australia provides risk assessments and policy advice to the Director of Quarantine (the Secretary of DAFF) on the pest and disease risks of importation of live animals, their genetic material and products (referred generally as import risk analysis).

Assessment

The process of environmental risk assessment under the EPBC Act and the process of import risk analysis under the Quarantine Act are quite different. For example, a live import that poses no threat to animal health may still pose a significant threat to the environment. There is, thus, good reason for the two processes to be undertaken.

Nonetheless, there have been several actions within the Australian Government to coordinate the two processes.

A memorandum of understanding between Biosecurity Australia and the predecessor of DEW was agreed on 11 October 2002, which established the Biosecurity and Environment Liaison Team. This seeks to enhance inter-agency cooperation and consultation on import risk analyses and live import environmental assessments.

The Australian National Audit Office (ANAO) in its review of quarantine effectiveness in 2005 reported that the memorandum of understanding had been operating satisfactorily since it was implemented (ANAO 2005, p. 50).

In addition, there is scope within the EPBC Act, arising from amendments in February 2007, for the accreditation of relevant Australian Government legislation and processes. For example, the Act provides for the Minister to accept an assessment report prepared by Biosecurity Australia for the purpose of importing or releasing a biological control agent (sections 303ED and 303EE), a hitherto major area of overlap of the two processes. The amendments also allow consideration of whether other Biosecurity Australia assessment processes could be accredited in future.

The Commission considers that the memorandum of understanding is achieving the objective of promoting coordination between the two agencies. Even so, consideration should be given by DEW as to whether Biosecurity Australia should have a greater role in assessing environmental risks of live animal imports under the EPBC Act.

DRAFT RESPONSE 3.2

The Department of Environment and Water Resources should assess whether there is further scope for accrediting Biosecurity Australia's risk assessment processes in relation to the importation of live animals under the EPBC Act.

Lack of clarity about 'significant impact'

Concerns were raised within the agriculture sector that the lack of a definition in the Act of the term 'significant impact' has created uncertainty for businesses as to when this trigger for the Act applies (for example, VFF sub. 13, p. 14; Growcom sub. 15, p. 19). The Victorian Farmers Federation (VFF) said that:

> Despite its importance in the regulatory regime, the term 'significant impact' is not defined in the Act or regulations. Although the EPBC Act Administrative Guidelines on Significance and guidelines for specific species go some way to clarify the meaning of significant impact using impact criteria, no guidance is provided on how a referred action will be assessed. Due to the gap between the Act's potential scope for and actual implementation, together with the use of the somewhat ambiguous 'significant impact' as the referral trigger, there remains a degree of uncertainty about the Act's direct and indirect impact on landholders both now and into the future. (sub. 13, p. 14)

Significant impact is the main trigger for referral under the EPBC Act. The purpose of referral is to determine whether or not an action requires assessment and/or approval under the Act.

Assessment

The Regulation Taskforce noted business uncertainty surrounding significant impact and recommended that the Government should improve its guidance on the application of the trigger, particularly in relation to the issues and reporting requirements that arise when referral is engaged (Regulation Taskforce 2006, p. 74).

In its response to the Regulation Taskforce, the Australian Government agreed to the recommendation (Australian Government 2006b, p. 37). It stated it would continue to work on providing guidance on the practical application of the Act.

Since the Regulation Taskforce report and Australian Government response, the Administrative Guidelines on Significance of July 2000 have been replaced by two sets of new guidelines on significant impact — the first relates to matters of national environmental significance (DEH 2006c), and the second to actions on, or having an impact upon, Commonwealth land and actions by Commonwealth agencies (DEH 2006a). Under the new guidelines, significant impact is defined as

> … an impact which is important, notable or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. (2006c, p. 4; 2006d, p. 5)

And further

> To be 'likely', it is not necessary for a significant impact to have a greater than 50% chance of happening; it is sufficient if a significant impact on the environment is a real or not remote chance or possibility.
>
> If there is scientific uncertainty about the impacts of your action and potential impacts are serious or irreversible, the precautionary principle is applicable. Accordingly, a lack of scientific certainty about the potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact on the environment. (2006c, p. 4; 2006d, p. 5)

The new guidelines set out in further detail the considerations or criteria for determining significant impact. For example, an action is likely to have a significant impact on the environment in a Commonwealth marine area if there is a 'real chance or possibility' that it will, among other things:

- result in known or potential pest species becoming established
- modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that an adverse impact on marine ecosystem functioning or integrity in a Commonwealth marine area results or

- have a substantial adverse effect on a population of marine species or cetacean including its life cycle and spatial distribution (DEH 2006c, p. 16).

In addition to the new significant impact guidelines, DEW provides information on the EPBC Act on its website. This information covers the referral and assessment/approval processes as well as other specific policy statements (for example, industry guidelines such as on offshore aquaculture and offshore seismic operations and nationally threatened species and ecological communities guidelines such as the spectacled flying fox and the bluegrass ecological community). There is a dedicated website link for farmers.

It is also notable that the NFF has, since 2002, had an Australian Government DEW officer seconded to it to 'provide effective communication and information "on-the-ground" to farmers and rural stakeholders in relation to the Act' (NFF 2007). The officer is fully funded by DEW.

The Commission considers that the recent actions of DEW have been constructive in resolving uncertainty for businesses in the agriculture sector about the role of significant impact as a trigger.

DRAFT RESPONSE 3.3

Actions to clarify the definition of significant impact under the EPBC ***Act for businesses in the agriculture sector are progressing.***

3.3 National Pollutant Inventory

The National Pollutant Inventory (NPI) is a database established through a National Environment Protection Measure,[2] agreed to by the Australian Government and State/Territory Governments in 1998. It seeks to:

- provide information to enhance and facilitate policy formulation and decision making for environmental planning and management

[2] National Environment Protection Measures are broad statutory instruments made by the National Environment and Protection Council under the National Environment Protection Council Act. National Environment Protection Measures outline agreed national objectives for protecting or managing particular aspects of the environment. They are similar to environmental protection policies and may consist of any combination of goals, standards, protocols and guidelines. Under the Australian Government's *National Environment Protection Council Act 1994* and complementary state and territory legislation, a National Environment Protection Measure becomes law in each participating jurisdiction once it is made by the Council, for which a two-thirds majority is required.

- provide publicly accessible and available information, on a geographic basis, about specified emissions to the environment, including those of a hazardous nature or involving significant impact
- promote and assist with the facilitation of waste minimisation and cleaner production programmes for industry, government and the community (clause 7).

The NPI National Environment Protection Measure is implemented through state and territory environment protection and other legislation.

The Environment Protection and Heritage Council (incorporating the National Environment Protection Council) decided at its June 2007 meeting that the NPI will include transfers, will include greenhouse gas emissions pending the establishing of a national purpose-built greenhouse reporting mechanisms, but will continue to exempt reporting of emissions from aquaculture (EPHC 2007a).

In terms of the agriculture value chain presented in table 3.1, the NPI National Environment Protection Measure is most relevant to the 'preparation of land', 'farming, cropping and animal husbandry', and 'on-farm processing' stages.

Participants in the agriculture sector raised concerns about the NPI National Environment Protection Measure that have to do with the:

- reporting requirements on intensive agricultural operations
- exemption of aquaculture
- relationship between the NPI and agriculture and veterinary chemicals regulation
- inclusion of greenhouse gas and energy reporting.

Each of the concerns is assessed below. Concerns about the use of the NPI for greenhouse gas and energy reporting are also dealt with more detail in chapter 4 on mining, oil and gas. Other concerns by mining, oil and gas participants about the NPI are dealt with in chapter 4.

Intensive agricultural operations — burden of reporting for individual farmers

Several participants raised concerns about the burdensome nature of reporting requirements for individual farmers engaged in intensive agricultural operations, including the tight time frames (New South Wales Farmers' Association sub. 27, p. 13; Red Meat Industry sub. 12B, pp. 22, 23; Australian Pork Limited sub. 44, p. 14). For example, the New South Wales Farmers' Association considered that:

> The reporting form currently requires expertise to complete and is not user friendly due to literature and computer competency factors. There are few incentives for intensive farmers to pursue accuracy in the reports, which raises questions about the scientific credibility of the data. (sub. 27, p. 13)

It proposed that the responsibility for measuring and reporting emissions be given to the relevant industry bodies:

> Industry bodies should be able to provide accurate emission figures based on general industry production figures (average slaughter numbers, average livestock numbers, known average emissions, effluent figures etc). (sub. 27, p. 13)

The NPI National Environment Protection Measure imposes reporting requirements on facilities if they reach certain prescribed thresholds. The thresholds relate to how much fuel, electricity and NPI substances have been used by the facility. Facilities that meet the threshold are then required to estimate their emissions annually and report these to a state or territory environment agency, which checks the data and forwards that on to DEW. The methodology for estimating emissions is available through estimation manuals (for example, DEW 2007c).

Assessment

The reporting burdens imposed on individual farmers in intensive agriculture operations are an inevitable result of the objectives that the NPI National Environment Protection Measure seeks to address. The issue is whether the burdens are excessive relative to the benefits embodied in the objectives of the National Environment Protection Measure.

The Commission notes that there have been attempts to reduce the burden on individual farmers and improve the ease of reporting. For example, there is considerable information on the NPI website that would assist individual farmers meet their reporting obligations. These include estimation manuals as well as the offer of industry training. The Commission also understands that changes have been made to the database system by DEW, which should make it more user-friendly.

In addition, the draft variation to the NPI National Environment Protection Measure (NEPC 2006a) incorporates some changes that might help ease the burden for individual farmers. These are to extend the publication date by two months to enable corrections to be made by jurisdictions and industry before public release (p. 61) and to enable jurisdictions to approve alternative reporting periods to meet the reporting 'efficiency needs' of facilities (p. 64).

Another measure that could be considered is for greater use to be made of industry associations that already have access to relevant data. There is no obstacle within the National Environment Protection Measure to the use of industry associations in

this way. Indeed, the Commission understands that the Western Australian Broiler Growers Association, which has a complete list of meat chicken farms and chicken numbers for each farm, manages reports to the NPI on behalf of individual farmers.

The Commission considers that some actions are progressing to reduce the compliance burden on individual farmers arising from the NPI National Environment Protection Measure. However, further consideration should be given by the Environment Protection and Heritage Council (which incorporates the National Environment Protection Council) to giving industry associations a greater role in compiling data on behalf of individual farmers.

DRAFT RESPONSE 3.4

Reforms are progressing to reduce the compliance burden on individual farmers in intensive agricultural operations resulting from the reporting requirements in the NPI National Environment Protection Measure. The Environment Protection and Heritage Council should also consider expanding the role of industry associations in meeting reporting requirements.

Intensive agricultural operations — inappropriate reporting threshold for ammonia

The Red Meat Industry expressed concerns on behalf of small beef feedlot operators and red meat processing plants about the NPI reporting threshold for ammonia (sub. 12B, pp. 21–23). It noted that the threshold is reached by 'a very small feedlot' (sub. 12B, p. 23).

Substances for inclusion in the NPI, and their reporting thresholds, are set out in a report by a technical advisory panel in 1999 (TAP 1999). Substances for inclusion were determined using a risk-based approach. Thresholds were determined on the basis of trials and with a view to eliciting reports from major emitting facilities without placing undue burdens on small facilities.

Ammonia was identified by the panel as one of 90 substances for inclusion. The threshold for reporting ammonia (a category 1 substance along with many of the 90 substances) was determined at 10 tonnes or more. For beef cattle feedlots, the threshold is triggered where the feedlot has more than 143 standard cattle units[3] (DEW 2007c, p. 5).

[3] A standard cattle unit is equal to 600 kg. The total emission of ammonia kg in a year is equal to the number of standard cattle units multiplied by an 'ammonia emission factor', which has recently been revised upwards for beef cattle feedlots to 70 kg ammonia per standard cattle unit per year.

Assessment

Although the ammonia emission factor has been revised for beef cattle feedlots, the Commission notes that the basic reporting thresholds for ammonia as well as for most category 1 substances in the NPI have not been reviewed since the technical advisory panel report of 1999. A review of these reporting thresholds ten years after their establishment would enable the Environment Protection and Heritage Council to reconsider the science underpinning the thresholds as well as the nature of the compliance burden imposed on small facilities such as small beef cattle feedlots.

DRAFT RESPONSE 3.5

The Environment Protection and Heritage Council should commission a review of reporting thresholds for all NPI substances. The review should occur by 2009.

Public access to facility-based information

Several participants raised concerns about the public accessibility of farmers' contact details (New South Wales Farmers' Association sub. 27, p. 13; Red Meat Industry sub. 12, p. 20 and sub. 12B, p. 23; Australian Pork Limited sub. 44, p. 15). For example, the New South Wales Farmers' Association noted that the publication of contact details of farmers engaged in agricultural intensive operations who were required to report nitrogen and phosphorous pollution left them 'vulnerable to harassment by extremist groups' (sub. 27, p. 13). It recommended that farmers' contact details be not accessible on the public website (sub. 27, p. 13).

Assessment

As noted earlier, an objective of the NPI is to provide publicly available information about specified environmental emissions on a 'geographic basis'. Further, a provision in the National Environment Protection Measure is that 'the Council envisages' that the Australian Government will ensure that information disseminated will include 'where practical a geographic information system to allow information on the NPI database to be viewed by locality, substance, reporting facility, activity or any combination of these factors' (clause 31(1)(d)).

Underpinning these provisions is the view that:

- communities have a 'right to know' the nature and extent of emissions within their localities and

- the publicly availability of such information creates incentives for businesses (who are concerned about their reputation, for example) to contain their emissions.

That said, the National Environment Protection Measure does not strictly require that access and provision of data to the public be on a facilities basis. There is flexibility in interpreting the 'geographic basis' of the data. This may well be desirable where there are real concerns about the harassment of businesses.

The Commission considers that the 'geographic basis' of reporting need not necessarily be at the facility level. Some aggregation of individual facilities' data should be possible without diminishing either the value to the public of such information or the incentive on businesses to reduce their emissions.

DRAFT RESPONSE 3.6

The Environment Protection and Heritage Council should review whether facility-based data collected under the NPI could be aggregated before being made available to the public without unduly reducing the value of the information or the incentive for businesses to reduce their emissions.

Inclusion of aquaculture

The National Aquaculture Council expressed concerns about the possibility of any inclusion of the aquaculture industry in the NPI. It argued that:

- there would be 'significant duplication' in industry having to report to various agencies as well as through the NPI
- the data would be misrepresentative as to its 'sustainable' approach to the production of seafood
- estimating and reporting transfers is complicated and expensive when dealing with an aquatic environment
- it would be unlikely that jurisdictions would enforce compliance (sub. 18, pp. 3–4).

Assessment

Following the National Aquaculture Council's expression of its concerns to the Commission, the Environment Protection and Heritage Council has decided to maintain the exclusion on reporting on emissions from aquaculture operations from the NPI (EPHC 2007a).

The Commission, however, notes that the Council's decision is inconsistent with a recommendation of the 2005 review. It also notes that the impact statement prepared in 2006 found that there was a strong 'equity case' for requiring aquaculture operations to report given its similarities with current reporting sectors, especially intensive livestock facilities, and the impacts of their emissions on water quality. The impact statement estimated reporting costs for industry of $36 000 per annum, affecting around 60 facilities (NEPC 2006b, pp. 52–4).

Inclusion of agricultural and veterinary chemicals

CropLife Australia expressed concern about the possible inclusion of agricultural and veterinary chemicals in the NPI through the proposed National Chemicals Environmental Management (NChEM):

> … [the National Pollutant Inventory] could inadvertently create a more burdensome, complex, duplicated and uncertain regulatory environment and diminish the role of sound science in the identification, assessment risk management of 'priority' chemicals, for example, by the APVMA. (sub. 14, p. 7)

Assessment

The 2005 review of the NPI considered the issue. It noted that regulation of agricultural and veterinary chemicals is 'clear but complex, and hence coordinated action can be protracted, particularly when the release of data is concerned' (Environment Link 2005, p. 23). It recommended that the Department provide an assessment of the capacity for the chemical use database program to provide public information on agriculture and veterinary chemicals to the Environment Protection and Heritage Council and for the Council to defer consideration on the inclusion of agriculture and veterinary chemicals pending the outcome of the assessment.

The Regulation Taskforce (2006, p. 77) recommended that including agricultural and veterinary chemicals in the NPI be deferred pending the outcome of other work underway in this area.

At its meeting in June 2007, the Environment Protection and Heritage Council considered and endorsed the National Framework for Chemicals Environmental Management (NChEM) (EPHC 2007a).

NChEM aims to ensure that environmental considerations are integrated into Australian chemicals management systems, reduce the fragmentation, and improve the streamlining of regulation and coordination across the various levels of government. The focus for improving the current system is primarily on the industrial chemicals management system, with some 'targeted improvements' to the

agricultural and veterinary chemicals systems administered by the APVMA (EPHC 2006).

Supporting NChEM is a Ministerial Agreement on Principles for Better Environmental Management of Chemicals and a Chemicals Action Plan for the Environment (EPHC 2007c, d). Part of the Chemicals Action Plan's future work program is the development by DEW of an 'environmental monitoring database that can incorporate information on environmental chemical impacts and usage' (2007c, p. 2). However, there is no reference in any of the NChEM documentation regarding the potential role of the NPI in relation to agricultural and veterinary chemicals.

The Commission considers that, if agricultural and veterinary chemicals were to be included in the NPI, then alternative ways for obtaining the information should be fully explored before imposing reporting requirements on business.

3.4 Climate change policies

Multiplicity of greenhouse gas and energy reporting requirements

Concerns were raised about the Environment Protection and Heritage Council's proposal for greenhouse gas emissions and energy reporting through the NPI until a specific-purpose reporting system is developed (Red Meat Industry sub. 12B, pp. 23–4; Australian Pork Limited sub. 44, p. 15). The Red Meat Industry noted that there would be:

> … two levels of potentially higher regulatory burden on red meat businesses: i) costs of extra poorly-based reporting requirements, and ii) the costs on industries and governments of implementing an interim process, then needing to start again for a purpose built system. (sub. 12B, p. 23)

It went on to say that 'if governments have over-arching concerns about 'unnecessarily burdensome regulation and impacts on costs, innovation and investment decisions' then:

- greenhouse gas emission reporting by agricultural businesses should be suspended until reliable and cost-effective mechanisms for recording and reporting are developed
- reporting should be aligned with industry and government programs including [quality assurance] systems — requirements for multiple reporting advantage no-one
- benchmarking and reporting should be required as a whole of industry or sector basis, with reporting by individual enterprises on a voluntary basis (commercial elements of future greenhouse trading may influence this)

- there is need for balance and sensitivity to variable factors in climate, environment and similar in assessing emissions. (sub. 12B, p. 24)

Australian Pork Limited had concerns about the practicality of implementing an interim greenhouse reporting system through the NPI:

> … The Australian pork industry has already made considerable investments in time and effort toward the Commonwealth preferred option. This would be an unnecessary duplication of legislation.
>
> If such an 'interim' system were to be implemented, a consultation process with industry is essential. The proposed timeframes do not allow for such a process to take place and given the restraints on time and resources are tight this may be expended on a system which may never be used. Further, should this interim system be introduced a considerable investment will be required by industry, and the government will be required to communicate the new, if temporary system.
>
> Finally, there is no surety that an interim system will be compatible with or even similar to the proposed national system. The proposed interim reporting system poses an unnecessary and unfair burden on the pig industry. (sub. 44, p. 15)

In terms of the agriculture value chain presented in table 3.1, greenhouse gas and energy reporting requirements are most relevant to the 'farming, cropping and animal husbandry' and on-farm processing stages.

Australian emissions trading scheme

Several participants in the agriculture sector noted, or commented on, the introduction of a greenhouse gas emissions trading scheme in Australia (Western Australian Farmers Federation sub. 17, p. 10; National Association of Forestry Industry sub 11, p. 13). The National Association of Forestry Industry, for example, was concerned to ensure that the benefits of carbon sequestration and storage in forests and wood products were adequately recognised in any emissions trading regime (sub. 11, p. 13).

The Prime Minister announced in June 2007 that Australia will move towards a domestic 'cap and trade' emissions trading scheme, beginning no later than 2012 (PMC 2007a) and in July 2007 launched the Government's climate change policy statement — Australia's Climate Change Policy (Australian Government 2007a). The statement endorsed the key features of the emissions trading scheme set out in the Prime Ministerial Task Group on Emissions Trading report (PMTGET 2007). The scheme is to be the primary mechanism for achieving Australia's long-term emissions goal and, thus, to deal with climate change.

The key features of the emissions trading scheme include:

- a long-term 'aspirational' emissions abatement goal and an associate emissions pathway, which is periodically calibrated by the Government to changing international and domestic circumstances
- a system of permit allocation that
  - compensates businesses that suffer a disproportionate loss in asset values
  - ameliorates the carbon-related exposures of existing and new investments in the trade exposed emissions intensive sector until key international competitors face similar constraints
  - allows for the auctioning of remaining permits
  - provides abatement incentives in the lead up to the commencement of emissions trading and ensures early abatement actions do not disadvantage firms
- the recognition of credible domestic and international carbon offsets
- capacity to link to other national and regional schemes (PMC 2007b; Australian Government 2007a).

Of particular relevance to the agriculture sector is the initial exclusion of agriculture and land use emissions (although energy use in agriculture would be captured) (PMC 2007b; Australian Government 2007, p. 34). The reason provided for this is the practical difficulties of including agriculture because of, for example, measurement uncertainties and the high administration costs of capturing many small sites. However, the Government envisages that the sector will be drawn into the scheme, where practicable, at a later point.

Public consultations are being conducted on the policy statement.

(As an element of the emissions trading scheme, the Government introduced legislation in August 2007 that establishes a single, national framework for greenhouse gas and energy reporting — this is also discussed in section 4.8.)

Assessment

The regulatory design of the Australia emissions trading scheme is crucial in terms of affecting the extent to which the scheme achieves its objectives and at what cost to the wider community, including to businesses. Best practice regulatory design features, if adhered to, should keep burdens imposed on businesses under any regulation to a minimum relative to the benefits achieved. In particular, design features should ensure that rights to emit greenhouse gases go to their highest value uses, minimise exemptions, and allow for ongoing monitoring and evaluation of the scheme.

3.5 Biosecurity and quarantine

Australia's biosecurity and quarantine regime consists of the Australian Government's *Quarantine Act 1908* (enacted under section 51(ix) of the Constitution) and state and territory biosecurity and quarantine legislation.

Biosecurity and quarantine measures are intended to prevent the introduction, establishment or spread of animal, plant or human pests and diseases that could be carried into Australia (or into a state or territory) by people, animals and their products, and plants and their products. They include measures for inspection, exclusion, treatment and disinfection of vessels, installations, persons, goods, things, animals, plants or their products.

The measures may be categorised broadly as follows:

- 'pre-border' measures (these anticipate threats and manage risk before arrival in Australia) including import risk analyses, offshore inspection and offshore certification
- 'border' measures (these implement quarantine and inspection strategies at the border) including inspection by AQIS and the application of quarantine protocols and
- 'post border' measures (these tackle the risk of pest and disease outbreaks within Australia) including prevention strategies, monitoring and surveillance, and emergency pest and disease response management.

In terms of the agriculture value chain presented in table 3.1, Australia's biosecurity and quarantine regime is most relevant to the 'farming, cropping and animal husbandry' and 'marketing, boards, customers' stages.

Participants raised several concerns about Australia's biosecurity and quarantine regime.

Import risk analysis

There have been numerous long-standing concerns expressed by business in different fora about import risk analyses conducted by Biosecurity Australia (for example, Agriculture and Food Policy Reference Group 2006, Regulation Taskforce 2006, SSCRRAT 2007, 2006). The concerns pertained to such matters as:

- the soundness of the science underpinning the import risk analysis
- the weight given in import risk analysis to the economic and social consequences of a pest and disease incursion

- consultation with stakeholders
- the communication of import risk analysis findings
- the role of the Eminent Scientists Group
- the independence of the appeal panel.

For example, in its submission to this review, Growcom reported that:

- The process for IRAs can be drawn out over many years which provides uncertainty for the domestic industry;
- The industry cost in supplying information to government can be a significant burden in relation to costs and resources;
- There needs to be mechanisms that allow for ongoing engagement with stakeholders in order to undergo continued alteration and improvements to the processes and systems put in place;
- Clear and transparent systems and procedures that allow for industry consultation and input prior to any alterations to import conditions that are in the final IRA. (sub. 15, p. 12).

Import risk analysis involves identifying the pests and diseases relevant to an import proposal, assessing the risks posed by them and, if those risks are unacceptable, specifying what measures should be taken to reduce those risks to an acceptable level.

Biosecurity Australia undertakes an import risk analysis where there is no policy relating to the import of an animal, plant or their products, or a significant change in existing policy is proposed.

The process that Biosecurity Australia has followed in conducting an import risk analysis incorporates stakeholder consultation, the preparation and release of draft and final import risk analysis reports, and scope for appeal or independent review (DAFF 2003, p. 30).

The role of import risk analysis within the Australian Government's quarantine regime is reinforced and subject to the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures (commonly known as the SPS Agreement). The Agreement provides World Trade Organization members with the right to apply a quarantine measure and, moreover, the right to determine their own 'appropriate level of protection' (or acceptable level of risk) provided certain requirements are met including that the measure is based on scientific principles and on an assessment of the risks to human, animal or plant life or health.

Assessment

Determining quarantine measures relating to the import of animals, plants and their products involves a delicate balancing act. Imports can involve the likelihood that pests or diseases are brought into Australia with adverse, and potentially devastating, consequences for producers. But excessive limits on imports can reduce choice and increase prices for consumers, which include producers seeking to import (for example, pigmeat producers seeking to import grain in times of drought).

It is important, therefore, that quarantine measures are supported by scientifically-sound import risk analysis and, moreover, that the process in which the analysis is done is as cost-effective as possible, with burdens imposed on those who participate kept to a minimum. Some principles that promote these aims include:

- the clear specification of the acceptable level of risk associated with importing
- objectively-based risk estimates (but still allowing for conservative attitudes to the acceptability of the risk estimates)
- where data and information are deficient or lacking, the presentation of a distribution of risk estimates to reflect different scenarios
- the avoidance of unnecessary replication of relevant international data and information
- the specification of meaningful time frames within the process for reporting
- the effective communication of risks to those who may be adversely affected through the process.

In recent years, several actions have been taken within the Australian Government to improve import risk analysis.

In 2004, the Australian Government made Biosecurity Australia a prescribed agency under the *Financial Management and Accountability Act 1997* to increase the independence of its operations and to ensure financial autonomy from the Department of Agriculture, Fisheries and Forestry (DAFF).

In its follow up review of 2005, the ANAO noted progress by Biosecurity Australia in implementing the previous review's recommendations in relation to import risk analysis. Notwithstanding this progress, the Office made additional recommendations to which Biosecurity Australia and DAFF agreed including that:

- Biosecurity Australia update its procedural documentation to incorporate recent enhancements that it had undertaken

- Biosecurity Australia document in its import risk analyses the range of strategies available to manage risks
- DAFF amend the terms of reference for the eminent scientists group to enable the group's earlier involvement in the process, where considered appropriate.

The Regulation Taskforce in 2006 recommended that the ANAO's recommendations on biosecurity and quarantine services be implemented (2006, recommendation 4.75). In its response, the Australian Government agreed to the recommendation and with the ANAO report (2006b, p. 4).

The Corish report in 2006 made a number of recommendations pertaining to import risk analysis, namely that:

- the current process be streamlined 'immediately' to minimise delays and alleviate international and domestic pressures on the system
- an independent institutional structure for Biosecurity Australia be established to promote confidence in the quarantine system
- Australia's quarantine and biosecurity policy settings be communicated more effectively in order to improve understanding (Agriculture and Food Policy Reference Group 2006, p. 137).

In its response to the Corish report, the Australian Government agreed with the recommendations to streamline the import risk analysis process and to improve communications (2006a, p. 23). It noted the recommendation relating to the institutional structure of Biosecurity Australia, but considered there were more effective ways of achieving confidence in the quarantine system.

The Australian Centre of Excellence for Risk Analysis was established in March 2006 in the University of Melbourne by Australian Government funding to research and develop state-of-the-art risk analysis methods across areas of interest to the Australian community. An early priority for the Centre is biosecurity risks (ACERA 2007).

In October 2006, DAFF announced a number of reforms to import risk analysis which are expected to take effect in September 2007. They involve the introduction of legislation to include:

- timeframes for the completion of import risk analyses (24 months for 'standard' import risks analyses and 30 months for 'expanded' import risk analyses) to improve timeliness of the process and predictability for stakeholders
- the expansion of the role of the eminent scientists group to include assessing conflicting scientific views provided to it and reviewing the conclusion of draft

import risk analysis reports to ensure they are scientifically reasonable based on the material presented

- improved consultation with stakeholders with an emphasis on early and regular engagement and directed consultation
- the establishment of a high level group with DAFF to prioritise import proposals to assist Biosecurity Australia to develop its work program and to monitor the progress of import risk analyses (DAFF 2006).

The Commission considers that Australian Government actions to date, including DAFF's proposed reforms to import risk analysis, should go someway to improving the cost and time burden imposed on agriculture sector businesses as well as dealing with concerns about the scientific rigour of the import risk analyses. It understands that legislation implementing the reforms will be introduced.

DRAFT RESPONSE 3.7

The Department of Agriculture, Fisheries and Forestry is progressively implementing reforms to the import risk analysis process which should address many of the concerns.

Import of veterinary vaccines

Animal Health Australia raised concerns about requirements imposed by AQIS/Biosecurity Australia on imports of veterinary vaccines. These concerns included:

- a lack of expertise in microbiology or experience in vaccine manufacture in AQIS/Biosecurity Australia
- a lack of scientific rationale in the policies governing the import of live and inactivated veterinary vaccines
- prescriptiveness in policies governing the import of live and inactivated veterinary vaccines (sub. 7, p. 6).

In relation to the import of veterinary vaccines (both live and inactivated), AQIS is responsible for administering quarantine requirements under its Biologicals Program. This includes initially assessing applications for import against import policies for the vaccines. AQIS refers applications to Biosecurity Australia where relevant information has not been provided or the applicant has claimed that alternative measures are equivalent to that contained in the policies. As noted earlier, Biosecurity Australia is responsible for import risk analysis where there is no policy relating to the import of an animal, plant or their products, or a significant change in existing policy is proposed.

Assessment

In its joint response to Animal Health Australia's concerns, AQIS/Biosecurity said that:

- the veterinary vaccine policies were developed following 'considerable' consultation with stakeholders including vaccine manufacturers
- the veterinary vaccine policies are 'highly prescriptive' and consistent with Australia's 'conservative approach' to quarantine risk.
- 'considerable effort' has been made to respond to industry demands in 2007 by employing qualified staff (including veterinary officers and microbiologists) to assess vaccine applications and working with industry to improve response times (sub. 48, p. 1)

The Commission considers that AQIS/Biosecurity Australia has sufficiently responded to concerns raised by Animal Health Australia.

Overlap between AQIS/Biosecurity Australia and APVMA

Concerns were expressed by the Animal Health Alliance that there is 'duplication of requirements' between AQIS/Biosecurity Australia and the Australian Pesticides and Veterinary Medicines Authority (APVMA) governing animal health products such as veterinary vaccines (sub. 7, attach. B, p. 5), which among other things contributed to delays in registration (around five years to register the products in Australia compared with two years in the European Union and the United States) (sub. 7, attachment B, p. 7).

AQIS assesses applications for a permit for import of biological products (for example, vaccines) for the risk that they are contaminated by pathogens that are *exotic* to Australia.

APVMA assesses applications for registration of all vaccines, whether imported or manufactured in Australia, for the risk that they are contaminated by pathogens that are *endemic* to Australia. APVMA accepts AQIS import permits on the basis of its risk assessments.

Assessment

The regulatory agencies responded to Animal Health Alliance's concerns. In a joint response, AQIS/Biosecurity Australia said that:

> … whilst APVMA generally ensure that domestically manufactured vaccines are not contaminated with extraneous disease agents, APVMA, AQIS and Biosecurity

> Australia agreed that AQIS would take responsibility for ensuring that imported vaccines are not contaminated with extraneous disease agents. This was largely due to concerns about contamination with exotic strains of endemic pathogens. This reduced the duplication that would occur if AQIS were only to look at contamination with exotic strains of endemic pathogens and APVMA were to look at contamination with endemic strains. (sub. 48, p. 1)

They also noted that AQIS has made greater cooperation with APVMA on vaccine assessments a priority and that this is reflected in its 2007-08 business plan (sub. 48, p. 2).

APVMA said that, at a recent consultative meeting with the chemical industry, APVMA and AQIS agreed to cooperate with a consultant to do a side-by-side comparison of each other's requirements and procedures, to determine what elements are common, and whether a single assessment will serve to fulfil the requirements of each agency (sub. 42, attachment 1, p. 1).

The Commission considers that these initiatives will help address the regulatory burden on applicants arising from duplicative requirements affecting the registration and import of animal products such as vaccines.

DRAFT RESPONSE 3.8

Recent initiatives by the Australian Quarantine and Inspection Service, Biosecurity Australia and the Australian Pesticides and Veterinary Medicines Authority should result in reduced duplicative requirements governing the importation of veterinary vaccines.

Lack of coordination across jurisdictions

Concerns were raised by participants about the lack of coordination of biosecurity and quarantine requirements across jurisdictions — not just between the Australian Government and State/Territory Governments (Western Australian Department of Agriculture and Food sub. 35, pp. 6–8), but between State and Territory Governments (Growcom sub. 15, pp. 9–11; Virginia Horticulture Centre sub. 32, p. 16).

For example, the Western Australian Department of Agriculture and Food drew attention to the gap between the Australian Government's Quarantine Act and state and territory biosecurity and quarantine requirements:

> The Quarantine Act is … unable to regulate the introduction from overseas of pest plants (weeds) of regional concern. This results in a significant gap in the biosecurity

> continuum that States and Territories attempt to regulate, which inevitably leads to unnecessary burdens and cost on many sectors within Australia (sub. 35, p. 6).

In relation to inconsistency between state and territory requirements, Virginia Horticulture Centre said:

> Our domestic markets trade from state to state on a daily basis and therefore are required to meet a number of differing biosecurity systems and quarantine regulations. Each Australian state has individualised quarantine systems that often cause conflict between states. Standards are differing and growers find them complicating and time consuming to adhere to, more significantly, growers find in many cases they become barriers to trade. (sub. 32, p. 16)

The Australian Government's role in biosecurity and quarantine is focused on preventing pest and disease incursions across the national border. The role of the states and territories is focused on preventing pest and disease incursions occurring within the jurisdiction including from other jurisdictions and other countries.

Assessment

The Corish report examined the roles of the Australian Government and State/Territory Governments in relation to biosecurity and quarantine (Agriculture and Food Policy Reference Group 2006, p. 134–7) and considered that:

> … national collaboration in preparedness for and prevention of new incursions across all jurisdictions is underdeveloped. Current institutional arrangements are unhelpful — responsibility for biosecurity issues is distributed across a range of agencies, nationally and at the jurisdictional levels. There is little consistency in controls and strategies employed, and there are no formal institutional arrangements supported by all jurisdictions to deliver common results. (Agriculture and Food Policy Reference Group 2006, p 134)

It recommended that there be a coordinated national approach to biosecurity as a matter of urgency:

> A framework for a coordinated approach would include activities being undertaken by the Australian, state and territory governments, as well as by industry and landholders. It could facilitate adequate surveillance, leading to agreements between governments and participating industries on eradication and/or management strategies, resourcing and cost-sharing. (Agriculture and Food Policy Reference Group 2006, p. 135)

The Australian Government expressed support for this recommendation and noted that the development of a framework for integration, known as the Australian Biosecurity System for Primary Production and the Environment (AusBIOSEC), has been underway since 2005 (2006a, p. 22). The framework will have common principles and guidelines to enable biosecurity arrangements to be applied

consistently across Australia. It is anticipated that the framework will be implemented through an Intergovernmental Agreement by 2008.

The Commission also understands that a new biosecurity committee will be established to link the Natural Resource Management Ministerial Council and the Primary Industry Ministerial Council and, thus, help coordinate policies governing biosecurity and quarantine across all jurisdictions and relevant agencies

The Commission considers that actions to improve coordination of biosecurity and quarantine requirements through AusBIOSEC and ministerial council arrangements are progressing.

DRAFT RESPONSE 3.9

Reforms on the development of a national approach to coordinating biosecurity and quarantine requirements across jurisdictions, through the Australian Biosecurity System for Primary Production and the Environment, are progressing.

Interstate Certification Assurance Scheme

Concerns were expressed by Growcom about the Interstate Certification Assurance Scheme:

> While the introduction of this system has been of great assistance to growers trading interstate, there are several major flaws in the operation of the system that must be rectified.
>
> The issues that growers have identified with the ICA system include:

- The lack of uniformity of requirements between state jurisdictions;
- The lack of training options for accreditation of auditors and inspectors;
- The large number of commodity classifications — eg separate ICAs required for Kaffir, Tahitian and Finger limes;
- The high number and lack of coordination of inspectors and audits required — eg For freshcare, ISO 9000, QA, ICAs
- All negotiations are one state government to another state government, with no time frames or uniformity;
- Changing products and procedures — eg Queensland apples bound for Victoria currently need to be dipped in dimethoate, but this product is to be withdrawn; and
- Inflexibility of enforcement procedures – eg Consignments of bananas will be declared as Yellow sigatoka if detected on 5 per cent per leaf, but this really should be per tree. (sub. 15, p. 12).

Growcom suggested some specific solutions for improving the Interstate Certification Assurance system including that on farm inspections and audits for certification should be restructured into a single cohesive set of procedures capable of being incorporated into a Farm Management System (for other suggestions, see sub. 15, p. 13).

The Interstate Certification Assurance Scheme is a national scheme of plant health certification administered by all states and territories. The scheme enables a business to be accredited by a state or territory agricultural authority to issue plant health certificates for its produce. To be accredited, a business must be able to demonstrate it has effective inhouse procedures in place that ensure produce consigned to intra or interstate markets meets specified quarantine requirements. The authority regular audits compliance by the business.

The scheme seeks to provide a harmonised approach to the audit and accreditation of businesses throughout Australia and the mutual recognition of plant health assurance certificates accompanying consignments of produce moving intrastate or interstate.

Assessment

Although the responsibility for the scheme rests with the states and territories, the Commission understands that the Certification Services Working Group — under the supervision of the Domestic Quarantine and Market Access Working Group within the Primary Industry Ministerial Council — will be undertaking a review in which it will, among other things, develop national standards and procedures for the consistent operation of certification services (including Interstate Certification Assurance Scheme services) for domestic market access in Australia. It will also review and develop Interstate Certification Assurance protocols and procedures and oversee the implementation of the national Interstate Certification Assurance Scheme.

DRAFT RESPONSE 3.10

A review of the Interstate Certification Assurance Scheme to develop national standards and procedures is planned and will address some concerns.

3.6 Livestock export controls

Concerns were expressed by the Red Meat Industry about the cost burden imposed by two areas of Australian Government regulation affecting the export of livestock:

- amendments to the Australian Meat and Livestock Industry (Export Licensing) Regulations introduced in 2004, which are administered by AQIS
- shipping requirements, particularly the Australian Commonwealth Marine Orders, which are administered by the Australian Maritime Safety Authority.

The first of these concerns is dealt with more fully below. The Commission will consider the second concern together with a submission by the Australian Maritime Safety Authority in response in more detail for the final report.

Livestock export controls are generally relevant to the 'transport and logistics' and 'marketing – boards – customers' stages of the agriculture value chain in table 3.1.

Poor design of the Australian Meat and Livestock Industry (Export Licensing) Regulations

The Red Meat Industry expressed concerns about the amendments to the Regulations introduced in 2004, in which the regulation of livestock exports moved from an industry based quality assurance process (the Livestock Export Accreditation Program) coupled with AQIS inspection and approvals to a fully government-run process. It noted:

- Escalating regulation costs for live export: complex systems, increasing charges, duplication and inefficiencies, concerns about expertise and uncertainty in administering, a Canberra centralised assessment and inspection regime, undermined regional capacity.
- Little or no evidence of improved outcomes or risk management under new rules.
- Assessments of cost impacts, performance effects and community benefit have not been undertaken during regulation reviews or revisions from 2004 to 2007.
- Directions of regulatory change are contrary to best practice principles including co-regulation, outcomes based regulation and streamlining.
- Indications that regulations cut-across responsible business development including accredited operation systems, innovation and full risk management by firms. (sub. 12B, p. 25)

The Red Meat Industry called for a review of this regulatory area against principles of good regulatory process (sub. 12B, p. 25).

Assessment

The 2004 amendments to the Regulations constitute the Government's response to the Keniry report — a review into Australia's live export trade in 2003 (Keniry et. al 2003). That report arose out of concern about mortality rates of livestock exported to the Middle East.

The Keniry report identified problems with the current arrangements for regulating the livestock export trade and, in particular, the imposition of responsibility for accrediting exporters and setting export standards on the industry body representing livestock exporters (Livecorp). Livecorp's administration of industry quality assurance was seen as inadequate with insufficient audit and sanctions policies for non-compliance.

The Keniry report made a number of recommendations including that:

- there be a national standard for livestock exports, which focuses on the health and welfare of the animals during export and which must be referenced in legislation and
- the Government must be solely responsible for granting export licences and permits and enforcing compliance against the national standard.

It appears that the extra costs of the amendments to the Regulations that the RedMeat Industry have alluded to are an inevitable consequence of the objectives of the amendments. These are that that every exporter holding a livestock export licence 'is suitable' to hold such a licence and that licence holders export livestock in a manner that meets 'minimum animal health and welfare standards' (Minister for Agriculture, Fisheries and Forestry 2004, paragraph 19).

The Commission understands that the Regulations will be subject to review at the end of 2007. Accordingly, no additional action is required at this stage.

DRAFT RESPONSE 3.11

A review of the Australian Meat and Livestock Industry (Export Licensing) Regulations is planned.

3.7 Security sensitive chemicals

Two broad concerns were raised surrounding the regulation of security sensitive chemicals. These related to inconsistencies across jurisdictions and compliance burdens.

In 2002, COAG agreed to review the regulation, reporting, security, sale, transport, handling and storage of hazardous materials as part of range of counter-terrorism measures. This review was split into four parts — ammonium nitrate, radiological sources, harmful biological materials and chemicals of security concerns.

Following the initial review, COAG in 2004 agreed to a national approach to ban access to ammonium nitrate, except for specified users. Under this approach, each

jurisdiction would implement a licensing regime for the use, manufacture, storage, transport and supply of ammonium nitrate to ensure it was only accessible to those with a demonstrated and legitimate need.

Regulatory regimes for radiological sources, harmful biological materials and chemicals of security concerns are yet to be implemented.

Lack of consistency in regulation of ammonium nitrate

Participants expressed considerable concern with the lack of consistency across jurisdictions in the regulation of ammonium nitrate and sought to avoid these problems in the proposed regulation of the other security sensitive materials.

The NFF said:

> Currently a high level of inconsistency and ambiguity of agricultural chemical regulations exists, caused by a lack of cohesion between government agencies. This issue presents an opportunity to incorporate national standards under State legislation, thereby reducing confusion and compliance difficulties. The NFF vehemently believes that without a nationally consistent and coordinated approach it will not be possible to effectively control chemicals of security concern, regardless of the framework established. (sub. 24, p.12)

Croplife similarly commented on the complexity resulting from the lack of consistency in the regulation:

> Security sensitive ammonium nitrate (SSAN) is a recent example of the complexity that results from lack of harmonisation of legislation across jurisdictions in Australia … COAG attempted to introduce a national system to regulate SSAN because of the terrorist threat. There was initial agreement between the Federal and state governments to put in place uniform regulation but no mechanism to manage uniform implementation. The result is seven different schemes being implemented around Australia. (sub. 14, p. 8)

The Queensland Farmers Federation (QFF) called for a national framework to overcome the current inconsistencies:

> We support the establishment of a nationally based and coordinated control framework or system that replaces existing state and nationally based chemical control frameworks. This will reduce duplication and inconsistency, and thereby assist industry. Governments, however, need to manage any negative or unintentional consequences of implementing a security control framework to minimise economic harm, and to ensure that one part of Australian society does not end up carrying an unfair cost burden to protect the rest of society from a possible terrorist threat. (sub. 19, p. 15)

Regulation has limited the use of ammonium nitrate by farmers

The VFF raised concerns that this regulation would affect the use and access of these chemicals by farmers:

> The VFF is concerned about the potential consequences for farmers and indeed the entire food production sector if the Government fails to regulate efficiently. An example is the unfortunate impact of the restrictions on Ammonium Nitrate on Horticulture. Farmers cannot access the product and alternative fertilisers are significantly more expensive and less effective.
>
> New regulations are currently being developed for the usage of fertilisers which contain explosive related properties. The agricultural community has concerns regarding the licensing, transportation and storage of these fertilisers, especially the requirements placed upon producers who utilise them regularly. (sub. 13, p. 13)

The QFF was critical of the regulation of ammonium nitrate which 'proved to be so onerous and impractical that the chemical has all but disappeared as an input into agriculture' (sub 19, p. 14).

Assessment

The regulation of ammonium nitrate was widely and consistently criticised by participants to this review and by participants to the Regulation Taskforce. The Regulation Taskforce (2006) recommended that the arrangements for the regulation of security sensitive ammonium nitrate be reviewed and that such a review assess the risk to policy of inconsistent arrangements across jurisdictions as well as the quality of guidance material provided on compliance with the regulations.

The Government in its response noted that the arrangements in each jurisdiction surrounding ammonium nitrate would be examined as part of the review of chemical regulation to be undertaken by the Productivity Commission. The review was announced in July 2007 and the Productivity Commission has been specifically requested to examine the efficiency of the arrangements for regulating ammonium nitrate. The review is to report in July 2008 (Costello and McFarlane 2007).

DRAFT RESPONSE 3.12

The recently commenced Commission study into chemicals and plastics is examining the efficiency of the arrangements for regulating ammonium nitrate.

Further regulation of security sensitive chemicals should balance risks and costs

The QFF was of the view that the further regulation of security sensitive chemicals should 'provide a fair and sensible balancing of actual security risk against the cost and regulatory imposition on business and the community' (sub. 19, p. 14).

Assessment

As noted above, the regulation of ammonium nitrate was agreed to by COAG in 2004 and since then licensing regimes have been implemented by the States and Territories. The review of hazardous chemicals or chemicals of security concern is currently underway and reviews of harmful biological materials and radiological sources are to be considered by COAG in 2008.

The review of chemicals of security concern released an issues paper in April 2007 to enable stakeholders to put forward their views. A report to COAG is to follow and implementation is not expected until 2008 at the earliest (AG's 2007b). The NFF has provided a submission to this review and the QFF (sub. 19) welcomed the review and the proposed multi-staged consultation process.

The Regulation Taskforce (2006) recommended that the reviews of radiological sources, harmful biological materials and chemicals of security concern explore the use of existing regulatory frameworks such as OHS and requested that an independent analysis of the cost and benefits of the proposed arrangements and practical guidance material be required to support compliance with the new arrangements. It also called for COAG to also ensure that post-implementation reviews were undertaken for each of these areas to verify the cost to business and the effectiveness of the new arrangements.

In its response, the Government announced that COAG would consider a regulation impact statement in close consultation with the Office of Best Practice Regulation, which will examine the compliance costs and the use of existing regulatory frameworks. It also noted that consultation would be undertaken with key stakeholders and that COAG would consider the need for practical guidance for stakeholders and the need for post implementation reviews (Australian Government 2006).

Irrespective of the regulatory framework used, it is important that there is consistency across jurisdictions in regulating these materials to avoid the problems associated with the regulation of ammonium nitrate and the need for further reviews. Moreover, given the security implications surrounding the misuse of these

materials and that it has been five years since COAG initially agreed to review the regulation surrounding their use, it is imperative that workable and effective regulation be put in place as soon as practicable.

DRAFT RESPONSE 3.13

The regulation of other security sensitive materials is now being developed by COAG and workable and effective regulation should be put in place as soon as practicable.

A further concern to the VFF was that the ACCC would remove the ability of AgSafe to impose trading sanctions on businesses trading in agriculture and veterinary chemicals not accredited through the industry Guardian Program (sub. 13). The program applies to the safe storage, handling, transport and sale of agricultural and veterinary chemicals from the place of manufacture through to the point of sale. However, following submissions from relevant government agencies indicating their support for the role of AgSafe in the regulation of agricultural and veterinary chemicals, the ACCC has re-authorised AgSafe's code of conduct and its ability to impose sanctions for non-compliance (ACCC 2007b).

3.8 Transport issues in agriculture

The states and territories are largely responsible for regulating road transport. Each state and territory has traditionally made its own laws in such areas as road rules, vehicle standards and driver licensing. Many participants commented that, over time, the differences between these laws have increasingly become an impediment to movement between jurisdictions, especially for heavy vehicle freight transport.

Interjurisdictional inconsistency

A number of submissions indicated that inconsistency in certain areas of regulation is hindering the efficiency of transport systems, which can adversely affect costs and international competitiveness. The NFF said:

> There are currently inherent differences between state transport/road authorities in areas such as header transportation guidelines, livestock loading, varying speed rules, multi-trailer restrictions and general permit thresholds … which create inequities between transport in various state jurisdictions ...
>
> There are currently 750 separate agencies across the nation responsible for controlling Australia's 800 000 km of roads, representing a $100 billion asset. Figures such as these are a concern for the farming community who every day are directly affected by inconsistencies in the regulatory transportation framework in which it operates. (sub. 24, p. 6)

The Red Meat Industry commented that:

> Despite inter-governmental promises to standardise road transport rules, regulatory inefficiencies continue to impact on trucking and user business costs nationally. Current (and likely widening) variation of these rules across States are major concerns. A key issue is regulated weight limits on vehicles designed and loaded for a specific purpose (livestock or grain carriage) ... (sub. 12, p. 7)

The VFF commented on the lack of support for volumetric loading schemes in some states:

> While there are volumetric livestock loading schemes in Victoria and Queensland, no equivalent scheme exists in NSW. This adds an additional level of complexity and cost to interstate transport… The VFF urges the National Transport Commission to encourage the introduction of volumetric livestock loading schemes in NSW in the interests of national uniformity. (sub. 13)

The NFF said higher mass limit roads were also a concern :

> Regulations on Higher Mass Limit roads allowing for B-Double and Road train (and potentially B-Triple) access can have serious financial implications for regional businesses. In many cases, new truck technologies have demonstrated to actually have a reduced impact on roads from larger vehicles which can deliver significant productivity efficiencies to the agricultural supply chain. (sub. 24, p. 7)

Other concerns related to heavy vehicle accreditation and in particular the Western Australian accreditation. The Western Australia Farmers Federation said:

> The current Heavy Vehicle Accreditation business rules for WA rope in primary producers to comply with accreditation, fatigue and roadworthiness requirements, and audit requirements that is a high cost in time and dollars but with less that 15 000 road kilometres in any one year on average …
>
> Rewrite the business rules for the heavy vehicle accreditation system in WA to encompass an annual roadworthiness check for low annual kilometre use heavy vehicles and a time log book for driver fatigue management when over a 100 km radius from licensed address base. (sub. 17)

Assessment

Participants concerns of relevance to this study relate to the more general issue of interjurisdictional inconsistency in road transport regulation. In broad terms, the issue hinges more on whether there are adequate arrangements in place to consider whether greater consistency can be garnered without compromising other relevant objectives (such as road safety and efficient utilisation of infrastructure) rather than whether a 'solution' can be found to one particular instance of concern.

An efficient and cost-effective freight transport system is essential to the competitiveness of Australia's primary producers and exporters and ensures that consumers benefit from the lowest possible prices. It can also help to ameliorate the consequences of market fragmentation, which can arise because of the wide dispersion of Australia's population centres (PC 2005, p. 209).

Australian governments have ongoing processes in place to develop and implement consistent road transport regulation. The National Road Transport Commission (NRTC) was established in 1991 to develop uniform arrangements for vehicle regulation and operation, and consistent charging principles for vehicle registration. In 1995, road reform was absorbed into national competition policy (NCP).

In 2004, the National Transport Commission (NTC) replaced the NRTC with a broader charter that continues the role of reforming road transport regulation and operations and also undertakes reform of rail and intermodal regulation and operations. The NTC is established under the National Transport Commission Act 2003 and a commitment by the Federal, state and territory governments in the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

The NTC's role is to undertake research and consultation and prepare proposals for model legislation for the approval of Federal, State and Territory Transport Ministers who together form the Australian Transport Council (ATC). Following agreement by the ATC, the states and territories implement the proposals. For some reforms, the Australian Government is also required to implement changes to the Federal Interstate Registration Scheme. The NTC has a role in overseeing the implementation of agreed reforms and is placing an increased emphasis on keeping implemented reforms up to date so that national uniformity is maintained on the ground (DOTARS 2007).

The establishment of the ATC and the road transport reform process has achieved a greater national consistency in road transport law. Key initiatives include nationally uniform heavy vehicle registration charges, national arrangements for the carriage of dangerous goods, a national heavy vehicle registration scheme and national road rules (DOTARS 2007).

Reform is ongoing. For example, the NTC's has developed Performance Based Standards (PBS) which provide the opportunity for innovative and higher productivity vehicles to demonstrate that they can operate safely and effectively on the nation's roads without excessively impacting on pavements and bridges. It means allowing access to road networks based on a vehicle's performance rather than its dimensions alone. The NTC has assisted industry and jurisdictions to understand what PBS vehicles are by publishing blue print vehicle designs for a

number of vehicle combinations. Transport Ministers are currently deciding if the scheme should be formally adopted.

Despite these reforms and ongoing procedures in place to deal with issues and harmonisation in transport regulation, reform in certain areas remains slow. In particular, participants have indicated that further reform is required in the areas of licensing, heavy vehicle accreditation, weight limits, volumetric loading and fatigue and roadworthiness checks.

DRAFT RESPONSE 3.14

Although there are institutional arrangements in place to address interjurisdictional inconsistencies in road transport, there remains a large agenda that needs to be progressed in a more timely manner.

3.9 Wheat marketing

There has been ongoing debate surrounding the single desk arrangements for Australia's bulk wheat exports. While domestic wheat sales were deregulated in 1989, the export monopoly though the single desk has remained intact in various forms.

At present, following the Government's response to the Wheat Export Marketing Consultation Committee in May 2007, the Minister will continue to hold the veto powers previously held by the AWB over bulk export licences issued by the Wheat Export Authority. The key change announced by the Minister was that Australian wheat growers will have the opportunity to establish a company before March 2008 and have a grower-controlled single desk. If not established by this time, the Government reserved the right to introduce other arrangements (McGauran 2007).

Although it is not clear whether the single desk arrangements will remain in place past March 2008, a number of participants were critical of the single desk arrangements and the costs these arrangements imposed on wheat growers.

Costs imposed by the single desk

The Red Meat Industry (sub. 12), representing the Australian Lot Feeders Association, were opposed to the single desk arrangements. It pointed out that these arrangements had a muffling effect on grain prices and the removal of the single desk would increase competition and investment and improve the responsiveness of the grains industry to its domestic customers.

Australian Pork Limited (sub. 44) said that with grain costs representing 55 to 65 per cent of production costs, the single desk had damaging effects on the competitiveness of the pork industry. To compete, domestic users required access to feed grain at the same relative price as their competitors and, based on a report prepared by ACIL–Tasman, removing the single desk would produce savings of about $15 per tonne in marketing costs.

Also, the Commission was told during consultations that the single desk resulted in higher management costs than in other grains. There was similarly a claim the arrangements resulted in Western Australian growers cross-subsidising other growers.

Assessment

There has been a series of reviews of the *Wheat Marketing Act 1989*. However, as noted by the Regulation Task Force (2006) and the Productivity Commission's *Review of the National Competition Policy Reforms* (2005), the Wheat Marketing Act and the costs and benefits of the single desk arrangements are yet to be subject to an independent and transparent review in accordance with NCP principles under the legislative review process. The guiding principle of such a review should be that legislation should not restrict competition unless it can be demonstrated that the:

- benefits of the restriction to the community as a whole outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition (PC 2005).

More specifically, the legislation review process agreed to by Australian governments under the NCP sought to clarify the objectives of the legislation, the nature of the restriction on competition, analyse the effect on competition and the economy generally, assess and balance the costs and benefits of the restriction and consider alternative means of achieving the objective.

As a result, the Productivity Commission, in its review of National Competition Policy Reforms (2005), recommended that the Australian Government initiate an independent and transparent review of the single desk arrangements in accordance with NCP principles as soon as practicable. The Regulation Task Force (2006) also recommended that an independent public review of the Wheat Marketing Act be brought forward and conducted according to NCP principles.

The Commission again endorses the need for such a review, particularly were the single desk arrangements to continue past March 2008.

The Wheat Marketing Act should be subject to a review in accordance with National Competition Policy principles as soon as practicable.

3.10 Animal welfare

Australia, a major producer and exporter of animal products and live animals, takes the view that 'all animals have intrinsic value':

> … animal welfare requires that animals under human care or influence are healthy, properly fed and comfortable and that efforts are made to improve their well-being and living conditions. In addition, there is a responsibility to ensure that animals which require veterinary treatment receive it and that if animals are to be destroyed, it is done humanely. (DAFF website)

State and territory governments have primary responsibility for animal welfare and laws to prevent cruelty. The Australian Government is responsible for trade and international agreements relating to animal welfare.

Progress in implementing rule harmonisation

Several submissions commented in general terms on the regulatory costs of animal welfare regimes. However, the Red Meat Industry, representing Meat & Livestock Australia, the Cattle Council of Australia, the Sheepmeat Council of Australia, the Australian Lot Feeders' Association, Livecorp and the Australian Meat Industry Council, identified it as a priority area for reducing regulatory burdens.

In particular, it expressed concerns about the slow progress with the Australian Animal Welfare Strategy (AAWS), noting that its history raises concerns about its consistency, timeliness and the funding of its implementation. It nominated the AAWS — its concept, regulatory bodies, procedures and rules — as requiring close review against principles of good regulatory process.

It added that it has major concerns with the way the regulatory framework for animal health and welfare has developed, and with differences in how rules are implemented between states:

> …, at operational level, there are significant variations across States in interpretation of animal welfare needs and circumstances. (sub. 12B, p. 4)

Moreover:

> … even with multiple costly national forums, differences endure across Australia in implementation of rules. (sub. 12B, p. 4)

It said that Australia cannot afford rule harmonisation processes that 'take ten years, and then don't work' (sub. 12B, p. 4). It sought action to achieve 'a functioning, viable national animal welfare rule system by 2009'.

The Australian Animal Welfare Strategy

DAFF said that, for some twenty years, the welfare of livestock in Australia has been supported by a series of Model Codes of Practice for the Welfare of Animals that provided minimum standards for the care of animals. However, in view of changing expectations within the community and by international trading partners, the AAWS was developed by the Australian Government, in consultation with the states and territories, industry organisations, animal welfare groups and the public. It is intended to guide the development of new, nationally consistent policies and to enhance animal welfare arrangements in all states and territories.

An implementation plan is now in place and six working groups (one of which covers livestock and production animals) have drafted separate action plans.

AAWS working group stocktakes

In 2006, AAWS working groups prepared stocktakes to assess gaps or weaknesses in animal welfare arrangements and to identify priorities for reform. All sectors raised the issue of differences between the states and territories in the way they exercise their responsibilities for animal welfare. These differences included:

- the nature of the legislation
- the nature and role of Codes of Practice
- ministerial and departmental responsibility
- the measures to ensure compliance
- priorities within jurisdictions (Shiell 2006, pp. 2–3).

In relation to livestock/production animals, some key priority areas were seen as:

- differences in the way states and territories manage their responsibilities
- the absence of an overarching model involving co-regulation and less prescription
- animal cruelty regulation not necessarily achieving animal welfare
- core competencies and associated training
- compliance

- clarity of functions and jurisdictions.

The stocktake did note that the issue of significant differences between states and territories is well recognised and several projects are being progressed under the auspices of the AAWS to try and achieve greater consistency. However, 'the process of gaining across jurisdiction agreement on a consistent regulatory format is likely to be more problematic' (Shiell 2006, p. 45).

Proposed new animal welfare standards and guidelines

Animal Health Australia is now using the AAWS to rewrite the Codes into new national welfare standards and industry 'best practice' guidelines. DAFF said that the new approach will help provide 'clear, contemporary, adequate and consistent' legislation and codes of practice across all jurisdictions (sub. 31, p. 10).

However, the Red Meat Industry expressed concern that so little real progress has been made, drawing attention to the long timelines involved. It pointed out that the AAWS was developed over the five years to 2005, yet the first nationally consistent Australian Animal Welfare Standards and Guidelines for the Land Transport of Livestock are only now being developed:

> By June 2007, a draft is part-prepared — seven years since the renewed focus on harmonisation, two years after AAWS began. (sub. 12B, p. 5)

It added that:

> At mid-2007, there are serious concerns in the red meat industry about AAWS progress and whether material advances will be secured once models are handed over for State implementation – for reasons listed above, especially State differences. (sub. 12B, p. 5)

Australian Pork Limited also expressed concern about delays in implementing agreed Codes across jurisdictions. It said that, while the Primary Industries Ministerial Council approved the new *Model Code of Practice for the Welfare of Animals – Pigs* in April 2007, little progress has been made to implement the Code at state level. It noted that the Code took three years to develop, but:

> With the current requirement that Codes be reviewed every five years, the actual implementation of the Code will only just be completed when the next review is due. (sub. 44, p. 11)

It said that the delays have affected the industry's competitiveness and its investment environment. It added that efficient mechanisms must be in place to allow timely implementation and 'it is imperative that legislation can be implemented consistently and harmonised across states' (sub. 44, p. 11).

The National Aquaculture Council is also monitoring the AAWS process. It said that the aquatic animal health sector is one that 'seriously needs review' to 'improve collaboration and cooperation' across Australia. It seeks to ensure that no unnecessary regulatory and legislative burden is placed on the industry, as industry 'is working well with voluntary guidelines and is keen to maintain this status' (sub. 18, p. 2).

Assessment

Major participants consider that the AAWS — its concept, regulatory bodies, procedures and rules — require close review against principles of good regulatory process.

The AAWS stocktake reports have identified an agenda of issues, foremost among which are state differences in regulatory regimes. While there is now an agreed process for implementing the AAWS, industry groups consider that progress has been too slow and costly, and differences between the states have not been overcome.

There are clearly benefits from quickly and efficiently implementing agreed new animal welfare standards and guidelines and ensuring uniform rules across states and territories. In this way, one of the unnecessary burdens associated with regulatory and compliance costs can be avoided and the industry has greater certainty as to what the rules are.

Particularly when implementing programs that require concurrent regulatory changes to be made in each jurisdiction, there are clear benefits in developing and making public an agreed timeframe for implementation at the outset. Agencies should be required to report periodically on progress towards implementation. (The detailed timetable agreed to by COAG for implementation of the National Water Initiative, together with the associated reporting requirements, provides a useful example of this.) To the extent that milestones are not met, jurisdictions should report on this and the reasons why. This may require subsequent revisions to the initial timetable, but this should be agreed and made public.

It is not clear why industry-specific Codes could not be developed and implemented in each jurisdiction within, say, two years, depending on such factors as industry cooperation and the need for new scientific information. The Commission seeks views on this matter.

DRAFT RESPONSE 3.16

There appears to be scope to implement the Australian Animal Welfare Strategy more quickly. The Commission seeks views on this matter.

3.11 Drought support

Australian governments provide a range of drought assistance under the exceptional circumstances (EC) arrangements — these are rare and severe events outside those a farmer could normally be expected to manage using responsible farm management strategies.[4] Those farmers and small businesses operating in EC declared areas are eligible for EC relief payments and EC interest rate subsidies. Professional advice and grants are also available for drought management and recovery for farms in these areas.

Problems in applying for drought support

The NFF (sub. 24), the VFF (sub. 13) and the South Australian Farmers Federation (sub. 5) pointed to a number of problems in applying for the EC relief payments and interest rate subsidies. These included:

- problems involving Centrelink such as lack of staff knowledge, long waiting times for applications to be processed and difficulties for farmers in meeting the 100 point identification check
- the time involved in the preparation of application forms for EC payments and interest rate subsidies
- different application forms for EC relief payments administered by the Australian Government and EC interest rate subsidies administered by the states and territories through the relevant rural adjustment authority. This results in farmers with properties spanning a state border applying for EC interest rate subsidies having to fill in separate forms, each requiring a different set of requirements.

The VFF recognised that while there was a certain level of rigour required in providing government support it should not dissuade those that are vulnerable and in need of the support from applying. It went on to note that the solution to the

[4] The EC declaration is made by the Minister for Agriculture, Fishing and Forestries based on recommendations from the National Rural Advisory Council made up of Australian and State governments and farmer representatives.

above problems were in government departments adopting service charters, including measures to improve services such as 1800 numbers and guaranteeing that calls are answered in three minutes (sub. 13).

Assessment

Farmers in EC declared areas are under considerable stress and require available support in as timely and as straightforward manner as possible. As with all government provided support, this needs to be balanced against ensuring that such support is targeted to those in need through the use of income and asset tests. The EC relief payment is equivalent to the Newstart allowance which provides income support to those unemployed and seeking work and is subject to similar asset and income tests.

DAFF considered the current eligibility criteria to be appropriate.

> Some eligibility criteria are consistent with other forms of "safety net" government assistance (ie. residency status, income and assets thresholds) while other criteria are specific to the EC programmes (ie must be a farmer for two years). In recognition of the complex nature of a farming business, additional criteria have been imposed to ensure only those farmers and small business operators in genuine need are provided with assistance. (sub. 31, p. 6)

However, there may be scope to streamline support through minor adjustments to administrative arrangements. For example, the state and territory rural adjustment authorities and Centrelink could provide application forms for both EC relief payments and EC interest rate subsidies. To the extent possible the duplication of information required from those applying for Centrelink services should be avoided. For example, when simultaneously applying for EC income support and professional development support, common information requirements could be shared rather than have to be repeated in each application. Also, to particularly assist those with properties that straddle state borders, state governments could consider adopting a single application form for the EC interest rate subsidies.

As to improving service, Centrelink has a customer service charter in place and is actively seeking to improve its service levels, particularly for those in rural and regional areas. Centrelink and most rural adjustment agencies and authorities provide toll free 1800 phone numbers and Centrelink call centres have a target to answer 70 per cent of calls within 2.5 minutes. In 2005-06, 57 per cent of calls were answered within this period which increased to 72 per cent in the following year (Centrelink call centre performance, web site).

To avoid duplication and reduce unnecessary burdens in the application process:

- ***Centrelink and state and territory government rural adjustment authorities should provide applications for both Exceptional Circumstances (EC) income support and EC interest rate subsidies***
- ***applicant information should be able to be used across different Centrelink administered programs***
- ***a single application form for EC interest rate subsidies should be adopted by state and territory governments.***

The Commission seeks views on whether drought support, by all governments, should be reviewed.

3.12 Occupational health and safety

There are ten principal OHS statutes across Australia — six state, two territory and two Australian Government.

Complex and inconsistent regulation across jurisdictions

Many submissions expressed concerns relating to OHS in the agricultural sector. The principal concerns raised related to inefficiencies and complexities arising from eight separate state and territory based OHS regimes. For example, the Northern Territory Horticulture Association (NTHA) stated:

> Occupational health and safety standards and the variation in state/territory legislation are difficult for industry to understand. The lack of clarity around variations in state requirements makes it difficult for industry to comply, particularly when the business operates in multiple states. (sub. 25, p. 15)

Growcom listed the following key points in relation to the complexity of OHS regulations:

- Many growers are unaware of their full obligations under OHS regulation.
- The rural industry has OHS issues that are unique to other industries.
- There are many regulations and codes of practises that employers need to be familiar with.
- The OHS legislation is seen as complex and constantly changing.
- There needs to be increased education and information campaigns undertaken to increase awareness of the issue and responsibilities. (sub. 43, p. 29)

A number of submissions noted that numerous changes to OHS guidelines have increased the costs for farmers. For example, the Red Meat Industry submitted that, while the need for OHS regulation is understood:

> … recent years have seen a plethora of changes to guidelines on machinery, general feedlot fixtures creating sizeable capital expenditure without justification other that a no risk accident policy. Similarly ticketing for machine operators is raising costs. (sub. 12, p. 18)

And the QFF said:

> The State Government is currently in the process of progressively removing all rural industry exemptions for OHS laws at the behest of the union movement in line with national agreements on OHS. This will increase costs for farmers. For example, the proposal to remove the exemption from prescribed occupations would require farmers to obtain licences to drive all load shifting equipment on farms, such as forklifts, backhoes etc. …
>
> The increasing complexity of Workplace Health and Safety legislation makes it more difficult for small business to be compliant. (sub. 19, pp. 3, 6)

Some submissions expressed concerns over the slow progress in achieving national harmonisation of OHS legislation: The New South Wales Farmer's Association commented that:

> The refusal of the NSW Government to prioritise harmonisation of its OHS legislation with that of other States threatens the process of providing greater regulatory efficiency in OHS across Australia.
>
> The replacement of the absolute duties of care with duties limited to that which is "reasonably practicable" would bring NSW OHS law in line with most Australian jurisdictions and repair confidence of the law within the rural sector. (sub. 27, p.18)

While, the QFF stated:

> While the idea of having national consistency in developing codes, legislation etc is to be applauded there needs to be a mechanism to ensure all potentially impacted parties have some input and there be a requirement on the states to fully explore the implications of the application of nationally developed codes etc. (sub. 19, pp. 3, 6)

The NFF submitted:

> Occupational Health and Safety (OHS) is of substantial concern to Australian farmers with the extraordinary complexity of compliance, particularly in NSW. The NFF is of the opinion that the problems associated with OHS red tape are such that workplace risk is simply being shifted to be the sole responsibility of the farmer rather than being shared with the employee. The regulations are therefore failing to meet the objective of removing workplace risks in totality. The nature of the regulation is such that it is seen as an employee regulatory matter rather than the more appropriate focus of implementing behavioural change at the workplace for productivity growth purposes (sub. 24, p. 16).

Similarly, the VFF commented:

> Although there are some large company farms, the reality is the majority of farms in Victoria are family farms, and farm safety is very much a family issue for farmers. The VFF is concerned that the problems associated with OHS regulation are such, that workplace risk is simply being the sole responsibility of the farmer, rather than being shared with employees as opposed to meeting the objectives of removing workplace risks in totality. (sub. 13, p. 8)

Assessment

Similar OHS concerns were raised in the Regulation Taskforce report. And prior to this the Productivity Commission conducted an inquiry into *National Workers' Compensation and Occupational Health and Safety Frameworks*, which was released in 2004.

The Regulation Taskforce recommended:

4.26 COAG should implement nationally consistent standards for OHS and apply a test whereby jurisdictions must demonstrate a net public benefit if they want to vary a national OHS standard or code to suit local conditions.

4.27 COAG should request the Australian Safety and Compensation Council to examine the duty of care provisions in principal OHS Acts as a priority area for harmonisation…

Subsequently, COAG placed OHS on a list of cross-jurisdictional regulatory hot spots and the National OHS Strategy 2002–2012 was agreed to by the Australian, State and Territory Governments, the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions.

States and territories use the Strategy as a key component of their business plans, and as a basis for conducting nationally coordinated compliance campaigns in targeted industries. The Strategy sets clear and measurable targets to reduce the incidence of work-related fatalities by at least 20 per cent and workplace injury by at least 40 per cent, by 30 June 2012. A nationally consistent regulatory framework is identified as an area that will contribute to achieving the targets of the strategy.

Table 3.2 **Timeline for the development of national OHS standards**

Proposal	*Milestones*	*Commencement*	*Proposed completion*
Develop core document	Develop a core document based on provisions in existing national standards and OHS Acts.	End 2006	End 2007
Harmonise elements of OHS Acts	ASCC to identify elements for harmonisation.	Mid 2007	Early 2008
	Undertake Regulation Impact Statement.	Early 2008	Mid 2008
	Finalise elements for harmonisation through WRMC.	Mid 2008	End 2008
	Align principal OHS Acts with core document to achieve national consistency.	Early 2009	All jurisdictions mid 2012
Develop outcome focussed national standards	Translate existing national standards.	End 2006	Mid 2008
	Analysis of deficiencies in translated standards.	Mid 2007	Mid 2008
	Refine translated standards.	End 2007	End 2008
Revise national codes of practise	Analysis of existing codes.	Mid 2007	End 2008
	Revision of existing codes.	Early 2008	Ongoing
Develop regulatory interpretive documents	Develop regulatory interpretive documents as required for translated standards.	End 2008	Ongoing
Develop handbook	Develop handbook on national OHS framework principles and processes.	Early 2007	End 2008
Implement revised standards and codes	Translated national standards implemented through ASCC declaration process and adopted by jurisdictions.	Early 2009	Ongoing
	Revised code implemented through ASCC declaration process and adopted by jurisdictions.	Early 2009	Ongoing

Source: COAG National Reform Agenda, COAG Regulatory Reform Plan April 2007, http://www.coag.gov.au/meetings/130407/docs/COAG_NRA_regulatory_reform.rtf, p. 14, accessed 27 June.

The COAG website sets out a timeline for the development of national OHS standards (table 3.2).

DRAFT RESPONSE 3.18

COAG has developed a strategy to develop a nationally consistent occupational health and safety framework. Its progress will be reported on during the 2011 review of generic regulation.

3.13 Food regulation

Australia's food industry is highly regulated in terms of safety standards, reflecting community expectations in regard to public health and safety. These regulations also play a role in meeting consumer demand for information concerning food products and as an international marketing tool for Australia's farmers and food producers.

Australia's current food regulation system was established following the Blair Review (1998) which found that the regulatory framework surrounding food was complex and fragmented. In response, an intergovernmental agreement to regulate food standards established the Australia and New Zealand Food Regulation Ministerial Council, responsible for developing food policy and Food Standards Australia New Zealand (FSANZ) responsible for developing food standards. The enforcement of food standards is the responsibility of the states and territories. The Australian Government has no constitutional power to regulate domestic food supply.

The concerns raised by participants in respect of food regulation mainly focused on the inconsistency in regulation across jurisdictions, between domestic and imported food and between the two regulators — FSANZ and APMVA. There was also the issue of the timeliness in implementing new standards.

Inconsistency and timeliness

In relation to inconsistency, Virginia Horticulture Centre said:

> Food standard regulation should be implemented uniformly and enforced consistently across all levels of government. (sub. 32, p. 14)

The QFF noted that while governments could agree in principle to consistent regulation it was more difficult to implement such an approach:

> A key issue for primary producers is achieving consistent efficient approaches across the nation on regulatory issues affecting the rural sector. Too many times COAG agree on principles, but then State Government departments develop inefficient, inconsistent regulatory approaches in each State, adding to the costs of running business. (sub. 19, p. 4)

In light of this, Growcom called for a national framework:

> Past experiences have demonstrated that adoption and enforcement of food regulatory standards at state and territory levels is very inconsistent, resulting in confusion between states and negative impacts on the industry. Growcom believes there should be

> a national framework that reduces confusion, duplication of effort and the wast of resources. (sub. 15, p. 36).

Woolworths Limited commented that despite the recommendations of the Blair Review, inconsistencies and duplication in food regulation remained:

> The Blair review recommended that all domestic Food Laws in Australia be developed nationally and enacted and enforced uniformly. This has not occurred and there is still significant inconsistency and duplication between the law of the Commonwealth and the States and Territories. (sub. 26, p. 2)

The NFF recommended 'streamlining the implementation and enforcement of food standards, which currently occurs at state, territory and even local government level' (sub. 24, p. 10).

Although most participants supported national consistency in food regulation, there was also support for some degree of regional flexibility. The VFF said.

> The VFF supports the harmonisation of these regulations providing there is sufficient flexibility to accommodate geographical differences, and to avoid additional red tape.
>
> An example of this can be drawn from the egg industry, where regulations in Queensland stipulate that it is necessary to keep eggs at a different level of humidity from what is required in Victoria. Maintaining sufficiently flexible Primary Production Standards will ensure good food safety practices in each State. (sub. 13, p. 20)

In contrast, Coles Group (sub. 9) pointed to instances where certain products such as egg and egg production standards had been subject to overly prescriptive and state based regulation which could introduce added complexity for national retailers and increase costs for consumers.

Assessment

Australia's food regulation has been subject to considerable scrutiny in the past decade. The Blair Review (1998) recommended creating an integrated and coordinated regulatory regime with nationally uniform laws. In response an intergovernmental food agreement was developed in 2001 to develop nationally and trans-Tasman consistent food regulation.

The Regulation Task Force (2006) found that while there had been improvements as a result of these changes, a number of issues remained. It commented that some jurisdictions had adopted only the core provisions of the Model Food Act and retained their own laws, resulting in overlaps with national laws. In addition, it noted that there were significant inconsistencies in implementing and enforcing standards across the states and territories. The Agriculture and Food Policy Reference Group (2006) (the Corish review) also commented on the timeframes

involved in standard setting, the inconsistency in food regulations and noted that the industry viewed food regulation as cumbersome and unpredictable.

The Regulation Task Force recommended that the Australian Government commission an independent public review to implement the outstanding recommendations from the Blair Review on the consistent application of food laws, align levels of enforcement and penalties across jurisdictions and examine the role of the Australian Government in the food regulatory system, including a greater involvement in enforcing standards. It also recommended that FSANZ monitor the proposed changes to its assessment and approval procedures to monitor the timeframes involved in these processes and report to COAG (Regulation Task Force 2006).

In its response, the Government agreed to implement a review and in January 2007 commissioned an independent review, the Bethwaite Review, to identify means to streamline and provide national consistency to the food regulatory framework. The Bethwaite Review terms of reference specified that it draw on the Regulation Task Force Report, the Corish Report and the Blair Implementation stocktake. Also, the Government, in responding to the Corish Report, pointed out that the Bethwaite Review would address the recommendations contained in the Corish Report concerning inconsistency, governance arrangements and enforcement of food regulation (Australian Government 2006a).

A number of submissions to this review, including Growcom (sub. 15) and the NFF (sub. 24), supported the Bethwaite Review to streamline and provide greater consistency to Australia's food regulation.

The issues raised with the Commission by participants are currently being examined by the Bethwaite Review and a report is due to be finalised at the end of 2007. At this stage, the Commission considers that the Bethwaite Review is the most appropriate means by which to examine these issues and make policy recommendations. However, given previous experience in food regulation, it is important that there is a post-review monitoring process to ensure that those recommendations accepted by Government are implemented in a timely manner.

DRAFT RESPONSE 3.19

Food regulation concerns are currently being examined by the Bethwaite Review.

Inconsistencies between domestic and imported food

The consistent treatment of domestic and imported food was also an issue and a number of participants called for imported food to be subject to the same

regulations and standards as domestically produced food. Virginia Horticulture Centre said:

> First and foremost imported produce being traded within Australia should meet the same or more stringent regulations and standards as domestic produce. (sub. 32, p. 16)

The VFF commented:

> Food imported from other countries must be subject to the same food safety standards which apply to Australian produced food. (sub. 13, p. 22)

Assessment

Imported food is inspected by AQIS officers under the *Imported Food Control Act 1992* to the same standards applied to food manufactured in Australia. This inspection process is based on a risk assessment process with those products posing a greater risk subject to more frequent inspection (DAFF 2007).

Inconsistencies in regulation between FSANZ and APVMA

Participants also raised the issue of inconsistencies between FSANZ and APVMA in regard to maximum residue levels in fresh food and produce. Growcom said:

> The issue for the horticulture industry is that when a new pesticide is registered or an existing pesticide registration is extended by APVMA it is not transposed in the Food Standards Code by FSANZ immediately. There can be lengthy transition periods of up to 15 months, where some fresh produce can technically be a MRL violation despite the fact the chemical is legal. This is a national issue that has been raised by industry stakeholders for many years, however it must be recognised that this issue has still not been rectified. (sub. 15, p. 36)

Assessment

There are clearly inconsistencies between FSANZ and APVMA regarding maximum residue levels in fresh food and produce.

DRAFT RESPONSE 3.20

The inconsistencies between food standards and chemicals regulation in regard to maximum residue levels in fresh food and produce will be examined by the recently commenced Commission study of chemicals and plastics.

3.14 National Livestock Identification Scheme

The NLIS is Australia's system for identifying and tracing livestock by way of electronic ear tags. It is a permanent whole-of-life identification system that enables animals to be tracked from property of birth to slaughter.

The scheme is state-based, but underpinned by nationally-agreed performance standards, including a *National Code for the Operation of the NLIS* (July 2005). It is now operational for beef cattle and is being progressively implemented for sheep and farmed goats. For example, a number of sheep tags have received conditional accreditation but are subject to field trials which assess issues such as readability and retention.

The Primary Industries Ministerial Council said that the agreement to establish a national framework for livestock identification and tracing was driven by food safety considerations, the need to identify and trace cattle movements to control a disease outbreak and to maintain access to key overseas markets and to stay ahead of competitors (PIMC 2003, p. 22). As the Queensland Government said:

> Traceability is crucial in effectively responding to an outbreak of a livestock disease, restoring access to key markets and addressing food safety issues. (Queensland Government RIS 2005, p. 5)

Queensland estimated the cost of implementation in that state to be of the order of $32.5 million per year, but saw this as more than justified by the resultant benefits. The costs are largely borne by industry, although these have partly been offset by government subsidies to various stakeholders (including manufacturers of tags, scanning equipment, computer software and installation of NLIS related infrastructure in saleyards and abattoirs). For example, to assist in implementing the cattle component of the NLIS, the Australian Government allocated $15 million over four years (McGauran 2005) and state and territory governments have also provided financial support.

Industry dispute over the need for NLIS in its current form

The Australian Beef Association, which has fought the introduction of NLIS since 2003, sees it as a flawed and costly system. In its view, reverting to the older tail-tagging method would allow the scheme's objectives to be more cheaply and effectively achieved (sub. 3). It pointed out that a recent study into the proposed introduction of electronic identification for sheep and goats in the United Kingdom found that the costs outweighed the benefits (DEFRA 2006, p. 19). (At present, any ear tags that meet specified quality standards may be used, although a second tag is needed for animals intended for the European Union or other export market. The

European Commission is working towards compulsory electronic identification of farm animals across the EU by 2008 and is currently investigating appropriate identifiers and readers.)

Others argue there are public and private benefits accruing from the NLIS. A submission by the Red Meat Industry, representing Meat and Livestock Australia, the Cattle Council of Australia, the Sheepmeat Council of Australia, the Australian Lot Feeders' Association, Livecorp and the Australian Meat Industry Council, said that studies of the NLIS 'showed potential for significant producer, industry and public benefits' (sub. 12, p. 11). It noted that:

> Australia's status as 'disease free' provides a crucial competitive advantage into high-value markets in Japan, USA and Korea (together near 90% of beef exports in 2005–06). (sub. 12, p. 8)

Meat and Livestock Australia supported the scheme, noting that Australia's export customers are increasingly concerned about food safety and traceability:

> There is a global trend in adopting animal traceability systems. Australia's major competitors and customers have or are in the process of adopting animal identification systems. To maintain our competitive advantage, Australia has adopted NLIS. (Meat and Livestock Australia, website)

It added that the NLIS can minimise the financial and social impacts of animal disease outbreaks and residue incidents through accurate identification and rapid traceability of animals. National performance standards now require that, in the case of an incident, it must be possible to determine the locations where a specified animal was resident during the previous 30 days (www.mla.com.au).

The VFF viewed the NLIS as one of the schemes that have 'formed the backbone of the food safety in the red meat industry' (sub. 13, p. 20).

The NFF pointed out that the industry 'led the push' for a National Livestock Identification Scheme:

> While imposing a time and cost burden on farmers, the Scheme is also integral to securing access to key overseas markets. … in many instances it has ensured that Australian agriculture can build on its global competitiveness in a sustainable manner. (sub. 24, p. 4)

It added that, while the livestock industry acknowledged that complying with the NLIS involved costs for farmers, they recognised the need for such regulation. Nevertheless, the NFF argued that industry should work to simplify the NLIS.

There was also a view that the NLIS could have wider uses for the industry. The Commission was told by a number of Queensland graziers that the NLIS could be

used as a management tool by incorporating additional information such as genetics or vaccinations for each animal.

Recent reviews and government decisions

In December 2006, PricewaterhouseCoopers (PWC) reported on aspects of the NLIS for DAFF. It noted the importance to Australia's exports of its diseasefree status and said that an outbreak of a serious disease, such as bovine spongioform encephalitis or foot and mouth disease, would likely result in exclusion of Australian beef from major export markets for some time. It cited evidence from Victoria's Department of Primary Industries that there is a major disease outbreak in Australia roughly every four years (PWC 2006, p. 6) and, after reviewing some cases from the 1990s, concluded that:

> … Australia would have lost access to a number of significant international markets (principally the EU and Japan) had it not implemented a more effective livestock tracing system. (PWC 2006, p. 7)

The PWC review did not identify any major issues in the operation of the NLIS database, and found that those that did arise, or that had been previously identified by the MLA, were being addressed. None significantly affected the overall operation of the NLIS system (PWC 2006, p. 38). However, the PWC report did not address the question of whether the NLIS is the most appropriate means of ensuring livestock traceability (p. 6).

In its response to the PWC report in 2006, the Government acknowledged that there had been some early problems with the scheme due to its staggered introduction across the states. However, these have declined significantly now that the system operates nationally. The Government pointed to the scheme's 'enormous benefit' in record keeping and tracking of livestock movements during the outbreak of bovine johne's disease in Western Australia in 2006 (McGauran 2006). It acknowledged that there had been earlier complaints about the NLIS, but added that the PWC audit was undertaken 'to get to the bottom of these claims':

> Given the thoroughness of the audit, I believe the matter is now settled once and for all. The Government is satisfied that NLIS leads the world in providing traceability, food safety and product integrity. (McGauran 2006)

Nevertheless, it said that the NLIS will continue to be monitored (McGauran 2006).

Recent trials indicate that the NLIS has improved livestock traceability. In May 2007, a national exercise was held to audit the NLIS against PIMC-endorsed performance standards. Nearly 99 per cent of the cattle involved in this audit ('Cowcatcher II') were traced back to their property of birth compared to 75 per

cent in the 'Cowcatcher I' exercise conducted in 2004 prior to the full implementation of the scheme (Cattle Council of Australia 2007). However, the Australian Beef Association disputed the value of these trials, claiming that some producers may have thousands of cattle incorrectly reported in their databases (ABA 2007).

Assessment

The merits of the NLIS were heavily debated when initially proposed and the implementation has progressed considerably since then. The scheme is essentially complete for cattle and is underway for other livestock. Aspects of the scheme have been reviewed on several occasions and the Australian governments and industry generally have indicated their support for the scheme. While the introduction of the NLIS has imposed costs on the industry, these have been ameliorated to some extent by government subsidies. Moreover, there appears to be general recognition of the benefits provided by the scheme.

The Commission notes the views of the Australian Beef Association. However, the current arrangements are now well established, certain aspects have recently been reviewed and are supported both by the wider industry and government. That said, industry and government should continue to monitor the operation of the system and make changes where necessary to improve its efficiency and effectiveness.

DRAFT RESPONSE 3.21

The NLIS should be subject to ongoing government monitoring of its efficiency and effectiveness in meeting the needs of industry and the community.

3.15 Temporary labour

A number of concerns were raised by participants in regard to the regulatory burden surrounding the employment of non-resident temporary labour. These concerns were of particular importance in the horticultural sector where large numbers of workers, many from overseas on working holiday maker visas, were required for short periods of time such as during the harvest.

Assessing the working eligibility of overseas visitors

Growcom (sub. 15), the NTHA (sub. 25), and the QFF (sub. 19) commented that assessing the eligibility of backpackers and other overseas visitors to work in

Australia was time consuming and is a problem when a farmer or grower employs a large number of workers for a short period of time on a seasonal basis.

The VFF also raised the issue of assessing the eligibility of temporary visitors and backpackers to work in Australia. It suggested that the Department of Immigration and Citizenship (DIAC) facilitate the process by issuing visa holders with a work permit containing photographic identification setting out work permit conditions (sub. 13). The NTHA made a similar suggestion to introduce a 'green card' or simple identifier to assist growers in identifying eligible workers (sub. 25).

Assessment

Having to engage a large numbers of casual workers, many from overseas, for a short period of time places an administrative burden on farmers and horticulturists, particularly given that these workers are usually required during the busiest period of their operations.

The use of photographic identification and work permits to assist employers in assessing the work eligibility of overseas visitors was raised by a number of participants. While issuing all temporary visitors with a visa document on arrival in Australia would make verification for employers simple, it would require a change away from the use of electronic visas. Also, a paper-based certification system raises issues of fraud protection. Moreover, issuing all working holiday makers with a visa document would shift costs on to the Government.

DIAC raised a number of issues with implementing an across the board 'green card' type system. A green card holder could continue to seek work even where the card holder's visa had been cancelled. Also, an effective 'green card' system would require a universal identifier for Australian citizens, as those without a 'green card' could simply claim to be an Australian citizen to a prospective employer (sub. 45).

That said, there are documentary measures available to temporary entrants on working holiday maker visas who wish to confirm their employment status to prospective employers. They can utilise downloadable copies of their visa grant application notice and can request visa evidencing on arrival or at any time when in Australia and have a detailed visa label attached to their passport.

To enable employers to check those without any documentation there is DIAC's entitlement verification online (EVO) system, fax back systems and 1300 information lines which allows registered Australian employers to check the work entitlements of prospective employees.

However, the NTHA commented that the system had been unable to cope with large number of enquiries at peak times such as at the commencement of a harvest resulting in verification taking up to 7 days (sub. 25).

This was clarified by the Department. According to DIAC, the average turnaround time for checks conducted by the EVO system was around 10 seconds with checks being conducted 24 hours a day, 7 days a week with high levels of reliability. Any significant delays were most likely due to the telecommunications infrastructure available or being used in that part of Australia. DIAC went on to say that although the fax back work checking rights system operated on a Monday to Friday, 9 to 5 basis with a one working day turnaround, there had been significant delays earlier in 2007. Problems with the fax back system had created delays in responding to work eligibility checks of up to 7 days. These delays had occurred over a few weeks and had now been rectified (sub. 45).

Overall, the DIAC view (sub. 45) was that the EVO system and fax back system were adequate with the EVO system being able to provide instant responses to requests to check the work eligibility of temporary entrants as well as providing a record of checks performed on employees for an employer.

Ensuring the technical capacity of the online entitlement verification system and telephone based verification systems, in addition to promoting their use, would enable growers and employment agencies to utilise the system to promptly and effectively assess the work eligibility of overseas visitors.

Also, further consultation between the Department and the industry could explore means to improve the verification processes for those employing seasonal workers.

DRAFT RESPONSE 3.22

The technical capacity of the Department of Immigration and Citizenship's visa verification systems should be sufficient to enable employers to promptly and effectively assess the work eligibility of overseas visitors.

Administering compulsory superannuation requirements for overseas visitors engaged in casual and seasonal work

Farmers and growers also raised the costs associated with administering the compulsory superannuation requirements for the large number of overseas visitors on working holiday making visas engaged in seasonal and casual work.

In light of these concerns, a number of policy changes were suggested. Growcom called for seasonal and casual workers on working holiday maker visas to be

exempt from the superannuation guarantee system (sub. 15). The NTHA supported this, as administering the superannuation requirements for working holiday makers was excessively cumbersome and costly and it was unlikely that these workers would receive any benefit from the superannuation guarantee as their employment in Australia was sporadic and short term (sub. 25).

Assessment

There are clearly costs imposed on growers and farmers in administering the superannuation guarantee arrangements for temporary visitors on working holiday maker visas who, because of their sporadic employment in Australia, are unlikely to receive any significant benefit from the arrangements. As such, there is a prima facie case for exempting those on working holiday maker visas engaging in seasonal type work from the superannuation guarantee arrangements.

On the other hand, there appear to be two reasons for requiring superannuation guarantee contributions for non-resident employees. First, a single uniform requirement that all employees be subject to superannuation guarantee provisions is simpler than having different rules for different categories of employees, which may prove complex to administer (for example, requiring identification of a bona fide non-resident short-term employee).

Second, failure to impose superannuation guarantee provisions on non-resident short-term employees might create a bias in the labour market as employers switch away (where possible) from higher cost (due to the superannuation guarantee) domestic labour. This latter concern was raised in the report of the Senate Select Committee on Superannuation and Financial Services (Senate Select Committee 2001).

Another means to reduce the compliance costs associated with the superannuation guarantee is via the threshold. At present, employers do not have to make superannuation contributions for employees who earn less than $450 a month. To reduce compliance costs for employers and for funds administrators, the Regulation Taskforce (2006) recommended increasing this threshold to around $800 a month and subjecting it to periodic review. In its response, the Government did not agree to the recommendation as it would have a negative impact on the retirement savings of low income employees.

DRAFT RESPONSE 3.23

Compulsory superannuation requirements for overseas visitors engaged in casual and seasonal work reflects government policy and there appears to be no lower-cost alternative way to achieve the policy objective.

The taxation treatment of non-residents versus residents

Growcom (sub. 15), the NTHA (sub. 25) and the QFF (sub. 19) also commented that the different rates of taxation applied to residents and non-residents which lowered the post-tax wage of the working holiday maker relative to an Australian resident performing similar duties. This created discontentment and impacted on productivity and retention of overseas workers as well as increasing compliance costs on farmers and growers.

Assessment

The different rates of taxation applying to resident and non-resident workers has been raised in previous reviews. The Agriculture and Food Policy Reference Group (Corish) Report (2005) recommended aligning resident and non-residents personal income tax to attract foreign workers into seasonal work. In its response, the Government did not support this and said:

> The proposal to align the resident and non-resident personal income tax withholding rates is not supported. Such a change would raise tax system compliance issues, including potential Australian tax revenue loss from the reduced incentive for concessionally taxed non-residents to submit a final Australian tax return. It would also generate equity and tax system complexity issues associated with creating another class of concessionally taxed non-residents and have uncertain labour market effects on other industries facing labour shortages. (Australian Government 2006a, p. 17)

Given the ever increasing regulatory detail and complexity of Australia's taxation system, changing the taxation status of certain non-residents without being part of a more comprehensive review would introduce further complexity into the personal income tax arrangements.

DRAFT RESPONSE 3.24

Any changes to the taxation treatment of non-residents, should be made as part of any broader review of the taxation regime.

Other related concerns

To direct workers to the primary sector in regional areas, the immigration legislation enables working holiday makers who work in specified regional areas for three months as the employee of a primary producer, including mining, to apply for a further working holiday maker visa — and extend their stay in Australia.

Growcom called for certain areas of Queensland, such as the Sunshine Coast where horticulture is undertaken, to be included as 'regional Australia' to enable workers

on working holiday maker visas to apply for a second visa if having worked in these areas for three months (sub. 15).

The NTHA also called for the working holiday makers visa arrangements to be extended to other countries not currently part of the reciprocal arrangements. This would deepen the available labour pool and provide mutual benefits to the Australian economy and the economies of overseas countries engaged in these arrangements (sub. 25).

Assessment

These concerns relate to government policy. Which areas are determined to be regional for the purpose of applying for a second visa and extending the working holiday maker visa arrangements to other countries is a matter for Government.

Centrelink reporting requirements

In relation to Australian resident seasonal workers, the NTHA also raised the burden placed on growers from supplying information to Centrelink. These involved employers having to provide verification of income, hours worked and period of employment to Centrelink where those receiving benefits were unable to provide proof of employment to Centrelink (sub. 25). It said:

> Growers are deterred from employing Australian residents on Centrelink allowances because there is a high incidence of employees not meeting their Centrelink reporting obligations and the follow up administration for growers is unmanageable. (sub. 25, p. 9)

Assessment

The *Social Security (Administration) Act 1999* requires employers to provide details of employees earnings when requested by Centrelink. This information is required to ensure those receiving benefits receive the payments they are entitled to.

Centrelink does cross share information with the Australian Taxation Office (ATO) and such information is often suggested as an alternative source to verify employee earnings. However, the ATO's wage information is based on financial years whereas Centrelink requires exact information concerning income received in fortnightly periods (Centrelink 2007a).

Although Centrelink encourages their customers to provide payslips as evidence of earnings, it will write to employers if additional information or verification is required.

In recognition of the paperwork this can create for employers, Centrelink has encouraged employers to provide adequate information on employee payslips, including information encouraging Centrelink customers to retain their payslips (2007b). However, as such an approach relies on Centrelink customers retaining adequate records it is unclear if this will significantly reduce the number of information requests that employers, particularly those of casual seasonal labour, receive from Centrelink.

Centrelink advised the Commission that it had attended meetings with grower groups to discuss reporting requirements and had spoken directly with individual growers to determine how Centrelink could reduce the impact of the reporting requirements. In recognition of the burden placed on all businesses, Centrelink has developed a Business Hotline to assist employers (sub. 47).

It is also currently exploring introducing an 'eBusiness' system to enable employers to electronically transfer information to Centrelink and concept trials are being carried out (sub. 47). If successful, this system should be available to all employers.

DRAFT RESPONSE 3.25

Centrelink has taken steps to address concerns. In addition, it is exploring the use of an electronic information transfer or 'eBusiness' system. If introduced, it should be available to all businesses, including small business.

3.16 Biodiesel

Biodiesel is a renewable fuel for internal combustion engines manufactured by chemically altering vegetable oils or animal fat. It is ideally suited for on-farm production and on-farm use as an alternative or additive to diesel fuel.

Testing of on farm-produced biodiesel

A number of participants during consultations with the Commission pointed to the regulatory impediments facing those involved in the on-farm production of biodiesel and its on-farm use. These concerns centred on the requirement to test biodiesel, and the cost of that testing, to meet the environmental standards even where the fuel was produced on-farm exclusively for on-farm use.

The standards are defined by DEW and incorporated in the *Fuel Quality Standards Act 2000*. The purpose of the standard is to:

- reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems
- facilitate the adoption of improved engine and emission control technology
- allow the more effective operation of engines.

Biodiesel became subject to excise duty in 2003 as part of the Government's commitment to implement a homogeneous excise system for all liquid fuels. To support the use of biofuels, the Government implemented the Cleaner Fuel Grants Scheme, which provides a rebate equivalent to the amount of duty paid by importers and manufacturers of biodiesel, thus providing an effective zero excise rate for biodiesel. To claim the grant, the manufacturer or importer is required to register and provide proof that the fuel meets the standards.

Assessment

There appears to be some misconception surrounding the requirement to test on-farm produced biodiesel. There is no legislative requirement under the *Fuel Quality Standards Act 2000* to test biodiesel to meet the standards unless it is supplied on a commercial basis. However, under the *Excise Tariff Act 1921*, all biodiesel is subject to excise, including on-farm produced biodiesel used on-farm and not sold. In order to claim the rebate for the excise paid, testing is required to provide proof that it meets the prescribed fuel standards. So farmers can use on-farm produced biodiesel that has not been tested but they must still pay the excise tax and will not receive the rebate. They also risk that the fuel could be environmentally harmful and could damage the machinery in which the fuel was used.

For the on-farm producer, any decision to engage in commercial production would depend on the costs of production and the cost of testing. At present, it appears that these costs make small scale commercial production unviable. For example, with the cost of testing at around $3000 and a rebate of $0.38143 per litre, a small scale producer would need to produce and sell over 7800 litres of biodiesel to cover the cost of testing. In the future, declines in the production and/or testing costs of biodiesel may improve the viability of small scale production and on-farm producers will continue to assess these costs before deciding whether or not to engage in commercial production.

There are misconceptions surrounding the testing requirements for on-farm-produced biodiesel. The Australian Taxation Office should clarify these with rural producers.

3.17 Agricultural and veterinary chemicals

Since 1995, the registration of agricultural and veterinary chemicals and their products (agvet chemicals) has been conducted through a National Registration Scheme, as established by an intergovernmental agreement.

- All aspects of agvet chemicals up to the point of sale, including conditions for packaging, labelling and use, are controlled by Australian Government legislation.
- The states and territories control the use of agvet chemicals in their own jurisdictions.

The *Agricultural and Veterinary Chemicals Code Act 1994* and the Schedule to that Act — which contains the Agricultural and Veterinary Chemicals Code — lists the operational provisions for registering chemical products. It provides powers to an Australian Government statutory body, APVMA, to evaluate, register and regulate agricultural and veterinary chemicals up to the point of sale. APVMA administers the National Registration Scheme for Agricultural and Veterinary Chemicals in partnership with the states and territories and with the involvement of other Australian Government agencies. Its role is:

> … to protect the health and safety of people, animals and crops, the environment, and trade and support Australian primary industries through evidence-based effective and efficient regulation of agricultural and veterinary chemicals. It does this through its evaluation and registration of agricultural and veterinary chemical products; its permits scheme; the review of older chemicals or chemicals for which concerns have been raised to ensure they continue to meet contemporary standards; as well as ensuring compliance, both during manufacture and in the market. (sub. 42, p. 1)

Participants commented on the importance of effective chemicals and pesticides regulation to the primary sector and provided information on aspects of the regulatory requirements that they saw as unnecessarily burdensome.

The Regulation Taskforce review

In submissions to the Regulation Taskforce review, participants expressed particular concern about:

- the need to streamline regulation
- duplication and inconsistency between Australian Government and state/territory regulatory regimes
- insufficient timeliness and cost effectiveness
- greater recognition of international standards and processes (2006, pp. 62–68).

The taskforce report noted that despite numerous reviews over the previous five years, national uniformity or national consistency was 'far from being realised' (Regulation Taskforce 2006, p. 63). It reported that there was a 'sense of urgency' in submissions about the need for a national chemicals policy. Submissions saw this as essential to the industry's competitiveness.

The report recommended that COAG establish a high-level taskforce to develop such a policy. In response, COAG decided, in February 2006, to establish a ministerial taskforce to help streamline and harmonise national chemicals and plastics regulation (an area identified by COAG as a hot spot 'where overlapping and inconsistent regulatory regimes are impeding economic activity') (COAG 2006a).

In addition, the Australian Government has announced that the Productivity Commission will undertake a full public review of chemicals and plastics regulation, with the report to be completed by July 2008. That review is now underway and the ministerial taskforce is expected to draw on the results of this study in developing proposed measures.

The Government also agreed to the Regulation Taskforce report's other recommendations, including for legislated timeframes for registration and approval of agricultural and veterinary chemicals, and investigations into the implications for agriculture (pesticides and veterinary medicines) of the implementation of the UN's *Globally Harmonised System for Classifying and Labelling Chemicals*.

Submissions to the current review

In all, over twenty submissions to this review raised problems with the regulation of agvet chemicals. Many reiterated concerns previously expressed to the Regulation Taskforce, ranging over many areas of Australian Government and state and territory government regulation. For example:

- Growcom, representing fruit and vegetable growers in Queensland, said that chemical use legislation should be streamlined and coordinated to remove existing duplicated, confusing and complex legislation. It pointed out, for example, that efforts to control chemicals of security concern can have long term and unintended consequences on the viability of industry.
- The VFF said that control of chemicals is 'beset by over-regulation', the cost and time involved in registering and developing agricultural chemicals is 'prohibitive', and no concerted effort has been made to harmonise regulatory processes or requirements (sub. 13, p. 14).
- Croplife, representing the plant science industry, drew attention to insufficient harmonisation and enforcement by the states of control of use regulation. It said that a multiplicity of legislation, further complicated by other state and federal legislation:

  > … has led to inconsistency, complexity, duplication and contradiction, causing confusion and unnecessary regulatory burdens on agricultural chemical manufacturers and users of their products. (sub. 14, p. 7)

- The Animal Health Alliance, which represents registrants, manufacturers and formulators of animal health products, drew attention to inefficiencies and inconsistencies in the dealings of APVMA and AQIS with the industry's products (sub. 7, p. 1 and attach. B).
- The VMDA, representing manufacturers and distributors of veterinary medicines and animal health products, pointed to the delays caused by complex Australian, state and territory government institutional structures, the lack of fast-track arrangements for products requiring a lower level of registration, and differences between states' rules governing control of use of agvet chemicals (sub. 28, p. 2).
- The Australasian Compliance Institute, the peak body for the practice of compliance in Australia, expressed concern about the time and financial costs of obtaining and maintaining registration of agvet chemicals, differences among the states in controls on use, supply and storage, and differences in registration requirements between Australia and its trading partners (sub. 20).

Response from APVMA

In an extensive response to many of the issues raised in submissions to this review, APVMA acknowledged that some 'raise some very relevant points … particularly in the areas of consistency in the national regulatory framework' (sub. 42, p. 3).

It saw some other criticisms as not relating to regulatory burden but perhaps more relevant to the broader review of chemicals and plastics that is being conducted concurrently.

But it expressed concern that several submissions were inaccurate in some of their comments about APVMA and the agvet regulatory framework and provided a detailed critique in its submission (sub. 42, att. 1).

The remainder of this section summarises the key concerns expressed in submissions to this review.

Some specific concerns raised in submissions

Overlap and duplication of regulation

The VFF argued that control of chemicals is over-regulated, noting that:

- Victoria's Department of Primary Industry oversees the use and purchase of products in that state, but its regulations overlap with those of the Department of Health
- OHS officers 'often interpret chemical storage and records regulations differently' from staff in those departments
- maximum residue levels are set by FSANZ and also by APVMA
- in addition, these tests are conducted by government through the Victorian Produce Monitoring Program and the National Residue Survey (sub. 13, pp. 15–16).

It added that:

> Reform through the harmonisation of regulatory processes and requirements is overdue, and the VFF urges that duplication in testing regimes be avoided. (sub. 13, p. 16)

To demonstrate areas of overlap, the VFF provided a table of regulations covering agricultural and veterinary chemicals (table 3.3).

Animal Health Alliance drew attention to duplication of requirements between APVMA and AQIS (sub. 7, p. 5).

The issue of quarantine regulation is examined elsewhere in this chapter.

ACCORD Australasia, representing manufacturers and marketers of formulated products, drew attention to possible future duplication of regulation of the labelling of hazardous substances and agvet chemicals. It said that, while the current *National*

Code of Practice for the Labelling of Workplace Hazardous Chemicals recognises other labelling systems, including those of the APVMA, the revised draft Code of December 2006 does not. If implemented, the draft Code would require agvet manufacturers to add significant amounts of hazard-based information to product labels, at considerable cost to manufacturers and confusion to users.

Table 3.3 **Regulations covering agricultural and veterinary chemicals**

Regulation covering …	*Responsible regulator*
Labelling and registration	APVMA
Maximum residue limits	APVMA and FSANZ. There are also residue requirements and withholding periods required which are monitored by markets — eg dairy companies, grain handling companies, stock agents.
Use of product on farm	State authority as set by control of use legislation, WorkCover, Environmental Protection Authority, Department of Health, industry quality assurance programs.
Storage of chemicals	State control of use authority, WorkCover, Environmental Protection Authority, quality assurance/environmental management programs.
Record keeping	Storage reconciliation and material safety data sheets required under WorkCover, but also under environmental management programs. Quality assurance programs, records of use of products required by vendor declarations, state authority and local council as part of planning permit conditions.

Source: VFF sub. 13, pp. 22–23.

ACCORD noted that the Code (developed by the Australian Safety and Compensation Council and APVMA) have different approaches to regulation:

- The Hazardous Substances regulatory approach is based on hazard classification and hazard communication which is appropriate for substances which may have diverse uses. …
- The Agricultural and Veterinary Chemical Products regulatory approach provides a higher, and appropriate, level of regulatory intervention whereby the risk-assessment for these defined-use products is part of the registration and approval process. (sub. 8, p. 2)

It argued that labels that meet the APVMA's requirements should be recognised as appropriate for meeting the requirements of the Code. The Plastics and Chemicals Industries Association also expressed this view (sub. 29, p. 2).

ACCORD has put its views to the Australian Safety and Compensation Council, which invited public comment on the draft Code but said there 'is yet no indication from ASCC as to how this matter has been considered' (sub. 8, p. 3).

Timeliness and complexity of national chemical registration procedures

Several participants expressed concern about APVMA's rules and procedures and the timeliness of registration processes. For example, the VFF said that the cost and time involved in registering and developing agricultural chemicals is 'prohibitive' and is slowing chemical innovations:

> … while some efforts are being made to harmonise the *objectives* of regulations between different States, no concerted effort has been made to harmonise regulatory *processes* or *requirements*. This is seen as a high priority issue. (sub. 13, p. 14)

The Animal Health Alliance said APVMA imposes 'unnecessarily burdensome requirements'. It drew attention to its requirement for local efficacy studies for all products intended for use in food producing animals:

> APVMA will not accept efficacy data generated overseas, even where the disease, the genetics of the animals and the environmental conditions are no different to those overseas. This results in increased costs and timelines, greater use of animals in studies, increased burden on companies wishing to bring new products to the market and issues with state ethics committees. It is also becoming less attractive for companies to register new products in Australia.

In response, APVMA said that, while Australian efficacy studies are required for products containing new active constituents and which are designed as herd or flock medications for food-producing animals:

> [it] will consider scientific argument that Australian efficacy data not be provided, on a case-by-case basis. This is particularly relevant to the pig and poultry industries, where the genetics, housing, feeding and husbandry are largely standardised the world over. The APVMA has registered a number of products on the basis of overseas efficacy data only and has directly informed the pig industry that it is prepared to register products for pigs on the basis of overseas efficacy data. (sub. 42, p. 4)

The Animal Health Alliance also said APVMA imposes a requirement that studies be conducted in several states or locations, even if there is no scientific reason for this (eg for poultry housed in temperature and humidity controlled housing). APVMA responded by saying that if Australian efficacy data are required, it requires sufficient trials to be conducted in a sufficient range of environments to prove efficacy of the product in relation to the product's proposed label claims. But it added that it 'only requires that studies be conducted where there is a valid scientific reason'.

The Animal Health Alliance also drew attention to 'inefficiencies and inconsistencies' in the dealings of the key regulators with its members' products. It referred to a December 2006 report on APVMA by the Australian National Audit Office and added that :

> … the recent outcomes of the ANAO audit of APVMA … have confirmed most of the shortfalls industry has identified. (sub. 7, p. 1 and attach. C)

It also noted that a recent international benchmarking survey had identified concerns with:

- the time, cost and risk involved in bringing new products to market
- incentives on companies to introduce fewer breakthrough products; to reduce product availability; to focus on older technologies; and to avoid certain product technologies
- inadequacies in APVMA's 'regulatory quality; (sub. 7, pp. 1–2 and attach. D).

Growcom also saw the timeliness of chemical registrations as a critical issue for the industry as:

> The uncertainty around the outcomes of a chemical review process can mean that an industry could be required to invest a substantial amount of money prior to knowing the final outcomes … (sub. 15, p. 5)

In its view, APVMA is under-resourced for the task of issuing permits and is unable to meet its target time frame of three months (sub. 15, p. 30). It argued for a streamlined and coordinated approach to chemical control of use legislation that removes the existing 'duplicated, confusing and complex' legislation (sub. 15, p. 35).

The VMDA commented on:

- the need for greater use of risk management by APVMA, particularly during product registration assessment, as recommended by the ANAO (2006)
- inconsistent application by APVMA staff and its outsourced advisors of guidelines and regulations (for example, in respect of interpretation of guidelines, reviewing of trial protocols or responding within statutory timeframes). (sub. 28, pp. 5–6)

APVMA responded to some of these concerns (sub. 42). It agreed, for example, that the delay between registration by APVMA and incorporation into the Food Standards Code was a problem that should be addressed, and advised that:

> For a number of years the APVMA has been involved in discussions with FSANZ and the Food Regulation Standing Committee … to harmonise the [maximum residue limits] setting process. Recent amendments to the Agvet Code and a revised MOU with FSANZ are expected to reduce the lag between product registration and entry of the relevant [maximum residue limits] into the Food Standards Code. (sub. 42, att. 1, p. 11)

In respect of timeliness, APVMA noted that 74 per cent of pesticide and 76 per cent of veterinary medicine applications made to it contain errors, and that it had been criticised by the ANAO for repeatedly giving applicants additional time to correct deficiencies, leading to a prolonged elapsed time for applications. The reasons for such high error rates are not clear, and the ANAO also criticised APVMA for not having systematic processes for analysing the type and cause of these problems (ANAO 2006, p. 16) Nevertheless, 98 per cent of applications received after 1 July 2005 were finalised within the statutory timeframe.

In response to the VMDA's comment on the need for greater use of risk management, APVMA acknowledged that its framework for risk assessment is not well understood.

> To rectify this and improve transparency the APVMA is in the advanced stages of finalising a document that describes the APVMA's framework of risk assessment. … The Agvet Code does not provide for risk/benefit analysis. The APVMA must be satisfied that products are safe and effective before they are registered. (sub. 42, att. 1, p. 22)

Differences among the states in rules for use of chemicals

DAFF said that a particular concern for the Australian Government and industry:

> … is the inconsistency between jurisdictions in regulating the use of chemicals and enforcing those regulations — while the Australian Government has responsibility for registering agricultural and veterinary chemicals, states and territories have responsibility for enforcement of regulations controlling chemical use. (sub. 31, p. 3)

The Virginia Horticulture Centre also drew attention to inconsistencies between jurisdictions in regulations that control the purchase, transport, storage and/or use of chemicals:

> Industry would support national benchmarks for use of chemicals. … A national system for chemical use would decrease cost, administration paperwork and time. (sub. 32, p. 21)

The VFF noted that 'cross-border variations in agricultural and veterinary chemical regulations greatly increase the compliance burden on farming businesses' (sub. 13, p. 14).

Croplife pointed to:

- differences whereby some states allow chemical products to be used in crops and situations for which they are not approved by APVMA

- complexity arising from lack of harmonisation — for example, there are seven different regimes for the regulation of security sensitive ammonium nitrate, notwithstanding initial national agreement to a uniform system (sub. 14, p. 8)
- duplication of, for example, regulations for aerial application of pesticides, which impose unnecessary costs on aerial applicators and largely prevent application by helicopters (sub. 14, attach. 4)
- different state restrictions on use of certain herbicides, giving rise to possible litigation, loss of markets due to residues in crops, and environmental damage.

Croplife argued for:

- action to implement best practice regulation
- harmonised legislation and regulation of control of use across all states
- greater compliance with mandatory label instructions through state monitoring and enforcement
- rationalisation and harmonisation of rules covering chemical handling, transport, storage, environment and food in all jurisdictions, and their integration with control of use legislation (sub. 14, p. 10).

CropLife said that after years of 'regulation reviews and buck-passing', agvet manufacturers and users of their products:

> … are suffering not only unnecessary regulatory burdens (and associated costs), but also 'review fatigue' with little progress to be shown for the reviews to date. The burden of contributing to those reviews diverts resources from core business and reduces profitability and competitiveness. (sub. 14, p. 7)

It recommended improved coordination between government agencies to avoid duplication and overlap of reviews of agricultural chemicals, together with a whole of government plan and timetable for future reviews.

Growcom expressed concern that Queensland's review to investigate consolidating the *Agricultural Chemicals Distribution Control Act 1966* and the *Chemicals Usage (Agricultural and Veterinary) Control Act 1988* has been underway for more than eight years. In its view, this is far too long and results in the wasting of resources for both government and industry. It supported consolidation of existing regulation into a single Act, to help reduce unnecessary duplication and remove confusion and complexity from the current legislative arrangements. It added that:

> Nationally consistent AgVet legislation, with consideration for each state and territory's particular conditions will eliminate confusion regarding what particular actions are allowed in each state and benefit industries operating across state borders (sub. 15, p. 31).

The VMDA also expressed concern that control of use issues 'differ from State to State.

> Differences are generally related to specific diseases and are often confined to crop chemicals because of the diversity of what is grown in different geographical/climatic areas. Such differences rarely occur with vetchems except where there are specific pests which may affect say, cattle in Queensland and which are not a problem in non-tropical areas. VMDA would however comment that differing instructions for application rates, uses etc. based upon pests which may behave differently in some climatic regions may well be a justified position. (sub. 28, p. 4)

Minor use permits

National registration arrangements allow the APVMA to issue permits for 'minor use', defined as.

> … a use of the product or constituent that would not produce sufficient economic return to an applicant for registration of the product to meet cost of registration of the product, or the cost of registration of the product for that use, as the case requires (including, in particular, the cost of providing the data required for that purpose). (APVMA website)

Minor use can include use on a minor crop, animal or non-crop situation, or limited use on a major crop, animal or non-crop situation.

In relation to Aquavet chemical registration, the National Aquaculture Association/Council said it is concerned over the time taken to evaluate applications for minor use permits:

> The industry appreciates the need for rigorous process but believes the Government should work with industry in shortening the process and in particular providing exemptions with very harmless products that are considered to have little or no risk or in the context of food contamination (eg salt). Various agencies are involved in evaluating applications and the timeframe for approval is very long. This needs to be shortened particularly given the small quantities of chemicals in use. (sub. 18, p.)

Tasmanian Salmonid Growers Association endorsed this view, adding that it is pursuing minor use permit registration of a small number of chemicals specifically for use in aquaculture:

> A feature of the Australian aquaculture industry is that being relatively new, relatively 'green', and quite small by world's standards, there is very little incentive for suppliers of aquavet chemicals to incur the effort and cost of registration of their product under the Australian system. … [APVMA] could speed up the evaluation of applications and generally improve the evaluation process by:
>
> - adopting a more lenient approach to chemicals used in relatively small quantities, and

- accepting more readily the published scientific literature and/or approvals granted by reputable authorities in other countries such as UK, Canada, US, and Norway. (sub. 16, p. 2)

The Association argued that 'this is a regulatory burden which could be alleviated without undue risk' (sub. 16, p. 2).

CropLife also argued for streamlining of the regulatory system to allow minor uses of agricultural chemicals, 'particularly by addressing issues of registration, labelling, permits, liability and data protection'.

The NTHA argued that the application processes are 'excessively cumbersome for industry to manage'. Moreover:

> Growers are increasingly trapped in a situation where they face severe losses from diseases, pests and weeds if they do nothing to protect their crops, or face penalties if they use a product that is not registered or available via a permit.

While the crops are valuable, they are too small individually for agrochemical companies to bear the high cost of registering pesticides for use on them. This has led to 'reliance on single broad spectrum chemicals, rather [than] "softer" targeted chemicals, that may be used in an integrated pest management strategy' (sub. 25, p. 5).

The Virginia Horticulture Centre said that 'minor use permits are costly and timely to acquire' (sub. 32, p. 24).

The ANAO report and APVMA's response

In December 2006, the ANAO released a report critical of some aspects of APVMA's performance. It found that:

> The APVMA is also not meeting its obligation to finalise all applications within statutory timeframes. This increases the cost of regulation, for both the APVMA and applicants, and impacts on users' access to pesticides and veterinary medicines. (ANAO 2006, p. 10)

It noted that almost half of all efficacy and safety assessments finalised in 2004–05 by State government departments or private consultants exceeded the timeframe specified by the APVMA.

In response, APVMA said it had commenced addressing the recommendations (November 2006) and would:

- better manage and report on timeliness of processing registration applications and more systematically communicate to the chemical industry the types of deficiencies in their applications
- review current arrangements for procuring external scientific advice
- strengthen the operation of the Manufacturers' Licensing Scheme
- assess current approaches to chemical review and disseminate more comprehensive information on reviews to stakeholders.

Assessment

Agvet chemical regulation was an issue in about one third of all submissions to this review, generally raising matters that the industry argues have been on the table for some time. Indeed, Croplife drew attention to the 'many overlapping reviews of regulation' in these areas since 2000, including, in addition to this regulatory stocktake:

- the Agriculture and Food Policy Reference Group (2005)
- the Review of Australian Dangerous Goods Code (2006)
- the Regulation Taskforce (2006)
- the COAG Ministerial Taskforce on chemicals regulation (2006)
- the ANAO review of the APVMA (2006)
- the Bethwaite review of the food regulation system (2007)
- ASCC review of the *National Code of Practice for the Labelling of Workplace Hazardous Chemicals* (2007)
- national training and accrediting for higher risk agvet chemicals (ongoing)
- reviews of minimum residue limits by APVMA and FSANZ (ongoing)
- reviews of state control of use (periodical)
- reviews of state OHS legislation (periodical)
- reviews of state poisons schedules (periodical).

Croplife said that the chemicals industry has continued to identify the need for regulatory reform since working with the Government on the Chemicals and Plastics Industry Action Agenda in 2000. However, this multiplicity of reviews has imposed a considerable resource burden on the industry.

A full public review of agvet chemicals is now underway

The Commission acknowledges the importance of the issues raised. The differences of understanding and interpretation — and views about appropriate policy direction — between some participants and the APVMA need to be examined.

DAFF advised that:

> Regulation of the chemicals and plastics sector was considered in detail in the Banks Report. In its response to the Banks Report, the Government announced that a PC study into chemicals and plastics regulation would commence during 2007. … The PC study will address industry's major concerns about chemicals regulation.
>
> In addition, COAG has established a ministerial taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation. The PC study will inform the ministerial taskforce's considerations. (sub. 31, p. 3)

As the Regulation Taskforce report concluded, and the government agreed, there is a clear need for a full public review. While industry has been waiting for this for some time, it was announced on 26 July 2007 and is to run for 12 months. Its terms of reference are sufficiently broad to pick up a wide range of matters relating to industry regulation, whether state, territory or Commonwealth. It will:

- identify duplication and inconsistency of regulations within and across all levels of government in Australia and with international practice
- examine the effect of these regulations on economic, public health and safety, occupational health and safety, and environmental outcomes
- examine the efficiency of existing arrangements for security-sensitive ammonium nitrate (Costello and Macfarlane 2007).

It has become clear during this review that many of these issues need to be scrutinised and that a detailed public study is timely. Submissions made to this current review, such as those referred to in this section, will be drawn to the attention of that study.

DRAFT RESPONSE 3.27

There are many agricultural and veterinary medicines regulatory issues that require detailed examination. The recently commenced Commission study into chemicals and plastics provides that opportunity.

3.18 Horticulture Code of Conduct

The Horticulture Code of Conduct is a mandatory code introduced to regulate the wholesaling of horticulture produce. It is administered by the ACCC. The Code was established to encourage greater clarity and commercial transparency in transactions between growers and wholesale traders through published terms of trade and produce agreements. It also provides for dispute resolution procedures between growers and traders as an alternative to litigation.

Omissions from the Code

The NTHA supported the implementation of the Code. However, it was concerned that there were a number of omissions from the Code. These included:

- the exclusion of retailers, exporters and food processors from the Code as the NTHA were of the view that the Code should encompass any transaction between the grower and the first point of sale and not just wholesalers and their agents
- a lack of coverage of grower-owned packing houses under the Code
- the pooling of grower's fruit being permitted, although price averaging is not
- the exclusion of buyers' agents from the Code. (sub. 25)

Assessment

The Australian Government targeted the Code at the wholesale sector as the major supermarket chains were already signatories to a voluntary code and contractual disputes in this area did not generally involve contractual clarity. As Growcom noted, the major chains operated by purchasing a set quantity at a set price and paid for it on agreed terms (Growcom 2007).

The Code does not contain any specific reference to packing houses and the application of the Code to the transactions involving packing houses will be determined according the circumstances of each case (ACCC 2007b). The ACCC (2007) also indicated that price averaging for produce sold in a pooled arrangement is not permissible under the Code as a grower must receive the price that their produce was actually sold for (less agreed deductions).

Other grower organisations such as Growcom (sub 15) supported the introduction of the Code. It was of the view that the improved business practices, transparency and confidence arising from the Code would increase investment and innovation in the

sector. However, Growcom also noted that there would be a transition period for the industry following the introduction of the Code:

> Growcom is aware that there is much debate around the implementation of the mandatory code. The Code will bring about a change in the horticulture wholesaler sector, and it is only natural for there to be a transition period and some reluctance to change business practices. (sub. 15, p. 40)

The Code only commenced in May 2007 and as such it is too early to determine what, if any, problems will arise from the operation of the Code in its current format. The Commission considers it would be more appropriate that the Code be subject to an independent and transparent review after having been in operation for a suitable period of time to enable any transitional issues to be addressed and for an adequate 'case history' of its operations to emerge. A review is scheduled for 2009 and this is appropriate.

DRAFT RESPONSE 3.28

The Horticulture Code of Conduct has only recently commenced and is scheduled to be reviewed in 2009.

3.19 Farm surveys

Time involved in completing farm surveys

During consultations, some participants engaged in farming in Queensland commented on the time involved in 'filling out' farm surveys from the Australian Bureau of Agricultural and Resource Economics (ABARE) and their duplications with the surveys conducted by various state government rural agencies.

Assessment

The time involved in completing such surveys is an issue for many rural producers and becomes frustrating when there is an element of overlap between the ABARE farm surveys and those conducted by state government agencies. The ABARE farm surveys are voluntary and are used to compile detailed financial, physical and socioeconomic information for the broadacre and dairy sectors. As such, they provide important data for the agricultural sector. Those volunteering to complete the ABARE farm survey, while aware of the costs and time incurred in doing so, also recognise the wider value of the information these surveys provide.

In contrast, there is an element of compulsion with ABS surveys. The ABS will seek cooperation, although if the information is not provided the *Census and Statistics Act 1905* provides for the Australian Statistician to direct the information be provided. This direction only applies to 'official data' such a census data and data collected as directed by the Minister and not for client initiated data.

It is not clear that this is a widespread concern or that those completing ABARE farm surveys are unaware that these surveys are voluntary. That said, there could be an issue for improved coordination between ABARE and other agencies, particularly state government agencies, involved in collecting data from rural producers.

DRAFT RESPONSE 3.29

Improved coordination between ABARE and other government agencies in collecting farm data could reduce the time spent by agricultural producers completing surveys.

3.20 Genetically modified crops

Australia's national scheme for the regulation of genetically modified (GM) organisms is underpinned by the Australian Government's *Gene Technology Act 2000*, which came into force in June 2001. It was developed in consultation with all Australian jurisdictions and is supported by an inter-governmental agreement and corresponding legislation in each state and territory. The national scheme regulates all dealings (such as research, manufacture, production, commercial release and import) with live viable organisms that have been modified by techniques of gene technology. The regulatory objective, agreed to by all governments, is:

> … to protect the health and safety of people, and protect the environment, by identifying risks posed by or as a result of gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms.

Broadly, all dealings with a GM organism are prohibited unless approved by the national Gene Technology Regulator (GTR). Its work is overseen by a Gene Technology Ministerial Council, which includes representatives from all jurisdictions. Other regulatory agencies have primary responsibility for the regulation of the *use* of GM products. For example, the Therapeutic Goods Administration regulates the sale and use of GM pharmaceuticals, and Food Standards Australia New Zealand regulates GM foods. GM products not covered by an existing national regulation scheme, such as stock feed derived from a GM crop such as cotton, are regulated by the GTR.

While the GTR is authorised to make decisions based on the health and safety risks posed by gene technology, the states may make separate GM laws on other grounds, such as trade. Most have moratoria on GM food crops. Under Victoria's *Control of Genetically Modified Crops Act 2004*, for example:

> ... part or all of the State of Victoria may be declared as an area where specified activities, or dealings, involving some or all GM crops or related material may be controlled or prohibited. … the Government has the power to deal with any aspect of the utilisation of GM crops that may negatively impact on the market competitiveness of any product. (Department of Primary Industries, Victoria, website)

However, exemptions can and have been made to enable small scale, non-commercial, research and development trials to take place.

Since 2002, the GTR has approved the unrestricted commercial scale release of certain herbicide-tolerant and insect-resistant types of cotton, canola and carnations. GM cotton has been introduced and now comprises about 90 per cent of production. However, the commercial release of GM canola is prevented by state legislation. For example, Victoria placed a four-year moratorium on GM canola in 2004 due to 'divisions and uncertainty within industry, the farming sector and regional communities about the impact of GM canola on markets' (Department of Primary Industries, Victoria, website).

The VFF argued that a state moratorium on a GM product already approved by the GTR means there is, in practice, no nationally consistent scheme for the regulation of gene technology in Australia. It argued that the Victorian Government should abandon the GM canola moratorium, which effectively prevents both commercial release and commercial scale coexistence trials for any GM crop variety. In its view, 'the imposition of state-based moratoria has severely obstructed the intent of the Federal Act' (sub. 13, p. 7).

The VFF noted that other countries such as Canada, America and Argentina allow the growing of many varieties of GM crops, including canola. (Canada is the world's largest GM canola producer.) Moreover:

> Important export markets for Australian grain such as Japan, the EU and China also allow a number of GM crops to be imported. (sub. 13, p. 7)

It added that the moratorium prevents producers from being able to access and utilise new farm production technologies, and also reduces the commercial incentives for others to invest in research in these areas. In its view, the moratorium 'is stifling Australian agri-biotechnology research and development' (sub. 13, p. 7).

Some states are now reviewing their moratoria on GM crops. In May 2007, Victoria established an independent panel to review its moratorium on the commercial

planting of GM canola, while a public review of South Australia's moratorium on GM crops commenced in June 2007. New South Wales also announced a review in July 2007.

Recently, ABARE examined the evidence on market acceptance and pricing of some GM and non-GM crops. These studies found that:

- GM canola is finding ready acceptance in international markets at prices very similar to those received for conventional canola.
- In the traditional import markets for canola — Japan, Mexico, China, Pakistan and Bangladesh — GM canola is generally accepted as readily as conventional canola and is priced at very similar levels.
- Despite perceptions of resistance to GM grains in world markets, countries that produce GM varieties of soybeans, corn, cotton and canola dominate the world export trade in these grains. For example, virtually all of Canada's export canola is considered to be GM, but its exports have reached record levels in 2006, more than doubling since GM canola was introduced in Canada in the mid 1990s. Canada accounted for more than 70 per cent of world canola seed trade in the three years to 2006.
- There is already widespread use of products from GM crops in the domestic market, particularly with locally-produced GM cottonseed and imported GM soybean products. ABARE suggested that GM canola will generally be accepted by food manufacturers and consumers in Australia's domestic market (Foster and French 2007).
- Commercialisation of GM canola would have negligible impacts on organic canola, livestock and honey production because Australia's organic standards are more stringent than those in our export markets (Apted and Mazur 2007).

ABARE also noted that GM canola production involves higher yields and lower input costs for farmers. Some of these gains, such as reduced usage of pesticides, also provide environmental benefits.

Regulatory arrangements have been recently reviewed

As required by the legislation, the *Gene Technology Act 2000* and the Intergovernmental *Gene Technology Agreement 2001* were reviewed in 2005-06 by an independent panel. The review was informed by some 300 submissions and national consultations. It found that regulatory arrangements had worked well in the five years following introduction, and that no major changes were required.

While the focus of the Act is on the health and safety of people and the environment, non-government organisations and farmers opposed to the introduction of GM crops argued that the scope of the Act should be broadened to include economic, social and marketing impacts so that the impact on farmers who choose not to grow GM crops would be considered under the Act. The review concluded that the existing scope of the Act should be maintained. However, it suggested a number of minor changes.

Recommended changes were agreed in the joint government *Response to the Recommendations of the Statutory Review of the* Gene Technology Act 2000 *and the* Gene Technology Agreement 2001. These were implemented by the Gene Technology Amendment Bill 2007 Bill, approved by the Gene Technology Ministerial Council in March 2007. This became law on 1 July 2007 and state and territory governments have undertaken to enact corresponding legislation by the end of 2007. To date (August 2007) none has done so.

Assessment

While the broader public debate is about gene technology generally, state moratoria are preventing the commercial release of GM crops that have been assessed under the national regulatory framework and approved for release in Australia.

The national framework assesses gene technologies on the basis of their implications for the health and safety of people and the environment. The framework has only recently been reviewed and reaffirmed by all governments. Some minor amendments to legislation are now being implemented. The Commission did not receive any complaints about the national GTR assessment framework and sees no case for proposing changes to it.

The moratoria are matters for the states, and the Commission's review does not focus on state regulation. However, it notes that some jurisdictions are now reviewing their stance on GM crops and seeking better evidence on the impact of GM canola on producers and exporters. States could consider requiring a more thorough impact analysis and risk assessment before making a decision on GM crops already approved by the GTR, but there is little action to be taken by the Australian Government.

DRAFT RESPONSE 3.30

The national framework for assessing the health, safety and environmental risks of genetically modified organisms was recently reaffirmed by all governments. Moratoria on genetically modified crops approved for release by the GTR are matters for the states and territories.

3.21 Water issues

While the availability and cost of water are crucial issues for businesses in the primary sector, few submissions raised water as a regulatory issue requiring attention in this review. In part, this likely reflects that this review focuses on Australian Government regulations, while many specific water regulations faced by primary sector businesses are set by state regulatory agencies, notwithstanding that they may arise from an intergovernmental agreement on water use. Indeed, COAG has long had a role as a key policy forum on water and related issues.

But it may also reflect a view that water-related policy issues are being comprehensively worked through in all jurisdictions, and that time is needed for the effects of various policy developments to become apparent.

Inconsistencies across jurisdictions

The Australian Property Institute (NSW Division) and the Australian Spatial Information Business Association (API/ASIBA) said that inconsistencies in water regulations across jurisdictions results in unnecessarily high regulatory burdens on businesses in the primary sector. In their view, state-based water management regimes are 'burdensome, jurisdictionally complex, and result in compliance costs for water access which are unnecessarily burdensome and costly' (sub. 34, p. 1).

Uncertainties regarding water ownership and trade

API/ASIBA also argued the need for appropriate water titling regimes, along the lines of the Torrens titling system used for land, to provide greater security for titles:

> The nature of how those water entitlements are registered, their security, ease of transfer, cost of administration, and public accessibility of information on trades and pricing, will be fundamental to establishing public confidence in the operation of the entire water industry. (sub. 34, p. 2)

In their view, such changes would underpin the sustainable management of Australia's water resources and the long term productivity of irrigated agriculture. One benefit would be greater surety for the financial sector in its dealings with landowners, in view of the separation of land ownership and water access entitlements and the ability to trade either or both.

Insufficient progress in establishing property rights and trading regimes

The Minerals Council of Australia said that, while much has been achieved, water reform has been hampered by difficulties in:

> … establishing the nature and extent of existing property rights, establishing the legal and market processes for trading those rights, and of ensuring demands for non-commercial uses (such as ensuring ecological flows) are accounted for. (sub. 37, p. 25)

It argued for full implementation of the NWI and for continued efforts by the National Water Commission (NWC) to drive water reform. In its view, efficient and cost-effective access to water supplies for all competing uses can be achieved if decisions are based on sound science, priority is given to environmental flows, heritage values are factored into the water market, and trading rules allow water to be allocated to its highest-value uses. Water pricing should be based on user-pays principles and be set regardless of end use, with appropriate allowance for environmental externalities (sub. 37, pp. 25–26).[5] The Council added that, once set, allocations should not be changed by governments other than in exceptional circumstances, and the risks associated with any such changes should be shared between government and industry.

Uncertainties surrounding water allocations

For the Red Meat Industry, security of water supply, rather than cost or trading arrangements, is the key issue. About 34 per cent of beef production comes from feedlots, which many producers use for drought management, productivity improvement and to obtain a more uniform product. While acknowledging that dry seasons lead to supply variability, the Red Meat Industry said that feedlots need secure entitlements for drinking water for cattle and to meet environmental rules on dilution of effluent and its distribution on pastures and crops (sub. 12, p. 7). It added that classification of feedlots as 'industrial users' is vital, as is compensation for production losses from losing water entitlements upon which business decisions were based. It cited the following examples of feedlots in New South Wales that had had water allocations reduced or removed, and in some cases had to purchase additional water from other sources.

- Feedlot A had an industrial licence which was rescinded through NSW policy with a loss of 67% of water entitlement. The feedlot was forced to purchase additional land

[5] There are specific provisions concerning the minerals industry in the NWI, reflecting that projects can involve isolation, relatively short duration, particular water quality issues (including the capacity to use waste water that would be unacceptable to other uses) and an obligation to remedy or offset impacts.

with a water entitlement, at a cost of $1.5 million. Compensation received was $230,000, taxable.

- Feedlot B lost half of its water allocation entitlements for 2007 and has been required to spend $842,000 for additional allocation water on a temporary transfer for a two year period.
- Feedlot C is in a private irrigation district scheme now 45 years old. The NSW Government is advocating closure without rights being recognised. This has stalled growing of crops to feed stock or to meet requirements for the feedlot and environmental management. (sub. 12A, p. 16)

However, the Industry cautioned that 'the best pathways for action on this are not clear, as these are drought-induced policy decisions that may become regulatory' (sub. 12A, p. 16).

Inadequate scientific evidence and unequal treatment of industries

The National Association of Forest Industries was concerned that large-scale plantation forestry had been singled out in the NWI (para. 55) as an activity with the potential 'to intercept significant volumes of surface and/or groundwater' in the absence of any adequate scientific definition or quantification of this potential water use' (sub. 11, p. 7). It also expressed concern that the development of water policy in state jurisdictions could result in 'perverse policy outcomes', threatening the broader benefits of plantation forestry such as carbon sequestration, enhanced biodiversity and reduced salinity and water inundation. It supported a greater role for the Australian Government:

> … to ensure that policy development … is applied equitably and transparently across all land uses and is consistent with national policy objectives. Failure for this to occur could lead to the forest industry being dealt with in a manner which does not adhere to a number of the over-arching requirements of the NWI. (sub. 11, pp. 7–8 and app. 4)

Expensive, prolonged and difficult negotiations for land and water plans

Growcom, representing fruit and vegetable growers in Queensland, expressed concern about the implementation of Queensland's land and water management plans (LWMPs), noting that growers find the process difficult and expensive. It referred to the 'excessive and invasive' level of information required, inconsistencies in the treatment of different regions and doubts about the practical on-farm applicability of some of the requirements. It also contrasted the ease of the approvals process in the Burnett Mary region with that of the Fitzroy Basin, pointing to the competitive advantage that this gave to growers in the first region. It

cited a LWMP developed in the Fitzroy region that cost a grower more than $8000 before it was considered to meet the requirements set for the region. It also expressed concern 'that the guidelines for LWMPs are more closely aligned to the cotton industry and furrow irrigation and do not align with horticultural industry needs' (sub. 15, p. 21).

Growcom said it supported a Queensland initiative to introduce a system whereby only one plan would be needed to comply with different state legislation and associated requirements. However, it said the process is taking too long and is utilising too many resources (sub. 15, p. 21).

Policy background

In 1994, COAG first announced its water reform agenda. In 2004, it followed this with the National Water Initiative (NWI 2004), agreed to by all governments to increase the productivity and efficiency of water use and to ensure the health of river and groundwater systems. Governments are now working to a ten-year timeline set down for the implementation of key actions under the NWI (NWI 2004, schedule A).

In July 2006, COAG reaffirmed its commitment to the water reform agenda and agreed on six fundamental elements of reform, namely:

- conversion of existing water rights into secure and tradable water access entitlements
- completion of water plans that are consistent with the NWI through transparent processes and using best available science
- implementation of these plans to achieve sustainable levels of surface and ground water extraction in practice
- establishment of open and low cost water trading arrangements
- improvement of water pricing to support the wider water reform agenda
- implementation of national water accounting and measurement standards, and adequate systems for measuring, metering, monitoring and reporting on water resources (COAG 2006b).

Each state and territory has developed its own implementation plan, in conjunction with the NWC, which was established to help implement water reform and advise COAG on national water issues generally. The NWC also monitors progress in the implementation of those plans, which can be viewed on its website. However, implementation across jurisdictions appears to be variable.

As required by the inter-governmental agreement (NWI 2004, para. 106), the NWC is currently undertaking the first biennial assessment of the progress of governments in implementing the NWI. Its assessment has been informed by over 100 public submissions and will be completed in mid-2007. The third biennial assessment, scheduled for 2010–11, is to involve a comprehensive review of the inter-governmental agreement (NWI 2004, para. 106(b)).

Over recent years, considerable work has been undertaken in all jurisdictions on the many economic, technical and scientific issues involved. Reports have been prepared into supply augmentation options for urban and rural water supplies, measures to improve water use efficiency, water trading arrangements and so on. Research is also shedding light on areas where information has been incomplete, such as the relationship between surface and ground water, to help avoid over-allocation of total water resources (Evans 2007). Private sector bodies such as the Business Council of Australia have also prepared policy reports on some of these matters. A Senate inquiry reported in December 2006 on Water Policy Initiatives.

During 2007, negotiations between the Australian Government and relevant states and the ACT continued over the future of water use in the Murray–Darling Basin. In August 2007, Parliament passed legislation permitting the Australian Government to take control of the Murray–Darling Basin, with an intergovernmental agreement to be negotiated with relevant states and the ACT. The Australian Government said it will now commence funding a range of water efficiency projects under its National Plan for Water Security (Howard 2007).

Assessment

From the viewpoint of this regulatory review, water policy is a field in which considerable changes are occurring across all jurisdictions. Water reform is very much work-in-progress, with governments working on an extensive policy agenda to an agreed ten-year timeline (2004–2014). Many interrelated policies are being introduced incrementally, and the pace of policy change is different among jurisdictions. It will take time for the practical consequences of these policy developments to be absorbed. Meanwhile, knowledge about some aspects of the water cycle, such as the relationship between surface and ground water, is improving and may influence future policy choices.

Nevertheless, there is national agreement about the need for: secure and well-defined property rights in water; removal of institutional barriers to trade in water; arrangements to ensure that water systems are not over-allocated; and the reservation of sufficient water for environmental needs. Governments separately have made public commitments to meet their responsibilities under the NWI.

There is also an agreed process by which governments report regularly (and publicly) on progress in implementing these commitments, including by discussions within COAG. In addition, the Natural Resource Management Ministerial Council[6] is required to provide annual reports to COAG on progress by jurisdictions in implementing the NWI (para. 104), and as noted, the NWC is to undertake biennial reviews. Once the first biennial review by the NWC is publicly released, it may give a guide to areas where improvements could be made in a manner consistent with the broader NWI framework.

Regulatory regimes, however, need to be developed in accordance with best practice principles to ensure that current fragmentation and complexity is overcome and that new regulation does not impose unnecessary burdens or overlaps. Importantly, pricing and trading regimes should facilitate market transactions and prices should reflect scarcities and encourage allocation of water to its highest value uses. The greater the number of exemptions, the harder it will be to achieve environmental and economic goals. It is essential that the regulatory framework be established in a timely manner and provide greater certainty over ownership/entitlements and trading rules.

DRAFT RESPONSE 3.31

Development of the national framework for water has the capacity to address concerns and avoid unnecessary burdens provided that best practice policy design is applied. In particular, the new national framework for water should facilitate market transactions so that scarce resources go to their highest value uses and any exemptions from the framework should be fully justified. Ongoing monitoring and evaluation of progress will be important.

3.22 Other concerns

A number of other concerns were raised, either in submissions or in discussions with participants:

- The requirement that most farm insurance policies require compliance with Australian Standards for all farm equipment as a general condition of policy and non-compliance gives the insurer the ability to refuse a claim (sub. 1). Australian Standards Australia have approached insurers through the Insurance Council of Australia to clarify this issue. From the view point of this review, these concerns

6 The record and resolutions of the Natural Resource Management Ministerial Council meeting of 24 November 2006 can be seen at http://www.mincos.gov.au/pdf/nrmmc_res_11.pdf. The discussion of water issues arising from the NWI are at pages 104–160.

related to the commercial operations of insurance companies and their relations with policyholders rather than government regulation.

- The complexity of completing the business activity statement was said to be deterring farmers from claiming fuel tax credits, although the NFF was encouraged by the efforts of the ATO to streamline its systems and reduce reporting burdens for businesses (sub. 24).
- Unincorporated farms being unable to access the Australian Government industrial relations arrangements (sub. 24). However, such benefits are assessed at the individual farm level against the taxation-related benefits and access to income support arrangements that are available to farming businesses who operate as a sole trader, partnership or trust. The overwhelming majority of farming enterprises have decided to remain unincorporated.
- Problems with AQIS' administration of the export program governing aquaculture products including the fees it charges, its communication and consultation with the aquaculture sector, and its approach to coordinating export requirements across the aquaculture sector (sub. 16, sub. 18).
- Inaction with the implementation of the Great Barrier Reef Plan (sub. 15).

Where appropriate the Commission will seek further information from the relevant government agencies. It also invites participants to comment on these matters.

4 Mining, oil and gas

4.1 Introduction

The Mining Division of the *Australian and New Zealand Standard Industrial Classification* (ANZSIC) covers business units involved in exploration and extraction of naturally occurring mineral *solids*, such as coal and ores; and also *liquid* minerals, such as crude petroleum; and *gases*, such as natural gas. It also includes beneficiation activities (that is, preparing, including crushing, screening, washing and flotation) and other preparation work customarily performed at the mine site, or as a part of mining activity.

However, the minerals sector's value, or wealth creation, chain goes well beyond exploration and extraction and includes mineral processing (for example, smelting and refining) and commodity transport. The Minerals Council of Australia (MCA) estimates that 'around a third of minerals sector direct activity is outside "mining", as defined for this inquiry' (sub. 37, p. 2).

Any unnecessarily burdensome regulations affecting these downstream activities can have a critical impact on investment decisions and the profitability of the whole sector. In light of this, table 4.1 sets out an indicative 'value chain' for the minerals sector. An equivalent value chain specifically for the petroleum sector is provided in table 4.2. The key areas of Australian Government and State/Territory Government regulatory involvement which affect each stage of these value chains are also identified.

Some areas of regulation affecting the mining, oil and gas sector (for example, general taxation measures, corporations and workplace/industrial relations laws, trade and customs; foreign investment guidelines; financial regulation) are not specifically noted in the tables because they are of a generic nature and they impact broadly throughout the value chain. Although in some cases these areas of regulation are potentially a major source of burden for the sector, the Commission has taken the view that they do not have a particular or discriminatory impact on the sector that would justify a detailed consideration in this year's review.

Table 4.1 **Minerals sector value chain and the impact of regulations**

Key Australian Government involvement/regulation	*Key stages of mining and mineral cycle*	*Key state/territory government involvement/regulation*
• allocation of exploitation and production rights offshore under Australian Government jurisdiction in waters beyond the three nautical mile limit (administration delegated to states and territories for joint administration) • Atomic Energy Act and NT Self Government Act determine Commonwealth's ownership of uranium in the NT	**Ownership of minerals**	• allocation of exploitation and production rights onshore and in coastal waters to three nautical miles (except NT in respect of uranium — NT Self Government Act) • Aboriginal Land Rights (NT)/Native Title (elsewhere)
• access for exploration purposes offshore beyond three nautical miles (administration delegated to states and the NT but major decisions jointly taken) • native title • Aboriginal land rights (Australian Government responsibility in NT only) • Aboriginal & Torres Strait Islander cultural heritage • non-indigenous cultural heritage • natural heritage, world heritage • international treaties and conventions covering natural and cultural heritage • pre-competitive geoscience programs — generating and disseminating geoscientific information • mineral property right/allocation system under *Offshore Mineral Act 1994* (jointly administered by States and NT) • environmental protection and biodiversity conservation (EPBC) Act • national frameworks for OHS, including National Mine Safety Framework	**Exploration**	• access to land for exploration purposes onshore and in "coastal waters" • laws relating to Aboriginal and Torres Strait Islander cultural heritage, archaeological & Aboriginal relics, sacred sites • natural heritage • native title • Aboriginal land rights in NT • mineral property rights/allocation system (onshore and "coastal waters") • pre-competitive geoscience programs — generating and disseminating geoscientific information • environmental protection/assessment and link to EPBC Act • planning approval • landowner compensation arrangements • Occupational health and safety (OHS) requirements

(Continued next page)

Table 4.1 **(continued)**

Key Australian Government involvement/regulation	*Key stages of mining and mineral cycle*	*Key state/territory government involvement/regulation*
• uranium mining permits (NT only and through EPBC Act for all new uranium mining) • native title • Aboriginal land rights in NT • cultural heritage • environmental assessments for matters of national environmental significance (EPBC Act) • national frameworks for OHS, including National Mine Safety Framework	**Mine approval**	• environmental assessments, including native vegetation • planning approval, land use planning, retention/works licenses • approvals required under state agreements for specific large projects • Aboriginal land rights in NT • cultural heritage • access to land • landowner compensation arrangements • OHS requirements • offsetting requirements
• native title • Aboriginal Land Rights in NT • national frameworks for OHS, including National Mine Safety Framework • access to capital, including tariff concessions and project by-laws • links through APEC and bilateral investment promotion and protection agreements • EPBC Act (for project expansions/extensions)	**Mine development and construction**	• mining/retention licences for the full recovery of minerals from the licence area and for associated works outside the area of the principle licence • infrastructure — transport facilities (railways, ports, landing strips, pipelines, large conveyor systems and roads), townships and supporting services (electricity, water and sewerage) • environmental, planning, safety and other regulations • building regulations • OHS requirements • native title • Aboriginal land rights in NT
• national frameworks for OHS, including National Mine Safety Framework • National Water Initiative • emissions/greenhouse policies • other environmental requirements (EPBC Act) and National Environmental Protection Measures • heritage • research and development incentives • royalties (offshore – shared with relevant state) • royalties (onshore – uranium in the NT only) • national frameworks for OHS, including National Mine Safety Framework	**Mining, primary processing and ongoing mine-site rehabilitation**	• OHS requirements • water access and discharge • energy regulation • royalties • rehabilitation bonds/financial surety • local Government rates and charges • environmental and social regulations • transport regulation • quarantine • contaminated sites legislation • OHS requirements

(Continued next page)

Table 4.1 **(continued)**

Key Australian Government involvement/regulation	*Key stages of mining and mineral cycle*	*Key state/territory government involvement/regulation*
• national land transport regulatory frameworks • quarantine • research and development incentives • National Environment Protection Measures	**Secondary processing where required**  **smelting/ refining** **other**	• environmental requirements/approval procedures • transport regulation, including coastal shipping • energy regulation • quarantine • contaminated sites legislation • water access and discharge • OHS requirements
• national land transport regulatory frameworks • shipping and maritime safety and environmental laws • international maritime codes and conventions • competition laws/access regimes • export controls (uranium) • quarantine • export incentives	**Transport to final consumers — shipping and logistics; sales/customer management** 	• transport regulation, including coastal shipping • government owned public/private transport infrastructure • competition laws/access regimes • OHS requirements • environment regulation
• environmental requirements relating to rehabilitation of site (matters of national environmental significance triggering EPBC Act) • national frameworks for OHS, including National Mine Safety Framework	**Mine closure and site rehabilitation** 	• environmental requirements relating to rehabilitation of site • closure requirements • contaminated sites legislation • OHS
environmental requirements relating to rehabilitation of site under EPBC Act	**Tenement relinquishment to Crown**	• environmental requirements relating to rehabilitation of site • bonds/financial surety relinquishment • sign off on closure for relinquishment

Source: Various, including MCA, sub. 37, p. 2., offshore exploration and mining legislation.

Table 4.2 **Petroleum sector value chain and the impact of regulations**

Key Australian Government regulation/policy area	*Key stages of mining and mineral cycle*	*Key state/territory government involvement/regulation (responsible for onshore and coastal waters)*
• allocation of exploitation and production rights offshore under Australian Government jurisdiction in waters beyond the three nautical mile limit (administration delegated to states and territories for joint administration)	**Ownership of resource** 	• allocation of exploitation and production rights onshore and in coastal waters to three nautical miles
• exploration permit (jointly administrated with states and the NT) • Aboriginal land rights (Aust Govt responsibility in NT only) • native title • Aboriginal & Torres Strait Islander cultural heritage • natural heritage, world heritage • international treaties and conventions covering natural and cultural heritage • geoscience programs — generating and disseminating geoscientific information • petroleum property right/allocation system under Petroleum (Submerged Lands) Act (PSLA) (jointly administered with states and the NT) • environmental protection and biodiversity conservation • national occupational health and safety (OHS) framework regulated by National Offshore Petroleum Safety Authority (NOPSA) for drilling activities. • Offshore Petroleum (Safety Levies) Regulations (NOPSA) • survey and drilling approvals	**Exploration (surveys and drilling etc)** 	• exploration permit • native title • PSLA legislation in coastal waters • laws relating to Aboriginal and Torres Strait Islander cultural heritage, archaeological & Aboriginal relics, sacred sites • natural heritage • mineral property right/allocation system • geoscience programs — generating and disseminating geoscientific information • environmental protection/assessment • state OHS legislation and onshore acts • survey and drilling approvals
• PSLA regulations — Management of Environment, Well Operations, Data Management, Management of Safety on Offshore Facilities, diving safety, OHS; Schedule of Specific Directions • NOPSA safety levies • field development plans • production licence • infrastructure licence • drilling approvals • native title • cultural heritage • environmental assessments, including Environment Protection and Biodiversity Conservation (EPBC) Act	**Development (drilling wells/platform design and construction)** 	• field development plans • production licence • drilling approvals • environmental assessments, including native vegetation • planning approval, land use planning • approvals required under state agreements for specific large projects • native title • cultural heritage • state OHS legislation, PSLA and onshore acts

(Continued next page)

Table 4.2 **(continued)**

Key Australian Government regulation/policy area	*Key stages of mining and mineral cycle*	*Key state/territory government involvement/regulation (responsible for onshore and coastal waters)*
• PSLA Management of Environment, Well Operations, Data Management, Datum, Pipeline, Diving Safety, OHS and Management of Safety Regulations • EPBC Act • pipeline licence • pipeline management plan • consent to construct • validation of pipeline proposal • construction environment plan • offshore occupational health and safety (NOPSA) • NOPSA safety levies • Navigation Act • Fisheries Act • quarantine • Radiocommunications Act • various environment protection legislation/regulations eg Sea Dumping, Prevention of Pollution, Prescribed Waste • radiation safety • offshore facilities security • Links through APEC and bilateral investment promotion and protection agreements	**Pipeline design and construction** ⬇	• pipeline licence • pipeline management plan • consent to construct • validation of pipeline proposal • construction environment plan • infrastructure — transport facilities (railways, ports and roads), townships and supporting services (electricity, water and sewerage) • environment protection Acts • building regulations • state OHS legislation, PSLA and onshore acts
• Aboriginal land rights (Aust Govt responsibility in NT only) • PSLA Management of Environment, Pipelines, OHS, Well Operations, Data Management, Management of Safety on Offshore Facilities, Pipelines, Diving Safety and OHS Regulations • pipeline management plan • consent to operate • offshore OHS — NOPSA • NOPSA safety levies • Navigation Act • offshore facilities security • quarantine • emissions/greenhouse policies • other environmental requirements • heritage • research and development incentives • petroleum resource rent taxation (offshore) • crude oil and LPG excise • petroleum royalties (North West Shelf) • resource rent royalty (Barrow Island – administered by WA)	**Production/ pipeline operation** ⬇	• pipeline management plan • consent to operate • occupational health and safety requirements • energy regulation • royalties • local Government rates and charges

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Table 4.2 **(continued)**

Key Australian Government regulation/policy area	*Key stages of mining and mineral cycle*	*Key state/territory government involvement/regulation (responsible for onshore and coastal waters)*
• national gas pipelines access law and code • national land transport regulatory frameworks • shipping and maritime safety laws • research and development incentives	**Transportation to terminal/sale of crude oil/gas**	• environmental requirements/approval procedures • transportation regulation • energy regulation
• petroleum product excise tax • fuel tax credits • Fuel Quality Standards Act (to address air quality, health, and operability requirements)	**Refining — conversion of raw primary gas/oil into petrol, diesel etc**	
• Mandatory Oil Code under Trade Practices Act • Liquid Fuel Emergency Act • international maritime codes and conventions • competition laws/access regimes • export incentives	**Sales/customer management** **Fuel distribution and retailing**	• transport regulation • government owned public/private transport infrastructure • access regimes • Queensland fuel subsidy scheme • consumer protection
• environmental requirements relating to rehabilitation of site — eg PSLA Management of Environment, Pipeline, and Well Operations Regulations and EPBC Act • offshore OHS— NOPSA • NOPSA safety levies • Sea Dumping Act • PSLA	**Decommissioning phase**	• environmental requirements relating to rehabilitation of site • state OHS legislation, PSLA legislation in coastal waters and onshore Acts

Source: Various, including APPEA, sub. 40.

There are also risks inherent in recommending reforms in some areas of regulation (for example, taxation) without a careful consideration of the whole economy impacts and the possible distortions that might be created by piecemeal changes.

Government policies and regulation relating to occupational health and safety (OHS) as well as education and trade skills development could also fit into this category. Both these areas of regulation have impacts on businesses across the

economy and there is an argument for covering them in year 5 with other generic areas of regulation. However, evidence presented to this review suggests that particular aspects of these issues are among the highest priority areas of concern for businesses in the minerals sector.

Another major concern for the sector is transport bottlenecks. Regulation is just one of many factors contributing to these problems. Transport regulation affects other businesses in the primary sector (agriculture, fisheries, forestry and aquaculture) as well as in other sectors, especially those in manufacturing, wholesale and distributive trades, which the Commission has been asked to study in year 2. And of course the direct burden of transport regulation in the first instance falls on businesses engaged in providing transport services — the relevant ANZSIC subdivision covering transport will be reviewed in year 3. However, there are particular elements of the transport infrastructure that are exclusively or largely used by businesses in the primary sector and in some cases the minerals sector only (certain rail and port infrastructure).

Accordingly, given their importance to the mining, oil and gas sector this chapter does include some analysis of concerns raised in relation to OHS; transport infrastructure; and labour skills and mobility. However, in each of these areas a full analysis of reform options is best deferred to a subsequent year.

Role of the Australian Government

Broadly, government regulation specifically covering mining, oil and gas activities has the following objectives:

- natural resource management — ensuring exploitation of the resource is carried out in a way that is compatible with its efficient long-term recovery and providing an appropriate return to the community from the granting of exploitation rights
- ensuring the safety of workers
- protection of the environment.

The Australian Government is responsible for mineral and petroleum resources in Australia's *offshore* areas beyond three nautical miles[1] and for uranium in the Northern Territory. In all other cases, resources located on land or in 'coastal' waters — areas in the zone within three nautical miles of the coast — are the

[1] In accordance with the United Nations Convention on the Law of the Sea, Australia has a 200 nautical mile Exclusive Economic Zone around continental Australia and its territories.

responsibility of the relevant state or territory government. Mining of offshore minerals (including petroleum) is carried out under common offshore regimes, with complementary Australian Government and State/Northern Territory offshore legislation in place for exploration and development.

Although the Australian Government regulates offshore mining (other than petroleum) activity through the *Offshore Minerals Act 1994*[2], historically there has been very little exploration and no production of minerals in offshore waters.[3] Thus, in practice the regulatory framework has, to date, not had a significant impact. In contrast, more than 90 per cent of Australia's oil and gas resources are found in Commonwealth (offshore) waters (APPEA 2007, p. 6). Thus, Australian Government regulation of the petroleum sector (section 4.3) has a major impact on business operations.

However, even where the Australian Government has jurisdictional involvement through ownership of the resources, day-to-day administration is typically carried out by state or territory governments through a system of designated and joint authorities.

Tables 4.1 and 4.2 highlight the relative roles of the Australian Government and state/territory governments. Most of the regulation affecting the operations of businesses in the minerals and petroleum sector (onshore) is imposed by state/territory governments.

The relative importance of state regulation was clearly evident from consultations, including a mine visit used as a case study for the review (box 4.1). Members of the review team visited Cadia Valley Operations in Orange, New South Wales (a gold and copper mining operation) with a view to getting a more detailed insight into the particular regulations affecting the different stages of the operation. While recognising their experience and the information gathered is not representative of different types of mining operations, or indeed similar operations in different jurisdictions, it nevertheless provided useful background for the analysis elsewhere in this chapter, and in particular to an understanding of the sector's 'value chain'.

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2 In addition, six associated Acts provide for the payment of royalties, fees for registration, exploration, retention, mining and works licences.

3 In recent years there has been growing interest in offshore minerals *exploration* in Australian waters as developments in processing have enabled areas previously thought to be impossible to mine to be considered.

Box 4.1 **Case study — key regulatory burdens affecting a metal ore mining operation**

In addition to a number of concerns relating to general taxation measures (including aspects of GST and FBT compliance) and industrial relations laws, which are not being examined by the Commission in this first year of the review program, Cadia Valley Operations raised specific concerns in the following areas, the most significant of which stem from state government legislation.

Occupational Health and Safety

A large number of regulatory requirements in this area generate direct costs and create obstacles to the free movement of people across jurisdictions. Even within jurisdictions, the discretion given to regulators under broadly specified requirements leads to inconsistent interpretations. Issues include:

- Explosives handling licenses — for Cadia this leads to license fees of around $30 000 and the equivalent of 60 person days organising licenses for staff, training, establishing competencies etc.
- Non-recognition of interstate qualifications — in some cases this is due to regulatory differences, but on occasions for hazardous occupations, it can be a company policy response to managing a 'duty of care' that is not well defined.

Other differences in regulation across states

- A vehicle fitted out as an ambulance and approved for use at the Company's mining operation in WA was off the road for 7 weeks because the NSW Roads and Traffic Authority would not accept the WA compliance plate.
- Human resource laws — for example, around recognition of accrued long service leave entitlements.

Royalties

The ad valorem royalty scheme in NSW necessitates complex calculations and separate accounting for depreciation (that is, inconsistent with tax and accounting depreciation guidelines). Cadia was required to invest in new tailored software and government auditors also incur unnecessary costs. Alignment with the simple percentage of revenue method used in most other states would reduce costs.

Environmental issues

Cadia estimates that its operations are subject to some 700 licences, permits and consents imposing environmental requirements relating to emissions, waste, noise, dust, flora, fauna, site rehabilitation etc. The intersection of the Commonwealth EPBC Act requirements and NSW legislative requirements are generally considered to be working well under the bilateral agreement on assessments, although under-resourcing of the Australian Government Department of Environment and Water Resources still leads to some delays.

(Continued on next page)

Box 4.1 **(continued)**

Ongoing certainty of access to water is crucial and Cadia emphasised the importance of a clear and consistent regulatory regime and the need to address the multitude of agencies across different levels of government with a role in determining water allocations and usage. Better coordination across governments was also required in the area of greenhouse policies, with a large number of different strategies and schemes leading to inconsistencies and confusion.

Transportation

Driver fatigue legislation and other requirements that nominate mining companies as part of the 'chain of responsibility' place an unreasonable burden on the industry. Firms are being asked to accept liability for actions they can have little practical influence over.

Other issues

Other matters raised that specifically related to Australian Government regulation included:

- Diesel fuel excise rebate — the cost of compliance resulting from complex record keeping leads to some legitimate fuel expenses not being claimed, that is, the cost of monitoring usage and recording keeping for vehicles that are used both on site (off road) and on road are judged to outweigh the benefit of the rebate.
- ABS statistical collections — the burden associated with compiling and submitting information is exacerbated because of the requirement to sort and present the data in a specific manner that is inconsistent with normal company practice and accounting standards;
- Research and development assistance — the paper work burden is considered too onerous and requires the engagement of external consultants.

Source: Interviews with management and staff at Cadia Valley Operations, Orange.

As concerns about *general* mining regulation relate mainly to the regulations governing *onshore* activities, which fall within the jurisdiction of the states and territories, they are outlined only briefly below.

An audit of onshore minerals regulations commissioned by the MCA (URS 2006) found that regulations for exploration, mining project and environmental approvals are complex, inconsistent and poorly administered. For mining companies which operate across states and territories, having to deal with several different regulatory regimes can impose a major cost burden.

In its submission to this study, MCA made the following observations based on the audit findings:

[the audit] confirmed the significant burden on business caused by inefficient and ineffective project approval procedures:

- problems tend to arise in the design of relatively new areas of regulation, such as environmental management, cultural heritage and access to land; and
- poor administration and implementation of regulation imposes unnecessary burdens on business.

Regulatory project approvals in the latter two areas impacting exploration and mining licences are cumbersome, complex and inconsistent undermining smooth and speedy project approvals.

… the different approaches across Australia all add to the time and cost of dealing with multiple regulators and different reporting formats and requirements. (MCA, sub. 37, p. 20)

The Commission notes that in relation to environmental approvals, COAG has recognised the need for nationally consistent, efficient, effective, timely and cost effective approval procedures as a key area for reform across all jurisdictions (section 4.5).

Apart from monetary and fiscal policy and various legislative requirements and policy settings which impact across all sectors of the economy, the Australian Government also impacts on the mining and oil and gas sector through:

- its constitutional power over international trade (customs and issuing of export permits for some commodities, for example, uranium)
- Australian Government environmental legislation — although the states are the main authorities for environmental management within their respective jurisdictions, the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) requires the Australian Government to take an active role in matters of National Environmental Significance
- National Water Initiatives — this is more of a prospective impact than one based on current regulatory involvement (chapter 3)
- Native Title (national framework) legislation governing Indigenous land use
- uranium in the Northern Territory
- transport regulations, including the *Navigation Act 1912*
- fisheries legislation
- quarantine
- generating and disseminating geoscientific information.

The rest of this chapter is organised as follows:

- uranium-specific regulation (section 4.2)
- petroleum regulation (section 4.3)
- access to land, including Indigenous and heritage issues (section 4.4)
- Environmental Protection and Biodiversity Conservation Act (section 4.5)
- National Pollutant Inventory (section 4.6)
- assessment of site contamination (section 4.7)
- climate change policies (section 4.8)
- labour skills and mobility (section 4.9)
- transport infrastructure (section 4.10)
- safety and health (section 4.11).

4.2 Uranium-specific regulation

Australia is a significant exporter in the global market for uranium, with exports worth $546 million in 2005-06, and forecast to reach $630 million in 2006-07 (ABARE 2007). Given the potential risks involved with nuclear materials and the role of uranium as a fuel in the nuclear power process, it is subject to a wide range of regulation.

Complexity of uranium regulations

As with other onshore resources, day-to-day regulation of uranium mining rests with the states and territories. Currently uranium mining is only allowed in South Australia and the Northern Territory (the Australian Government owns the uranium resources within the Northern Territory).

Uranium exports are destined for use in nuclear power generation in countries with which Australia has nuclear safeguards agreements. Therefore, in addition to the involvement of state and territory governments, and beyond the standard regulation of minerals (see above), the Australian Government also has a significant role in the regulation of uranium:[4]

4 For more details, see www.uic.com.au/mineralregulation.htm.

- environmental approvals for new or expanded mines – uranium is an automatic trigger under the EPBC Act
- legislation specific to the Northern Territory (such as the *Environment Protection (Alligator Rivers Region) Act 1978*)
- export approval for radioactive materials
- implementation of international safeguard agreements, including the physical security of nuclear materials
- the protection of human health and the environment from radiation hazards, including the safe transport of radioactive materials
- current Australian Government legislation (including the EPBC Act) also prohibits any fuel fabrication, enrichment or nuclear power plants in Australia.

Assessment

The uranium industry, and its regulation, have been the subject of three recent reviews. The *Report of the Uranium Industry Framework Steering Group*[5] (the UIF) — involving both government and industry — was released in November 2006. It focused on rationalising environmental approvals, a national reporting regime for uranium mines and removing impediments to the transport of uranium. The UIF has recently (23 January 2007) formed an implementation group to progress reforms.

In 2006, a House of Representatives standing committee report, *Australia's Uranium – Greenhouse Friendly Fuel for an Energy Hungry World*[6] looked at, among other things, minimum effective regulation for uranium mining across Australia and streamlining land access approvals.

The Prime Minister's Taskforce — *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?*[7] — concluded in relation to regulation that:

> Regulation of uranium mining needs to be rationalised … A single national regulator for radiation safety, nuclear safety, security safeguards, and related impacts on the environment would be desirable to cover all nuclear fuel cycle activities. (PMC 2006, p. 117)

[5] http://www.industry.gov.au/assets/documents/itrinternet/Uranium_report20061120135026.pdf.

[6] http://www.aph.gov.au/house/committee/isr/uranium/report.htm.

[7] http://www.pmc.gov.au/umpner/reports.cfm.

Following these reviews, the Australian Uranium Association (AUA) commented that it is:

> … satisfied that the regulatory regime applied to the industry has been well studied, and … will support the current reform processes in the endeavour to produce a fit-for-purpose regulatory arrangement which reconciles the roles of the Commonwealth and the States and Territories. (sub. 33, p. 1)

DRAFT RESPONSE 4.1

Following three recent reviews of uranium regulation, reform is progressing to implementation. There appears to be little to gain from further examination of general uranium regulation at this stage.

Uranium under the EPBC Act

Despite general satisfaction with the recent reviews, the AUA believes that there are two outstanding matters which were not dealt with under the previous reviews. The first relates to the status of uranium mining as an automatic trigger under the EPBC. The AUA noted that:

> The other matters of national environmental significance specified in the EPBC Act — world and national heritage areas, wetlands, threatened and migratory species, marine environment — all possess inherent characteristics that make them valuable per se from a national environmental perspective. (sub. 33, p. 2)

And as such, they believed that this implied that:

> … uranium mining is included in the definition of 'nuclear actions' on the basis of the assumed environmental impact of the physical properties of uranium ore per se. (sub. 33, p. 2)

The AUA sought clarity for the basis of this treatment, submitting that:

> … the physical properties of uranium ore that account for its treatment under national environmental legislation need to be identified in a review so as to provide an informed, clear and public basis for that treatment. We submit also that such a study could usefully extend to an examination of the implications of the physical properties of uranium for employee and public health and safety. (sub. 33, p. 2)

They recommended that this study, examining the environmental, health and safety risks inherent in physical properties of uranium, be conducted by authorities such as the Chief Scientist of Australia and the Chief Medical Officer. (sub. 33, pp. 2–3)

The Commission supports a science-based assessment of the current treatment of the mining of uranium to ensure that it is based on a proper evaluation of the up-to-date scientific evidence of the risks (and potential costs) involved with the activity.

DRAFT RESPONSE 4.2

There should be a science-based assessment of the risks involved in uranium mining. This should form the basis for evaluating whether uranium should continue to be an automatic trigger for national environmental assessments under the EPBC Act. This review should be conducted by the Chief Scientist of Australia, with the involvement of the Chief Medical Officer.

Duplication in export permits

Secondly, the AUA raised an issue of duplication in regard to uranium export permits. The AUA questioned:

> …whether the continued inclusion of mining and environment-related conditions in export permits is necessary. It would seem more appropriate for environmental conditions to be imposed under an environmental protection Act, and uranium security conditions to be imposed under safeguards-related regulation. This would be clearer and guard against duplication. (sub. 33, p. 3)

Assessment

Export permits are required under the *Customs (Prohibited Exports) Regulations 1958*, and are issued by the Department of Industry, Tourism and Resources (DITR), in consultation with the Australian Safeguards and Non-proliferation Office (ASNO). Before an export permit can be issued, both safeguards and environmental requirements must be met.

Safeguards clearances (which monitor the possession and movement of uranium) must be obtained from ASNO before a permit can be issued by DITR. The ASNO, located within the Foreign Affairs and Trade portfolio, is responsible for:

> … nuclear safeguards and physical protection. ASNO ensures that **nuclear materials** — uranium, thorium and plutonium — and **nuclear items** —facilities, equipment, technology and nuclear-related materials — are used only for authorised purposes, are properly accounted for, and are protected against unauthorised use. An important part of this responsibility is ensuring that Australia's treaty commitments are met, particularly that nuclear activities are conducted for exclusively peaceful purposes. (ASNO 2006, p. 31)

Export permits form one component of Australia's safeguard requirements. Uranium export policies aim to ensure that uranium exports are only used for non-military purposes. As such, Australia generally requires its trading partners to be party to international safeguards agreements — usually as a signatory to the Treaty on the

Non-Proliferation of Nuclear Weapons — as well as requiring bilateral safeguards agreements between the destination country and Australia (UIF 2006). Given the international characteristics of safeguard arrangements, the Commission believes it is appropriate that safeguard-related information and conditions are required at the point of export, to assist in the effective tracking of the movement of uranium. Additionally, it is appropriate that this function is conducted by ASNO as they are responsible for monitoring Australia's compliance with international treaty obligations.

The ability to impose environmental requirements currently resides with two Ministers, leading to the potential for duplication between the two. First, the Minister for Industry, Tourism and Resources can impose them under the Customs (Prohibited Exports) Regulations:

> Amendments to the [Customs (Prohibited Exports)] regulations were made in 2000 to strengthen Australian Government control over uranium exports by providing the Minister for Industry, Tourism and Resources with a clear and administratively efficient mechanism by which the Minister can place legally binding conditions, including mine-site environmental conditions, on the export of uranium. …
>
> [additionally] Prior to the EPBC Act, proposals were assessed under the now repealed *Environmental Protection (Impact of Proposals) Act 1974* (the EPIP Act) but were not subject to approval under that Act. Export licences were issued by the Australian Government Minister for Industry, Tourism and Resources taking into account the results of the EPIP Act assessments and these approvals remain valid. (UIC 2006, pp. 2–3)

Second, the Minister for Environment and Water Resources has the power to impose environmental requirements on uranium mines under the EPBC Act, both for any new mines, as well as affecting existing mines:

> … any major expansion, intensification or modification from the operation as approved would likely trigger the provisions of, and be subject to assessment under, the EPBC Act. The proposed expansion of the Olympic Dam mine in South Australia is currently being assessed under the EPBC Act. (UIC 2006, p. 2)

This situation may eventually resolve over time, as future uranium mines will be assessed under the EPBC Act, effectively consolidating environmental requirements. However, unless they undergo significant expansion or modification, the current uranium mines will remain under existing arrangements. Such potential duplication can lead to significant costs and delays to uranium mining companies, without any additional effectiveness in the pursuit of environmental protection. As such, the Commission believes that it is appropriate that the assessment of all environmental conditions relating to the export of uranium — including any new or renewed approvals for current mines — are consolidated under the EPBC Act.

The Commission notes that the UIF review recommended the development of 'a coherent and consistent policy framework' for the regulation of the uranium industry (UIF 2006, p. 8, Recommendation 9) as well as consideration of the most efficient arrangements to discharge responsibilities under the EPBC Act (UIF 2006, p. 8, Recommendation 10). In progressing these recommendations, the Commission would encourage the UIF implementation group, as part of its focus on regulation, to examine means to consolidate the environmental requirements for export permits into the EPBC Act, ensuring that approval from the Department of Environment and Water Resources (DEW) is sufficient to satisfy any environmental requirements for export permits.

DRAFT RESPONSE 4.3

The assessment of environmental conditions for export permits should be consolidated into approvals under the EPBC Act, ensuring that approval from the Department of Environment and Water Resources is sufficient to satisfy any environmental requirements for export permits.

4.3 Petroleum regulation

Introduction

The Australian Government is responsible for petroleum resources in Australia's *offshore* areas beyond three nautical miles. These activities are currently governed by the *Petroleum (Submerged Lands) Act 1967* (PSLA Act). There is equivalent legislation at the state and territory level, so that the exploration and development of offshore petroleum is carried out under a uniform offshore regime applying in both Australian Government and state/NT jurisdictions.

The PSLA provides for orderly exploration and development of petroleum resources, and sets out a basic framework of rights, entitlements and responsibilities of governments and industry. Under the legislation all titleholders must carry out operations according to good oilfield practice, including doing so safely and preventing the escape of petroleum into the environment.

Petroleum located on land or in coastal waters — areas in the zone within three nautical miles of the coast — are the responsibility of the relevant state or territory government. Thus, state and territory governments, *inter alia*:

- manage access to land for exploration and issue exploration licences
- allocate petroleum property rights

- have primary responsibility for land administration
- regulate operations (including environmental and OHS)
- collect royalties.

As noted above, Australian Government regulation has a major impact on business activity because more than 90 per cent of oil and gas resources are found in Commonwealth (offshore) waters, although state and Northern Territory regulators have a significant influence on compliance costs associated with this regulation as the designated authorities for day-to-day administration.

Recent reforms (some of which are ongoing) to the Australian Government legislation and regulations, include:

- a significant restructuring and rewrite of the legislation and its passage through the Commonwealth Parliament in the form of the *Offshore Petroleum Act 2006* (OPA) and associated Acts to reduce compliance costs for industry and administration costs for governments. It will be proclaimed to cover Commonwealth waters once the remaining states have passed equivalent legislation (this process is due to be finalised by the end of 2007)[8]
- since 1994 the Australian Government has been replacing prescriptive rules under the 'Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production in Waters under Commonwealth Jurisdiction' (the Schedule) with a system of activity-focused objective-based regulations
- a review of the Petroleum (Submerged Lands) (Management of Environment) Regulations in 2005
- single-purpose regulations under the PSLA have been harmonised to ensure that a similar approach is used in each, such as the use of risk management plans and some alignment of reporting requirements
- responding to the industry's concerns and the Regulation Taskforce findings, DITR recently initiated a legislative project to significantly consolidate and streamline single-purpose regulations, with a view to merging some of them.

The last-mentioned review has involved extensive consultation with the industry and government agencies. The project is seeking to identify 'areas of duplication, regulatory overlap and grey areas, overly onerous approval processes, duplicative reporting requirements and any other issues which might be impacting on industry', such as regulatory creep, management and development plans, consents, the role of guidelines and clarity, transparency and consistency in regulations and guidelines.

8 The PSLA continues to operate until the new Act is proclaimed.

Some recommendations are likely to be implemented before the end of the year (Western Australian Department of Industry and Resources, sub. 36, p. 2).

DITR's review provides a means by which to address some of the concerns raised in the context of this current assessment of regulatory burdens.

Concerns raised by the Australian Petroleum Production and Exploration Association (APPEA) in its submission to this study (sub. 39) were focused broadly on the operation of the petroleum regulatory framework as a whole:

- a multiplicity of approval requirements and regulatory bodies, including duplicative regulations
- some concerns relating to the transition to objectives-based regulation
- long and uncertain approval time lines
- inconsistent interpretation and administration of regulations across jurisdictions.

Each of these is discussed below.

Too many approvals, regulatory bodies and too much duplication

A particular concern relates to the duplicative requirements that industry must meet for activities involving pipelines crossing from Commonwealth waters to one or more state onshore jurisdictions for processing. This reflects a special characteristic of many oil and gas projects.

With regard to the whole regulatory framework, including requirements imposed by different jurisdictions, APPEA has stated:

> Every step in the exploration, development and production of crude oil and natural gas is highly regulated … In every jurisdiction … the industry must potentially meet hundreds of requirements relating to timing, location, environment protection, worker and public safety, and management and extraction of the resources … (sub. 39, p. 4)
>
> ... to develop any of these projects requires extensive teams of potentially dozens of highly trained people to shepherd the approvals through the company, engage with government, engage with scientists, engineers and other specialist contractors and of course engage in consultation with local communities. (sub. 39, p. 7)
>
> The length and complexity of the multi-jurisdictional approvals regime is contributing to an international perception that Australia is a difficult place to invest in oil and gas exploration and development. This is reducing Australia's competitiveness for petroleum investment. (2007, p. 63)

Some requirements are duplicated across jurisdictions and unless characteristics of different regions vary so much as to require different regulatory responses, impose unnecessary costs:

> In many of the states and territories, there are often duplicated requirements that industry must follow for a given activity for each of the respective jurisdictions. (APPEA, sub 39, p. 4)
>
> … unnecessary and/or duplicative regulations can have a significant impact upon the oil and gas industry … resulting in an international perception that Australia is a difficult place to invest. (APPEA, sub. 39, p. 4)

An indication of the burden imposed by the multiplicity of approvals required for petroleum projects, and the number of regulatory agencies involved, is provided by the case studies presented in table 4.3.

As the table shows, the regulatory approvals required for petroleum projects can vary considerably, from roughly 40 to nearly 300 approvals. Of note is the number of pipeline approvals, comprising between 20 and 50 per cent of approvals required for projects involving pipelines. In addition, firms must also deal with multiple regulatory agencies. Each of the first three, more standard, projects involved dealing with roughly 20 agencies, while the case of the floating production facility required dealing with only six agencies.

Managing numerous approvals with various agencies imposes considerable costs on firms. For instance, in case study 2, APPEA estimated that the cost of meeting regulatory requirements included:

- approximately 6 man years overall for the internal management by the operator of all 163 approvals and regulatory requirements;
- 54 man months of the internal management and coordination of all health, safety and environmental approvals; and
- engagement of contractors for the drilling and pipeline approvals totalling over $100,000. (sub. 39, p. 9).

While for case study 3, the costs involved:

- Environmental approvals (EPBC and PSLA) that have cost approximately $200,000 in environmental consultants fees as well as 5 man-months of time from the operator;
- Production licence, Field Development Plan, Pipeline Management Plans, Pipeline Licence that have required about 8 man-months of time from the operator to prepare;
- Installation Vessel Safety Case Revision, Dive Management Plan and supporting HSE [Health, Safety and Environment]management plans and procedures for installation that have cost around $200,000 in consultancy fees; and
- HSE assessments in design for the operation have cost a further $300,000 in consultancy fees. (APPEA, sub. 39, p. 10)

Table 4.3 **Case studies – regulatory approvals for selected petroleum projects**

	Case study 1	*Case study 2*	*Case study 3*	*Case study 4*
Description	Natural gas in Commonwealth waters, pipeline through state waters to onshore processing, liquefaction and export	Unmanned oil facility in Commonwealth waters, with a pipeline to onshore processing	Gas entirely in Commonwealth waters, tying into existing onshore gas processing	A floating production, storage and offloading facility in Commonwealth waters[a]
Government agencies – total	**19**	**22**	**17**	**6**
• Australian Government	9	8	14	-
• state and territory governments	10	14	3	-
Regulatory approvals – total	**277**	**163**	**83**	**44**
• Pipeline approvals (including design, construction and operation)	49	61	46	0
• Drilling approvals (including design, construction and operation)	53	18	24	18
• All other approvals (including general project approvals, environmental, health and safety, shipping, storage and processing facilities)	175	84	13	26

a Floating production facilities process the crude oil onsite, which is then offloaded onto a shuttle tanker for transport directly to the customer. As such they do not require any regulatory approvals relating to pipelines.

Source: APPEA, sub. 39, pp. 8-11.

It is important to note that the information provided relates to the total number of approvals and regulatory costs, and does not identify which are unnecessary in whole or part. As the Western Australian Department of Industry and Resources noted, in relation to the Cliff Head project in Western Australia, multiple approvals for one pipeline may be necessary where the pipeline crosses different types of environment, giving rise to a variety of risks:

> This project, for a small offshore oil field in Commonwealth waters, involved construction of an unmanned platform and a pipeline spanning three jurisdictions from the platform to an onshore processing plant from which oil is trucked to the BP Kwinana Refinery.
>
> The safety, environment and public risk factors for the Cliff Head project differ within each jurisdiction. The platform is located within the valuable Western Rock Lobster fishery. The oil pipeline from the platform passes under the coastal reef with a beach crossing before passing through a variety of land tenure, (including a nature reserve), before reaching the processing facility in a disused quarry. The pipe lay issues on the pipe lay barge, (technical, safety and environmental) differ markedly from the pipe lay construction process onshore with the added complexity of a beach crossing. (sub. 36, p. 3)

In addition, further care must be taken as the table contains case studies only, which may not necessarily be reflective of the regulatory approvals required for every petroleum project.

Many of the above concerns relate not only to the Australian Government approvals and other requirements, but also to state and territory onshore regulatory regimes.

Assessment

Australian Government regulation

With regard to offshore petroleum, at the Australian Government level, there has been significant review activity in recent years focused on streamlining both the PSLA and its regulations, as noted above.

The Commission commends DITR's current review, in terms of its objectives, consultative process and anticipated implementation timeframes. The scope for this exercise to result in a substantial consolidation of regulations and streamlining of approval and information requirements is encouraging, but it is vital that this good work translates into actual practical reforms.

However, since the DITR coordinated Review focuses primarily on the PSLA regulations for which it has administrative responsibility, it is unlikely to address

inconsistencies and overlap between Australian Government regulations and regulators outside DITR's area of responsibility, for example in the Environment and Water Resources and Transport portfolios.

Although the industry did not raise specific concerns about the interaction between different Australian Government regulations and agencies, it is highly desirable that the relevant departments liaise closely and ensure a coordinated response to reducing unnecessary regulatory burdens on the petroleum sector.

In relation to environmental issues, there remain some duplicative requirements between the PSL (Management of Environment) Regulations and the EPBC Act. Two avenues to address this include: amendments to the EPBC Act, which came into effect in February 2007 (section 4.5), that allow the Environment Minister to take account of the decisions made by other Australian Government Ministers; and the Standing Committee on Environmental Approval Processes for Offshore Acreage provides a forum for DITR and DEW to coordinate policy and actions.

State and territory regulation

There would be benefits if any improvements that enhance the efficiency of the Australian Government regulations were also taken up, where appropriate, by other governments to reduce compliance costs associated with their onshore regimes.

The Western Australian Department of Industry and Resources (sub. 36) has also flagged that any amendments to Australian Government regulations coming out of the consolidation exercise will be mirrored in the WA regulations.

Further, the Commission understands that a number of state governments (for example the WA Office of Development and Approvals Co-ordination) have commenced an examination of the need for more substantial reforms to their regulatory regimes. Ideally any such reform efforts should be coordinated across jurisdictions, with the ultimate objective of harmonisation of regulatory regimes wherever possible.

A national approach?

There is a strong argument for a more national approach to regulation of the sector.

At a minimum, road maps of reporting and regulatory requirements could provide a valuable way to improve transparency of regulatory requirements (Western Australian Department of Industry and Resources, sub. 36, p. 2).

Beyond this, there is a strong case for greater uniformity across onshore and offshore regimes. APPEA suggested two approaches for achieving this. One is to build further on recent successes of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) where stakeholders developed 'a consistent law with regard to decommissioning offshore facilities'. APPEA considered that this provides an 'excellent model for improving the regulatory regime and reducing inconsistency', noting:

> The approach of engaging stakeholders very early in the development of new and critical policy, assessing the existing legal framework, and then basing regulations on the best available science is commended by the industry. Such a process should be mirrored for the development of all critical new policies. This would result in fewer new regulations having unintended consequences or conflicting with or duplicating existing regulations. (Platform for Prosperity, p. 67)

Secondly, APPEA (sub. 39, p. 7) considered that there is the potential for the model of the National Offshore Petroleum Safety Authority (NOPSA) to be adopted for non-safety aspects of petroleum regulation, with a new national regulatory authority established to manage all regulatory approvals for the oil and gas industry. The wider application of the NOPSA model could go further, providing greater scope to coordinate and streamline requirements across jurisdictions and thereby address the duplication of regulatory approvals.

More generally, APPEA have called for a 'detailed and extensive investigation and benchmarking of the Australian petroleum regulation system across all jurisdictions' (sub. 39, p. 7). In its *Platform for Prosperity*, APPEA recommended that such a review should involve:

- a benchmarking of the Australian petroleum regulation system with globally competing provinces, including the United States, Canada, the United Kingdom, Norway, Indonesia and Brazil
- ensuring that the Prime Minister's Taskforce Principles for Good Regulation are adopted
- a consideration of opportunities for streamlining and removing a number of areas of duplication in petroleum regulation, whilst ensuring that governments are able to continue to regulate the industry on the issues that matter to them to provide public assurance
- implementing clear time frames for approvals retained under the new system to further reduce the potential delays arising out of regulatory requirements. (APPEA 2007, p. 63)

The Commission considers that there may be merit in establishing a new national regulatory authority. However, the costs and benefits of alternative models would be best considered in the context of a broader and comprehensive review of the onshore and offshore petroleum regulatory framework and its administration,

including the effectiveness and efficiency of the current Joint Authority and Designated Authority processes.

DRAFT RESPONSE 4.4

A review of the whole Australian onshore and offshore petroleum regulatory framework, endorsed by the Council of Australian Governments, would provide the best mechanism for evaluating how regulations can be restructured to reduce compliance costs and for assessing the case for a national authority to oversee onshore and offshore petroleum regulation throughout Australia.

Some concerns with moving from prescriptive to objective-based regulation

With regard to Australian Government regulations concerning offshore petroleum, while the petroleum industry supports the move to objective-based regulations, as it *potentially* provides greater flexibility and reduces compliance costs, some aspects of the transition are causing concern:

- the costs associated with the preparation and submission of management plans

  … the growing requirement for management plans to be submitted to government and approved is imposing a significant cost and time burden on the industry and can create substantial duplication in regulation. It also imposes a burden on the scarce resources of government agencies. (APPEA 2007, p. 67)

- the requirement to submit the same or similar information to different agencies under *multiple* management plans — the regulations for safety, the environment, pipelines, diving safety, data and well operations all require the preparation of management plans

  Many of the regulations necessitate submission of the same information — for example, about safety and environmental considerations — at different times and to different agencies. This information is also provided to NOPSA in the form of a Safety Case and to the Commonwealth's Designated Authority in the form of an Environment Plan. In addition, each of these processes in turn has its own, often unique, reporting requirements, drawing on precisely the same performance data, just in a different form. The reporting burden is another area that clearly warrants attention to improve regulatory efficiencies and make Australia an even more attractive place to invest. (APPEA 2007, p. 67)

- as some of the clauses under the Schedule remain active, this has created some uncertainty for companies. The problem is exacerbated because the active clauses vary between jurisdictions.

Assessment

The PSLA enables the following sets of single-purpose regulations:

- Management of Well Operations
- Management of Safety on Offshore Facilities
- Occupational Health and Safety
- Diving Safety
- Management of Environment
- Pipelines
- Datum
- PSLA regulations
- Data Management
- Resource Management (forthcoming)
- Carbon Capture and Storage (forthcoming).

Industry has complained about the need to submit a management plan for each one so that similar information is provided in multiple management plans. This issue was highlighted in the Regulation Taskforce report, although no specific recommendation was made.

In response, as noted above, DITR recently initiated a legislative project to consolidate and streamline the regulations under the PSLA/OPA. The project is reviewing all current single-purpose regulations with a view to merging these into three sets of regulations responding to the three basic rationales for regulation — safety, environment and resource management.

This process aims to reduce the cost and time associated with meeting regulatory requirements through a reduction in overlap and duplication of documentation. The project is also seeking to ensure that there is no duplication between the Act and the regulations and will seek to bridge any regulatory gaps.

APPEA have expressed strong support for this rationalisation of requirements to submit management plans:

> APPEA has been particularly encouraged by the work of the Commonwealth and state industry departments, and welcomes the real prospect that potentially up to 60 duplicative decision points might be removed from the Petroleum (Submerged Lands) Regulations. Specifically this would involve repeals of the Pipeline Management Regulations, Diving Safety Regulations and the many legal consents required to construct, install and operate a facility or pipeline. This process should also result in significant amendments to the Well Operations Regulations. (sub. 39, p. 6)

Through this process, government has worked constructively with industry to go back to first principles and consider the purpose of each clause of the regulations, how it is regulated, and whether this purpose has already been addressed in another regulation, such as safety or environmental requirements. This process has been a

very successful exercise in identifying duplication and reducing the number of approvals required. (APPEA, sub. 39, p. 6).

DRAFT RESPONSE 4.5

Reforms to offshore petroleum regulation have gone some way toward reducing compliance costs, but more needs to be done. The current Department of Industry, Tourism and Resources' consolidation exercise has the potential to streamline regulations and reduce duplication, but the necessary reforms should be implemented as soon as possible.

Inconsistent administration of regulation

In its *Platform for Prosperity* report (2007), as well as differences in the regulations themselves, APPEA highlighted inconsistent *administrative processes* between jurisdictions, as adding to costs and uncertainty. This particularly arises from the state and territory governments' role in administering offshore regulation on behalf of the Australian Government.

Although the states and the Northern Territory have enacted legislation, based on the Australian Government model, for exploration and development of petroleum in offshore (including coastal) waters, in many cases, problems with offshore regulation stem from inconsistent administrative implementation and interpretations of that legislation by designated authorities in each jurisdiction.

Assessment

Within the legal framework established under the PSLA Act, with equivalent legislation at the State and Territory level, the Australian Government and the States/Northern Territory jointly administer and supervise petroleum operations in *offshore* areas beyond coastal waters through Joint Authority arrangements. Each Joint Authority comprises the Australian Government Minister and the relevant State/Northern Territory Minister. In addition, the relevant State/Northern Territory Minister administers day-to-day operations as the Designated Authority, in accordance with the Act.

APPEA highlighted an existing model for achieving greater consistency in the interpretation of regulation as worthy of further consideration — the Environment Assessors Forum (EAF).

The EAF (box 4.2) includes representatives from all jurisdictions, and seeks to remove inconsistent *interpretation* of environmental regulations contained within

the PSLA. APPEA considers that the Forum 'has made significant in-roads towards addressing inconsistent application of the law.' It discusses ways to further remove 'inconsistent interpretation of regulations and find pragmatic solutions to regulatory issues while preserving the intent of the regulation' (2007, p. 66).

There would be merit in extending the EAF model to other areas of petroleum regulation to ensure greater consistency in the administration of offshore petroleum regulation by designated authorities.

DRAFT RESPONSE 4.6

In the absence of establishing one regulator, or alternative reforms based on a wide-ranging review, jurisdictions should extend the model established with the Environment Assessors Forum to other areas where concerns arise over inconsistent application of regulations affecting petroleum.

Box 4.2 **Environmental Assessors Forum**

The Environmental Assessors Forum (EAF) was established in mid 2004 as a key mechanism to ensure that environmental regulators have robust systems in place to provide consistency of environmental processes over all jurisdictions.

The EAF consists of the Australian Government Departments of Industry, Tourism and Resources (DITR) and Environment and Water Resources, Geoscience Australia and State/Territory Designated Authorities (DAs) responsible for the application of the Petroleum (Submerged Lands) (Management of Environment) Regulations 1999. Other agencies and organisations, such as the Australian Petroleum Production and Exploration Association, are engaged dependant on the agenda.

The EAF is focussed on promoting greater interaction between DAs (sharing ideas and experiences) and also between DITR and the DAs (wherein DITR could act as a driver of actions which could help promote consistency improved regulatory practices).

There are no formal terms of reference for the EAF and the matters discussed at meetings are dictated by those issues most relevant at the time. An EAF teleconference is held approximately every quarter with a two-day face to face EAF workshop held twice a year.

The EAF reports to the Ministerial Council on Mineral and Petroleum Resources as required.

Source: DITR (pers. comm., 7 August 2007)

Long and uncertain approval time lines

APPEA notes that:

> … it often takes a lot of time, money and effort to secure regulatory approval to explore and develop oil and natural gas. Gaining this approval often causes delays that can be costly and inefficient for both industry and government, and has the potential to drive investment overseas … (sub. 39, p. 4)

With respect to delays in gaining approvals under petroleum regulation, APPEA have stated:

> Delays in decision making within joint ventures can also arise as a result of the time needed to reach consensus on important matters as well as the differing corporate approvals requirements and time lines for new expenditure. Joint venture arrangements are used to spread risk over a portfolio of assets. Delays to activities within titles are limited by legislated time frames determined under the *Petroleum (Submerged Lands) Act 1967* (or the *Offshore Petroleum Act 2006*) or the relevant state and territory provisions. While the legislation imposes time frames on the title holder to provide information or applications to the regulator, certainty could also be increased by setting more time frames for the regulator to make decisions. (2007, p. 65)

Delays in gaining approvals can fundamentally alter the economics of a project and over time have a serious negative impact on the relative competitiveness of Australia as a destination for oil and gas investment. The Commission considers that, in principle, regulators should be required to commit to clear and reasonable time frames.

DRAFT RESPONSE 4.7

Petroleum regulators should commit to clear time frames for making decisions and this requirement should be reflected in relevant legislation.

4.4 Access to land

Mineral and petroleum firms operating in Australia must go through processes relating to native title rights and Aboriginal cultural heritage before they are able access the land from which they extract resources. The mining and petroleum sectors have raised significant concerns relating to these processes:

> The lengthy and uncertain time lines involved in Native Title and Aboriginal heritage processes are one of the main onshore impediments and pose considerable additional costs for petroleum exploration. (APPEA, sub. 39, p. 5)

This section examines concerns relating to both native title and Aboriginal cultural heritage.

Native Title

Native Title Representative Bodies (NTRBs) play an important role in the native title system, assisting and representing claimants in the lodging and processing of native title claims, determinations and associated negotiations. The MCA raised concerns that NTRBs:

> … have been chronically under-resourced in fulfilling their statutory functions, which has delayed the negotiation of mutually beneficial agreements with industry and the resolution of native title claims. (sub. 37, p. 18)

As illustrated in the value chain in table 4.1, land access approvals are required at the beginning of a project, and as such, delays in approvals can give rise to significant costs within the mining industry, as entire projects can be delayed, or subject to uncertainty, pending native title negotiations. To remedy this, the MCA called for:

> The Australian Government [to] ensure adequate, performance-based resourcing to Native Title Representative Bodies, both in terms of human and financial capital … (sub. 37, p. 19)

As such, any reforms that streamline negotiation periods, while maintaining the objectives of the native title system (namely to recognise and protect native title rights, while providing a mechanism and standard for allowing activities that may affect native title rights to proceed – *Native Title Act 1993*, s.3), would be beneficial. The Australian Government has recently enacted a package of reforms aimed at improving the performance of the native title system. This package consisted of six 'elements':

- a claims resolution review
- technical amendments
- improving the capacity of prescribed bodies corporate
- funding for respondents to negotiate
- improving the performance of native title representative bodies
- consultation with state and territory governments over these reviews.

Generally, these reforms focused on encouraging participants to negotiate and reach agreement over native title, rather than taking issues to litigation.

Claims resolution review

The review focused on improving (and speeding up) the functions of the National Native Title Tribunal (NNTT), while reducing duplication between it and the

Federal Court. The suggested reforms also grant the NNTT powers to require attendance by a party or the production of documents and the ability to assess material to see if it would support a native title claim. The Government responded in August 2006, accepting nearly all of the review's recommendations, and changes were enacted as part of the March 2007 Amendment Act.

Technical amendments

These amendments focus on practical matters in the native title process such as information requirements for the registration and compensation of parties, the timing of notices for future acts, what information will be included on the NNTT's Register of Native Title Claims, and how claims can be removed from the register.

Of note, these amendments examined the status of the right to negotiate provisions in the Native Title Act. The Government believed that:

> … the right to negotiate provisions, as amended in 1998, are appropriately balanced and workable. Whilst the Government is prepared to consider technical changes to the right to negotiate process, it does no believe that significant changes are necessary. (AG's 2007e, p. 3)

Additionally, the amendments make Indigenous Land Use Agreements more flexible, making it simpler to modify them, while still preserving the rights they cover. These amendments received royal assent on 20 July 2007, and most of them will come into effect from 1 September 2007.

Prescribed Bodies Corporate (PBCs)

Following the determination that title exists, PBCs implement and monitor native title agreements, exercise native title rights (including and negotiating about any proposed future acts that may affect the native title, and investing and managing money held in trust on behalf of the native title holders) and discharge land management obligations (such as maintaining watercourses and clearing refuse). Following targeted consultation, the Australian Government committed to:

- improve the ability of PBCs to access and utilise existing sources of assistance, including from Native Title Representative Bodies (NTRBs)
- authorise PBCs to recover costs reasonably incurred in performing specific functions at the request of third parties
- encourage greater State and Territory government involvement in addressing PBC needs, and
- improve the flexibility of the PBC governance regime while protecting native title rights and interests. (AG's 2007c)

The Steering Committee for the report also considered that:

> … there is scope for further assistance to be provided to PBCs by the Australian Government in particular circumstances, it is also necessary to consider complementary measures to ensure better use is made of resources which are currently available within the native title system. (AG's 2007d, p. 24)

The MCA also raised funding of PBCs as an issue in their submission (sub. 37, pp. 18-19). It recommended that the Australian Government provide core funding to PBCs to meet statutory obligations, negotiate with third parties, and secure further assistance from existing programs.

Funding for respondents to negotiate

This covers funding to non-claimants parties (such as the South Australian Chamber of Minerals and Energy, or pastoralists groups like the Pastoralists and Graziers Association of Western Australia). The reforms aim to 'strengthen [the] focus on resolution of native title issues through agreement making, in preference to litigation' (AG's 2007a). Revised *Guidelines on the provision of financial assistance by the Attorney-General under the Native Title Act 1993* commenced on 1 January 2007.

Native Title Representative Bodies

The reforms changed the funding arrangements for NTRBs by offering funding for up to three years instead of just one year at a time, while also providing recognition of NTRB status for a fixed term of one to six years (to allow for a review of performance at the end of the period), among other things. These aim to encourage improved performance by generally granting longer terms to better performing NTRBs.

Evidence given at the Senate Committee hearings into the 2007 Amendment Act indicates that the government is focusing on funding for capacity building:

> …the key to improving performance is to increase capacity to provide professional services, rather than putting additional funds into organisations that are struggling through lack of appropriate skills and experience. The capacity building program includes specialist training in governance, administrative law and contract management. There is also a project designed to improve the capacity of NTRBs to attract and retain quality staff. (AG's and FaCSIA 2007, p. 10)

Consultation with state and territory governments

The Attorney-General convened Native Title Ministers Meetings in 2005 and 2006. These meetings have provided a forum to allow all jurisdictions to work together, notably engaging the States and Territories in the Australian Government's reform process (above).

The industry's response to the Australian Government's reforms is mixed. APPEA stated that it:

> … welcomes the recently proposed amendments to the Native Title Act, including those that will allow for the creation of template agreements. (sub. 39, p. 5)

While the MCA remarked that:

> Government reforms have taken a narrow and overly onerous approach to improving the performance of such organisations, rather than building capacity for improved outcomes. (sub. 37, p. 18)

It is clear from the reform process that the Government is aware of the need for capacity building and has sought to address it through several reforms. In this context, the Commission considers that these reforms should be given time to take effect and then be subject to evaluation after they have been in operation for some time.

DRAFT RESPONSE 4.8

Recent Australian Government reforms to the native title system are being progressively implemented. They should be subject to evaluation within five years of their implementation.

Aboriginal cultural heritage

The MCA raised two concerns relating to Aboriginal cultural heritage. First, they noted the complexity in the system, with heritage registers existing at both Australian and State Territory Government level. To remedy this, they recommended:

> That a single heritage register is maintained by the Commonwealth, incorporating sites and artefacts of both National and State significance … (sub. 37, p. 19)

Secondly, they raised concerns relating to duplication and inconsistency in Aboriginal cultural heritage processes across Australia:

> … the assessment of cultural heritage is imprecise, often leading to substantial delays in the project assessment and approval process. … Australia needs to develop a consistent approach to Indigenous heritage matters and to integrate Indigenous heritage

conservation procedures with other land management procedures to avoid duplication and overlap between legislative instruments and requirements. (sub. 37, p. 19)

Assessment

The protection of Aboriginal cultural heritage is primarily covered by State and Territory legislative regimes, although there is some involvement from the Australian Government. As the Australian Heritage Council noted, this system is appropriate as, in regard to Indigenous Australian heritage places:

> … many of the most special places are of local significance and indeed, private places of ceremonial or spiritual importance. General statutory protection of these Indigenous heritage places is afforded by State-based Aboriginal heritage laws and, as an act of last resort, through the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984.* (ATSIHP Act). Council does not expect that these very significant local places will be nominated for national listing …
>
> Since Indigenous Australia consists of hundreds of locally-based socio-political groups, places that might be considered of national significance are most likely to be ones from the nineteenth and twentieth century that have had an impact across the nation. (AHC 2007, p. 24)

In the context of such local significance, there will be differences in Aboriginal cultural heritage laws across jurisdictions. As such, individual registers by jurisdiction are required, so that each jurisdiction retains power, and responsibility, over places of significance that they consider need to be listed. Nonetheless, the Commission encourages jurisdictions to examine each other's models and — as far as possible— work towards a consistent national approach, particularly in relation to heritage management processes.

For example, the Commission notes that the Victorian Aboriginal Heritage Act 2006 (which came into force in May 2007) seeks to incorporate Aboriginal cultural heritage processes into broader land management processes:

> The Act links the protection of Aboriginal cultural heritage more directly with planning and land development processes. It does not seek to stop or delay development. It establishes a process by which Aboriginal heritage can be protected and managed, with the involvement of Aboriginal people, while allowing development to proceed. (AAV 2007)

While other jurisdictions also incorporate Aboriginal heritage into planning and development processes — for example, the Environment Planning and Assessment Act 1997 in New South Wales requires that local governments must consider Aboriginal cultural heritage in the planning and development process (Allen Consulting Group 2007, p. 76) — there is variation in the manner and degree of this

inclusion between jurisdictions. As such, this is one issue that would benefit from cooperation between jurisdictions.

Additionally, the Commission notes that DEW has begun a process of reforming the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*:

> The Australian Government will engage in further consultation with Indigenous groups on reforming this legislation to provide a new national scheme that will ensure protection of Indigenous areas and objects to the best contemporary standards. The primary role of state and territory laws and the views of Indigenous people and other stakeholders will be central to this reform. (DEH 2006b, p. 27)

The Australian Government, through debate in the Senate, has since clarified the status of this review:

> The government indicated that it is reviewing the act. This is an internal government review but in the process of doing this my understanding is … the government will of course be consulting. (Kemp, R 2006, p. 8)

As part of this process, the Commission considers that 'best contemporary standards' should be taken to include reduction in regulatory burdens where possible. One area that may be worthy of further examination is the possibility for consolidating access to information regarding Aboriginal cultural heritage sites listed by each of the jurisdictions. If this information were available through a single, consolidated portal, it could ease burdens on business by allowing them to access such listings in a simple and timely manner.

It is important that such a consolidation should not undermine the ability of individual jurisdictions to control and change their own registers. In this light, care would need to be taken to ensure that those who access the portal are made aware of differences between each jurisdiction's register – particularly relating to the purpose that each register serves in the context of jurisdictional legal systems.

Access to information on registers may be restricted, to protect knowledge required to kept secret by Aboriginal tradition or information that may be (personally and commercially) confidential, as well as to record those who have accessed the register, for legal reasons. Therefore, any consolidation should not proceed without first ensuring that jurisdictions retain the ability to determine — and record — who accesses their own registers.

These factors mitigate against the creation of a single consolidated register as such. However, they do not prevent consolidating access to the information. This could be as simple as links on the heritage page of DEW's website to the relevant Aboriginal cultural heritage registers in each jurisdiction.

In the course of current reforms, there appears to be scope to consolidate access to information regarding Aboriginal cultural heritage areas listed in all jurisdictions. The Commission seeks views on this matter.

4.5 Environment Protection and Biodiversity Conservation Act

As noted in chapter 3, the EPBC Act was introduced to protect Australia's environment and heritage and, in particular, matters of 'national environmental significance'.

In terms of the value chains set out in tables 4.1 and 4.2, the EPBC Act is relevant to most stages and, in particular, in the:

- minerals sector — to the 'exploration', 'mine approval', 'mine development and construction' and 'mine closure and site rehabilitation' stages
- petroleum sector — to the 'exploration', 'drilling of wells and platform construction', 'pipeline design and construction' and 'decommissioning' stages.

Overlap and duplication with state and territory processes

Concerns have been raised within the mining, oil and gas sector (and agriculture sector, see chapter 3) about ongoing overlap and duplication of the EPBC Act with state and territory environmental assessment and approval processes.

The MCA suggested that where bilateral agreements were not in place, duplication of processes can turn into a 'major issue' for the industry (sub. 37, p. 21). It recommended that approvals bilateral agreements with all states and territories be established as a 'matter of urgency' and that those states and territories that are yet to enter into assessment bilateral agreements with the Australian Government be encouraged to do so (sub. 37, p. 22).

Fortescue Metals Group noted in relation to a particular development in which it was involved that although the assessment bilateral agreement between the Australian Government and the Western Australian Government 'significantly' reduced the duplication of documentation for assessment, an additional 3 months was added to the assessment process 'waiting for the Federal Minister to issue his

decision after the State Minister had made his decision' which 'did impact on Fortescue's development timetables' (sub. 40, p. 2).

The EPBC Act enables the reduction of duplication with state and territory environment assessment and approval processes through the accreditation of these processes under bilateral agreements between the Australian Government and a state or territory government. Specifically, the Act allows for bilateral agreements to:

- protect the environment
- promote the conservation and ecologically sustainable use of natural resources
- ensure an efficient, timely and effective process for environmental assessment and approval of actions
- minimise duplication in environmental assessment and approval through Australian Government accreditation of the processes of the state or territory (and vice versa).

There are two types of bilateral agreement — assessment bilateral agreements and approvals bilateral agreements.[9] To date, assessment bilateral agreements have been signed with the Northern Territory, Queensland, Tasmania, Western Australia and, just recently, New South Wales. Draft agreements have been prepared in relation to the remaining states and the ACT. No approvals bilateral agreements have yet been signed.

Bilateral agreements must be consistent with the objectives of the EPBC Act and the processes they accredit must meet certain criteria. For example, they must ensure adequate public consultation.

Where there is no bilateral agreement, state and territory assessment and approval processes are accredited by the Australian Government case-by-case.

Assessment

The Regulation Taskforce (2006, p. 74) recommended that the Government seek to expedite the signing of environmental bilateral agreements with all remaining states and territories, and that all bilateral agreements be extended to include the approval

[9] An *assessment* bilateral agreement allows an action that would otherwise require Australian Government assessment under the EPBC Act to be assessed using a state or territory assessment process. An *approvals* bilateral agreement allows an action that would otherwise require Australian Government approval under the EPBC Act to be assessed and approved using a state or territory approvals process.

process. It further recommended that, in implementing the agreements, the Government provide 'national leadership' aimed at achieving efficiencies in state and territory administrative and approval processes.

In its response, the Australian Government agreed to the recommendation (Australian Government 2006b, p. 36). It noted that COAG agreed at its July meeting in 2006 to pursue further regulatory reform in the area of bilateral agreements with senior officials reporting at the end of 2006 on strategies for improvement within the existing architecture of the EPBC Act.

Since the Regulation Taskforce report and the Australian Government's response, there have been some developments towards the harmonisation of environmental assessment and approval processes.

An assessment bilateral agreement was signed in January 2007 between the Australian Government and the New South Wales Government. A draft assessment bilateral agreement with South Australia has been released for public comment in June 2007.

The 2006 amendments to the Act sought, among other things, to deal with duplicative and inconsistent processes within the Act and between the Act and state and territory regimes including dealing with difficulties in accrediting or recognising state and territory authorisation processes for the purpose of an approvals bilateral agreement and enabling agreements to continue to have effect during reviews.

At its meeting in April 2007, COAG identified environmental and assessment processes as one of ten regulatory 'hotspots'. It agreed that the Australian Government Minister for the Environment and Water Resources would develop a proposal, in consultation with the states and territories, for a 'more harmonised and efficient system of environmental assessment and approval as soon as possible' (COAG 2007a, p. 5).

The Commission notes that there has been some progress in dealing with the overlap between the Australian Government and State/Territory Governments through assessment bilateral agreements. That said, it considers that completion of all assessment and approvals bilateral agreements warrants high priority by all governments.

DRAFT RESPONSE 4.10

Reforms which will harmonise environmental assessments through bilateral agreements are progressing. Governments should give high priority to completing all assessment and approvals bilateral agreements.

Inadequate resourcing

Underresourcing of DEW in relation to its administration of the EPBC Act was a concern for the mining, oil and gas sector in so far as it contributed to delays in referrals, assessments and approvals under the Act and held up progress on the conclusion of bilateral agreements (MCA sub. 37, pp. 21–2).

Assessment

The Commission notes that, according to the 2007-08 Budget, additional funding of $70.6 million over four years has been provided to DEW to enhance its administration of the EPBC Act (DEW 2007d, p. 18). Accordingly, no action is required in relation to funding the administration of the EPBC Act.

4.6 National Pollutant Inventory

The MCA raised concerns about the National Pollutant Inventory (NPI) that relate to:

- the inclusion of transfers
- limited public awareness
- the inappropriate use and quality of data
- the lack of adequate resourcing
- the use of the NPI for reporting of greenhouse gas and energy emissions.

Concerns relating to greenhouse gas and energy reporting are dealt with in the next section on climate change policies. Concerns within the agriculture sector were dealt within chapter 3.

In terms of the value chains set out in tables 4.1 and 4.2, the NPI is most relevant in the:

- minerals sector — to the ‘mining, primary processing and ongoing mine-site rehabilitation’ and ‘secondary processing’ stages
- petroleum sector — to the ‘production/pipeline operation’ stage.

Inclusion of transfers

The MCA was concerned about the proposed inclusion of transfers in the NPI given the ‘ongoing lack of resources’ (sub. 37, p. 22).

As noted in chapter 3, the Environment Protection and Heritage Council decided at its June 2007 meeting that the NPI include transfers, among other things (EPHC 2007a).

A 'transfer' is the transport or movement, on-site or off-site, of substances contained in waste for containment, destruction, treatment or energy recovery (NEPC 2006a, p. 5).

Assessment

The inclusion of transfers in the NPI flows from a recommendation of a 2005 review (Environment Link 2005, p. 18). The Regulation Taskforce, however, recommended that the inclusion of transfers be deferred and reconsidered when the capacity of the NPI to deliver existing requirements has been improved (Regulation Taskforce 2006, p. 77).

The impact statement supporting the inclusion of transfers in the NPI found that information on transfers would be 'an important public good that would not otherwise be publicly available in a comprehensive and integrated fashion' (NEPC 2006b, p. 27). The inclusion of transfers would also align the Australian NPI with international pollution and transfers registers. The estimated cost for industry would be an initial average increase of $2800 per facility with ongoing average costs of $1400 per facility per annum. The estimated cost for government would be a one-off implementation cost of around $800 000 plus on-going costs of $400 000 per annum.

The Commission considers that, in view of the decision of the Environment Protection and Heritage Council, no further action is required at this stage.

DRAFT RESPONSE 4.11

No further action is required in relation to the inclusion of transfers in the NPI at this stage.

Limited public awareness

The MCA was concerned that the NPI 'remains a little known and under-utilised resource' (sub. 37, p. 22).

Assessment

Public awareness of the NPI is important. If it is limited, then the objectives of the NPI National Environment Protection Measure are undermined. And the burdens placed upon business would be difficult to justify.

There are various means used by DEW to raise the public profile of the NPI, including outreach programs to local communities and schools.

Selective data provided by DEW suggest that public awareness of the NPI is improving. The data indicate that new user sessions of the NPI website increased from 170 000 in 2004 to 500 000 in 2006, an average annual increase of around 60 per cent.

The Commission considers that, to ensure that the objectives of the NPI are achieved, DEW give a high priority to monitoring public awareness.

DRAFT RESPONSE 4.12

The Department of Environment and Water Resources should give high priority to monitoring public awareness of the NPI and to take action to increase its profile as appropriate.

Quality of the data

The MCA expressed concerns about quality and inappropriate use of data from the NPI.

> For those members of the public who do visit the NPI website, the lack of accurate, current and plain english guidance on the interpretation of the data means that using the site is extremely difficult, if not impossible for the majority of users. (sub. 37, p. 22)

It recommended that to overcome inappropriate use of data, specific guidance needs to be included to ensure that data users are aware of the limitations of the data and the contexts in which the data are designed to be used (sub. 37, p. 22). It also recommended updating the emission estimate techniques manual relating to mining and other associated manuals to deal with the 'perceived overestimation of some substances (sub. 37, p. 23).

Assessment

If the quality of data reported to the NPI are deficient, then the objectives of the National Environment Protection Measure, particularly the objective to 'provide information to enhance and facilitate policy formulation and decision making for

environmental planning and management', are undermined. And the burdens placed upon business are difficult to justify.

Concerns about the quality of data were considered in the 2005 review of the NPI. It also understands that DEW is presently improving its data system and updating its emission estimate techniques manuals. The Department also systematically responds to feedback from user forums on the NPI. These actions may lead to better quality data.

The Commission considers that, to ensure that the objectives of the NPI are achieved, DEW give a high priority to monitoring the quality and use of data reported to the NPI.

DRAFT RESPONSE 4.13

The Department of Environment and Water Resources should give high priority to monitoring the quality and use of data reported to the NPI.

Inadequate resourcing

The MCA considered that, among other things, there was a 'pressing need for a substantial and sustained increase in the level of resourcing' for the NPI, particularly in the areas of updating the emissions estimation techniques manuals for industry sectors and of the provision of better contextual data for substances reported under the inventory (sub. 37, pp. 22–3).

Assessment

Data provided by DEW suggest that funding to support the NPI since 1994-95 has declined in real and nominal terms by an average 3 per cent per annum.

The Commission considers that the Environment Protection and Heritage Council should not initiate further expansion of the NPI until there is sufficient funding available for existing functions.

DRAFT RESPONSE 4.14

The adequacy of funding for the administration of the NPI by the Department of Environment and Water Resources should be reviewed. There should not be any further expansion to the NPI until this has been done.

4.7 Assessment of site contamination

The MCA was concerned that the Assessment of Site Contamination National Environment Protection Measure led to inappropriate use of data by regulators, specifically the use of levels used to trigger an investigation as a trigger for site clean-up operations (sub. 37, p. 22). It recommended that, to overcome inappropriate use of data by regulators, specific guidance be included to ensure that users were aware of the limitations of the data and the context in which the data were designed to be used.

In terms of the value chains set out in tables 4.1 and 4.2, the Assessment of Site Contamination National Environment Protection Measure is most relevant in the:

- minerals sector — to the 'mine closure and site rehabilitation' stage
- petroleum sector — to the 'decommissioning phase'.

The National Environment Protection Measure was made in 1999 to establish a nationally-consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community, including regulators, site assessors, land auditors, land owners, developers and industry (clause 5(1)). The purpose of assessment is to determine whether site contamination poses an actual or potential risk to human health and the environment, either on or off the site, of sufficient magnitude to warrant remediation appropriate to the current or proposed land use. The National Environment Protection Measure includes schedules setting out a recommended process for the assessment of site contamination and guidelines on various technical and administrative aspects.

The recommended process for the assessment of site contamination within the National Environment Protection Measure consists of a preliminary investigation stage and a detailed site investigation stage.

- Preliminary investigation involves assessment against an 'investigation level', which is the concentration of a contamination above which detailed site investigation is triggered.
- Detailed site investigation involves assessment against a 'response level', which is the concentration of a contaminant for which some sort of response is required to provide an adequate margin of safety to protect public health and/or the environment such as site remediation.

Assessment

The inappropriate use of investigation levels can result in unwarranted and costly remediation of site contamination that can increase unduly the overall costs of developing a site.

A review of the National Environment Protection Measure in 2006 considered, among other things, concerns about the inappropriate use of investigation levels that resulted in unwarranted costs in site remediation. It recommended that the National Environment Protection Measure framework and the schedule setting out the process for the assessment of site contamination be revised to 'improve clarity and understanding of the fundamental site assessment principles and emphasise the appropriate use of the National Environment Protection Measure, in particular to address the misuse of investigation levels' (NEPC 2006c, p. 4).

At its meeting in June 2007, the Environment Protection and Heritage Council (which incorporates the National Environment and Protection Council) agreed to initiate a process to vary the National Environment Protection Measure based on this and other recommendations made in the 2006 review.

The Commission considers that, given the action of the Environment Protection and Heritage Council in June 2007, reforms to deal with concerns about the use of investigation thresholds as triggers for site remediation are progressing.

DRAFT RESPONSE 4.15

Reforms to the Assessment of Site Contamination National Environment Protection Measure to deal with the inappropriate use of investigation thresholds are progressing.

4.8 Climate change policies

Multiplicity of greenhouse gas and energy reporting requirements

Several participants in the mining, oil and gas sector raised concerns about the compliance burden arising from multiple greenhouse gas and energy reporting requirements (for example, the MCA sub. 36, pp. 23–5; Queensland Resources Council sub. 22, p. 3). (Concerns were also raised by the Red Meat Industry and these are outlined in chapter 3.) The MCA expressed concern about the 'risks and uncertainties of uncoordinated national and State-based climate change measures' and supported greenhouse gas reporting that was nationally consistent as well as consistent with international standards (sub. 37, p. 24). The Queensland Resources Council said:

> … given the multitude of reporting programmes which cover energy or greenhouse gas, either currently in operation or being considered, there is need for streamlining to provide for consistency and consolidation of reporting requirements. (sub. 22, p. 3)

In addition, particular concerns were raised about the proposal of the National Environment Protection Council for greenhouse gas and energy reporting through the NPI National Environment Protection Measure given that COAG had already decided on a national purpose-based system. The MCA considered that:

> … the reconsideration of [greenhouse gas] emission reporting under the [National Pollutant Inventory] as an expensive and time-consuming process for what appears to be a short-lived exercise. Time could be better spent focussing on COAG's agreed national reporting system. (sub. 36, p. 25)

APPEA supported 'the development of a mandatory national emissions reporting and verification system that streamlines current arrangements and reduces existing reporting burdens' (APPEA 2007, p. 51). The Association considered that:

> … the methodologies and tools for the system should be based on the Greenhouse Challenge Plus Program and incorporate internationally recognised emission estimation methodologies for the oil and gas industry. This would be applicable to all organisations based on the Greenhouse Challenge Plus Program. As part of the system, a very rigorous data confidentiality and access protocol should be established possibly on a par with that applying to data supplied by the industry to the Australian Taxation Office. While data may be reported under the system, there should be no public disclosure of information that could reveal proprietary business, competitive or trade secret information about a specific facility, technology or corporate initiative or the physical security of facilities. The industry does not support the use of the National Pollutant Inventory as the reporting vehicle. (APPEA 2007, p. 51)

Presently, there are at least 20 Australian Government and State/Territory Government greenhouse gas and energy programs through which businesses report greenhouse gas emissions and/or energy data (table 4.4). The general objective of these programs is to deal with community concerns about climate change as well as about energy use and production.

Differences in the reporting requirements relate to:

- emission source categories covered
- fuels covered
- greenhouse gases covered and modes of reporting
- the emission factors used to derive emissions from energy used
- the treatment of 'offsets' such as carbon take-up provided by forestry activities
- reporting periods
- constraints on passing on data to third parties (Australian Greenhouse Office 2006, p. 9).

Table 4.4 **Key government programs with greenhouse gas and/or energy reporting requirements**[a]

Jurisdiction	*Program*
Australian Government	ABARE Fuel and Electricity Survey Australian Petroleum Statistics Energy Efficiency Opportunities Generator Efficiency Standards Greenhouse Challenge Greenhouse Challenge Plus Greenhouse Friendly Mandatory Renewable Energy Target National Greenhouse Gas Inventory Ozone Protection and Synthetic Greenhouse Gas Management Act
NSW	NSW Energy and Savings Plans and Fund NSW-ACT Greenhouse Gas Abatement Scheme NSW Load Based Licensing
Victoria	Victorian State Environment Protection Policy (Air Quality Management) *Victorian Environment Protection Act 1970* Victorian State Environment Protection Policy (Greenhouse Emissions and Energy Efficiency in Industry)
Queensland	13 per cent Gas Scheme EcoBiz
Western Australia	Western Australian Greenhouse Gas Inventory Western Australian Greenhouse Registry
South Australia	South Australian Greenhouse Strategy
Northern Territory	Northern Territory Greenhouse Gas Reporting Program
ACT	NSW-ACT Greenhouse Gas Abatement Scheme

a The ABS has produced energy and greenhouse gas emissions accounts for Australia (for example, Cat. 4604.0 - Energy and greenhouse gas emissions accounts, Australia, 1992-93 to 1997-98 and Cat 1301.0 — Year Book Australia). These data have been derived from sources other than ABS surveys.

Sources: APPEA (2007, 49); CGERG (2006, p. 8); Environment Protection Authority Victoria (2007, pp. 6–7).

Two proposals to harmonise greenhouse gas and energy reporting requirements are currently in train — a proposal by COAG for a national purpose-built system and a proposal by the Environment Protection and Heritage Council to include greenhouse gas and energy reporting in the NPI (box 4.3).

Box 4.3 Proposals to harmonise greenhouse gas and energy reporting requirements

A national purpose-built system

At its April 2007 meeting, COAG agreed to establish a mandatory national purpose-built greenhouse gas emissions and energy reporting system, with the detailed design to be settled after the Prime Minister's Task Group on Emissions Trading reported at the end of May (COAG 2007b).

Consistent with COAG's decision, the Minister for the Environment and Water Resources announced funding in July 2007 of $26.1 million over five years to establish a single, streamlined national system of greenhouse and energy reporting (Turnbull 2007). The system is expected to commence in July 2008. The Minister considered that businesses could expect a reduction in duplication, red tape and the cost burden of existing reporting requirements through the new system. The Commission understands that the system will involve the introduction of Australian Government legislation exercising its corporation power under the Constitution followed by the negotiated repeal of existing greenhouse gas and energy reporting requirements.

The new system will be based on the Australian Government's Online System for Comprehensive Activity Reporting, developed for the Greenhouse Challenge Plus programme. Companies emitting more than 125 000 tonnes of greenhouse gases or using or producing more than 500 terajoules of energy will be required to report at the start of the new system. These thresholds will be phased down over time to 50 000 tonnes of greenhouse gases or 200 terajoules of energy used or produced. Around 700 companies will be required to provide detailed reports on their greenhouse gas emissions and energy use and production under the new system. There would be public reporting of company-based data only.

National Pollutant Inventory

At its June 2007 meeting, the Environment Protection and Heritage Council agreed to a variation to the NPI National Environment Protection Measure to include greenhouse gas emissions pending the establishment of a national purpose-built system. The Council noted this would be an interim measure only and would not change the commitment by parties to a purpose-built system.

Key elements of the draft variation to the NPI National Environment Protection Measure considered at the June 2007 meeting of the Environment Protection and Heritage Council were that:

- the reporting threshold for the 'controlling business entity' would be set at the emission of 25 000 tonnes or more of greenhouse gases expressed in carbon dioxide equivalents, or at the production or consumption of 100 terajoules or more of energy in the reporting period

(Continued next page)

Box 4.3 **(continued)**

- there would be public reporting of both company data only
- reporting requirements would not be imposed prior to 1 July 2008
- should a more comprehensive national scheme of greenhouse gas emissions and energy reporting come into force, the reporting requirements in the NPI National Environment Protection Measure would be repealed (NEPC 2007).

In terms of the value chains presented in tables 4.1 and 4.2, greenhouse gas and energy reporting requirements are most relevant in the:

- minerals sector — to the 'mining, primary processing and ongoing mine-site rehabilitation' and 'secondary processing' stages
- petroleum sector — to the 'production/pipeline operation' stage.

Assessment

The Commission supports the harmonisation of existing multiple greenhouse gas and energy reporting requirements. The issue is whether this is best achieved through the existing NPI or through a national purpose-based system.

Two recent reports assessing the benefits and costs of options to deal with multiple greenhouse gas and energy reporting have reached opposing conclusions.

- A draft regulation impact statement prepared by the COAG Greenhouse and Energy Reporting Group preferred streamlined reporting underpinned by purpose-built legislation because it is the only option 'that can ensure that all of the stated objectives are met to the greatest degree possible' (CGERG 2006, p. 44). It did not prefer the NPI because:

  > … it would not provide for mandatory reporting of all the energy data needed for national energy statistics, it does not offer the means to ensure removal of duplicative reporting arrangements, and there are doubts about whether it offers a legal basis for the reporting of greenhouse gas emissions. (CGERG 2006, p. 44)

- A report by KPMG for the Victorian Environment Protection Authority using a 'balanced scorecard approach' preferred the option of amending the NPI National Environment Protection Measure over a national purpose-built system. It found that the NPI would:

  – be more beneficial than a national purpose-built system in attaining nationally consistent and comparable information on greenhouse gas emissions and other regulated emissions that would be reported and publicly disclosed together on one website

– cost government and business around $7.9 million over a 10 year period compared with a national purpose-built system of more than $10 million over the same period

– be operational in less time than the a national purpose-built system.

The Commission notes the COAG commitment to a national purpose-based system and the recent commitment of significant resources by the Australian Government to establish the system (box 4.3). In those circumstances, the Commission notes that any further work by the Environment Protection and Heritage Council (which incorporates the National Environmental Protection Council) on including greenhouse gas and energy reporting in the NPI could have the effect of compounding current business confusion about the apparent inconsistent policy directions of COAG and the Council and create a further compliance burden.

DRAFT RESPONSE 4.16

Reform is progressing to harmonise multiple greenhouse gas and energy reporting requirements through national purpose-built legislation.

Australian emissions trading scheme

As noted in chapter 3, several participants in the agriculture sector noted, or commented on, the introduction of a greenhouse gas emissions trading scheme in Australia. The scheme is also of relevance to the mining, oil and gas sector.

The regulatory design of the scheme is crucial in terms of affecting the extent to which the scheme achieves its objectives and at what cost to the wider community, including to business. Best practice design features, if adhered to should keep burdens imposed on businesses to a minimum relative to the benefits achieved.

RECOMMENDATION 4.17

Development of the Australian greenhouse gas emissions trading scheme has the capacity to address red tape and reduce unnecessary burdens provided that best practice policy design is applied. In particular, the new scheme should facilitate market transactions so that rights to emit greenhouse gases go to their highest value uses and any exemptions should be fully justified. Ongoing monitoring and evaluation of progress is important.

4.9 Labour skills and mobility

Participants identified a shortage of skilled workers as a major constraint to growth in the minerals sector. Currently there are shortages for trades (especially competencies associated with mechanical and electrical trades), semi skilled employees (such as miners and plant operators) and for professionals (mining engineers, metallurgists and geoscientists). There are also severe shortages in related areas, such as transport and logistics, for example, heavy vehicle and train drivers, port and at-sea pilots. According to the MCA, based on projected future expansion, the minerals sector will require 75 per cent (or 70 000) more employees by 2015 than in 2005. The most chronic shortages are likely to be for semi-skilled workers and trades (MCA sub. 37, p. 16).

Regulations aimed at delivering training, skills mobility and skilled migrants were considered to need further improvement. In particular:

- The vocational education and training system is seen as insufficiently driven by industry needs, particularly in delivering skilled tradespeople to meet industry needs.
- While the Mutual Recognition Agreement has gone some way to facilitating the movement of labour across jurisdictions, diverse approaches by industry regulators to assessing skills impede the movement of some tradespeople across state borders, such that VET training is often not sufficient to satisfy their requirements.
- While skilled migration visas are generally seen to be flexible and effective, current proposals for reform risk adding to red tape and reducing efficiency.

The MCA (sub. 37, pp. 16–18) made a number of suggestions for addressing skills shortages (box 4.4).

Assessment

While shortages of particular trades and other skills appear particularly severe in the mining sector, the problems are not confined to the primary sector and policy responses tend to impact generally across the economy. Addressing skills shortages has been a key focus of governments and industry in recent years.

COAG has been working on implementing an action plan for addressing skills shortages through a national approach to apprenticeships, training and skills recognition (COAG 2006a).

Box 4.4 Minerals Council of Australia views on addressing skills shortages

The MCA strongly supports mutual recognition of skills across jurisdictions to promote the movement of people and equipment around Australia.

It called for a vocational education and training (VET) system that:

- is driven by industry and business needs;
- recognises training providers as service providers;
- prioritises public resources to areas of greatest need within the national economy and in the case of the minerals industry to critical skill shortage needs in the mechanical and electrical trades and semi skilled areas;
- delivers quality training outcomes, including nationally consistent and streamlined pre-employment training for secondary students and school leavers in the traditional trades in greatest demand; and
- services industry at times and places that meet industry and employee needs.

The MCA supported the Australian Government's Skilled Migration Program and endorsed the flexibility and effectiveness of the 457 Temporary Business Visa arrangements as an instrument for sourcing skilled personnel from overseas. It called for a skilled migration system , where:

- 457 Visa arrangements are flexible and avoid unnecessary processing delays — any measures to strengthen the integrity of the arrangements should focus on correcting demonstrated instances of abuse and give adequate consideration to the risk of increasing red tape, cost and processing times;
- fast tracking processes are available for pre-qualified companies to ensure recruitment times are less than 3 months;
- fast tracking of processing times is available for skilled occupations paid over a minimum salary cap;
- highly skilled occupations and those with identified skills gaps remain exempt from labour market testing;
- other skilled occupations to be registered with a Job Network member or other recruitment company, to be done concurrently with the skilled migration application process rather than requiring a mandatory 28 day registration period;
- continued access to employer sponsored visas for "labour hire" companies and their associated obligations, provided the labour hire company remains the direct employer of the 457 visa holder; and
- employers are to be denied access to the 457 Visa if they misuse the process.

Source: MCA (sub. 37, pp. 16–18).

Recently the MCA and the National Farmers Federation entered into an Agreement with the Australian Government on addressing *regional* skills shortages. A Memorandum of Understanding has been signed to:

> collaboratively establish the basis to build a pool of skilled workers capable of meeting the needs of both industries throughout regional Australia …
>
> Under the MoU, parties to the Agreement will trial different ways of coordinating existing activities, facilitate improved engagement with the National Vocational Education and Training (VET) system, specifically the Australian Technical Colleges, and establish direct linkages to on-the-job training and subsequently, employment in agriculture and mining. (MCA media release, 17 July 2007)

A number of observations are made below in relation to the following three broad strategies for addressing the problems:

- education (especially vocational and higher education) and training
- mutual recognition of skills and qualifications to enhance mobility across jurisdictions
- skilled migration policies and recognition of overseas qualifications.

Education and Training

Generally education policy objectives, including vocational education and training, are met through funding and administrative programs, rather than through regulation, and responsibility for these programs largely rests with the state and territory governments. Where legislation or regulation is involved, concerns often relate to policy design rather than to streamlining or eliminating red tape.

The COAG National Action Plan, referred to above, has included initiatives directed towards improving the quality, flexibility and portability of skills and training. This has included consideration of:

- making training more flexible and responsive, for example, through recognition of prior learning, shortening the duration of apprenticeships where competencies are demonstrated and allowing intermediate or specialised qualifications as well as full apprenticeships
- enabling (including by removing regulatory barriers) school-based New Apprenticeships
- making skills and training more portable, for example through a nationally consistent Statement of Attainment that clearly sets out competencies and skills achieved
- facilitating effective competition between training providers

- a targeted response to skills shortages affecting particular industries or regions.

It was apparent from consultations that there can be an inherent tension between the industry's desire for, on the one hand, flexible vocational education and training options, including recognition of prior learning, acceptance of shortened duration formal education and training and support for a wide range of government and non-government training providers, and, on the other hand, assurance of quality training outcomes. Cases were cited, for example, where certificates of competencies obtained did not appear to be consistent with actual observed or tested workplace competencies. It was suggested quality assurance standards were uneven across training providers and that the agreed competencies for the attainment of certain certificates were too vague or broad.

With a view to ensuring the quality of outcomes from the training system, COAG has agreed to accelerate the introduction of a national outcomes-based auditing model and stronger outcomes-based quality standards for registered training organisations with specific quality assurance measures.

Many of these reforms being implemented or under consideration have the *potential* in the coming years to alleviate some of the shortages impacting on the minerals sector. However, previous attempts to bring about improvements have delivered disappointing results, especially with regard to the recognition of VET skills.

As was the case when the Commission examined VET issues as part of its 2005 *Review of National Competition Policy Reforms*, while 'many of the policies required to move forward in the VET area are already in place or recently announced' (PC 2005, p. 343), there needs to be a resolute commitment to accelerated implementation of reforms.

DRAFT RESPONSE 4.18

While reforms in the Vocational Education and Training area, that are being implemented or under consideration, have the potential to alleviate skills shortages, progress has been slow and there needs to be a commitment to accelerated implementation.

Mutual Recognition

For occupations, the Mutual Recognition Agreement and the Trans Tasman Mutual Recognition Arrangement, and the relevant legislation giving effect to these arrangements, allow a person who is registered in one jurisdiction to be registered in the other participating jurisdictions for the equivalent occupation and to carry on that occupation in those other jurisdictions.

The Australian National Training Authority's *Licence to Skill* Report (ANTA 2002) made the following observations about mutual recognition of occupations:

- Mutual recognition is of limited benefit where occupations are not consistently regulated across jurisdictions.
- Mutual recognition does not assist the portability of occupations between jurisdictions in instances where occupational knowledge and skill requirements are mandated by legislation, but for which no physical licence or registration is issued. (p. 8)

The Commission conducted a major review of mutual recognition in 2003. Its Report *Evaluation of the Mutual Recognition Schemes* found that mutual recognition of registered occupations had, in general, reduced impediments to occupational mobility, but identified considerable scope for improvements (box 4.5).

Box 4.5 **Productivity Commission Report on Mutual Recognition**

The Commission considered that several problems in the day-to-day operation of the schemes could be dealt with by:

- enhancing the information exchange systems and procedures among registration boards (for example, in relation to incomplete disciplinary actions) by greater use of electronic database registration systems with capacity for access by counter-part registration boards;
- improving the capacity of registration systems to accommodate short notice applications for registration to allow short term service provision across jurisdictions;
- encouraging Australian occupational registration authorities to develop national registration systems where the benefits justify the costs; and
- encouraging jurisdictions to continue to work on reducing differences in registration requirements to address concerns that the entry of professionals through the 'easiest jurisdiction' might lower overall competencies.

Source: PC (2003, p. XVIII).

More recently, COAG has included the effective implementation of full mutual recognition of skills/qualifications across Australia as part of its national approach to address skills shortages:

> COAG has agreed to new measures to enable people with trade qualifications to move more freely around Australia without undergoing additional testing and registration processes. COAG has agreed that governments will work with employers and unions to put in place more effective mutual recognition arrangements across States and Territories for electricians, plumbers, motor mechanics, refrigeration and air-conditioning mechanics, carpenters and joiners and bricklayers (skills shortage trades)

> by June 2007 and by December 2008 for all licensed occupations where people normally receive certificates and diplomas. (COAG 2006a)

Specifically, COAG's agreed outcome is that, by June 2007 for skills shortage trades and by December 2008 for all licensed occupations where people normally receive certificates and diplomas, 'individuals in licensed trades will have full mutual recognition of their licences in all jurisdictions and do not face duplicate assessment requirements for obtaining qualifications and licences'.

The Commission notes that some of the most severe skills shortages impacting on the mining sector are in trades that are not specifically included in COAG's priority 'skills shortage' trades and/or are not 'licensed' trades.

DRAFT RESPONSE 4.19

COAG's initiative to improve the mutual recognition of some trade qualifications should be broadened to cover all trades experiencing severe skills shortages, including those specifically affecting the mining sector.

Skilled migration

Migration policies come under the jurisdiction of the Australian Government and are largely codified in regulations.

The COAG work program referred to above has also been considering how migration policies can contribute to addressing the shortage of skilled workers. This has included an assessment of strategies for more efficient processes for recognising overseas qualifications, particularly in priority skills shortage occupations.

Specifically, COAG has agreed to new arrangements to make it easier for migrants with skills at Australian standards to work as soon as they reach Australia, and they will be in place in the five main source countries for our skilled migrants by December 2008, initially for skills shortage trades and later for other occupations in the skilled migration program. There will also be a parallel on-shore assessments for those who want overseas skills recognized.

In addition, the Joint Standing Committee on Migration conducted a public inquiry into skills recognition, upgrading and licensing, tabling its report *Negotiating the Maze* in September 2006.

The Commission notes that the Committee's Report made a number of recommendations for streamlining overseas skills recognition, including improved communication to users and between Australian Government agencies, removing

duplication, addressing complexity and processing delays and achieving greater national consistency in licensing and registration. Some changes to the skilled migration program have been announced by the Government and other administrative changes have been made by bodies involved in the process.

The only specific issue raised by participants in relation to skilled migration was with respect to the operation of the Business (Long Stay) (temporary business entry) visa, (the "457 visa") scheme (see comments by MCA in box 4.4). The mining sector appears to be happy with the scheme, but is more concerned about how it might be changed in response to recent criticisms, in particular reports of some abuse of the system by a minority of employers (underpaying workers or other unfair practices that exploit the vulnerable position of some of these guest workers). The 457 visa scheme is being reviewed as part of the COAG process identified above. In addition, the Senate Legal and Constitutional Affairs Committee recently conducted an inquiry in relation to the Migration Amendment (Sponsorship Obligations) Bill 2007. The Bill amends the *Migration Act 1958* and the *Taxation Administration Act 1953* to create new obligations for sponsors of skilled temporary overseas workers.

Given that the operation of this visa scheme has been the subject of recent review, and that the concerns raised relate to proposed amendments to the legislation, rather than existing rules, the Commission does not propose any new actions, but does endorse MCA's call that any changes give adequate consideration to the risk of increasing red tape, cost and processing times.

4.10 Transport infrastructure

The minerals and petroleum industry is a major user of transport and logistics services. The industry has identified transport bottlenecks as a major capacity constraint.

Although inefficiencies in domestic container/freight transport (ports, road and rail) also increase costs for businesses in the sector, the focus of this section is on the rail and port infrastructure that handles the export of bulk commodities, as well as cabotage restrictions on coastal shipping. This emphasis is appropriate given that these elements of the transport infrastructure impact (apart from the direct impact on the transport service providers) almost exclusively on primary sector users, whereas the impacts of any inefficiencies in the general road and container freight transport infrastructure impact more broadly across sectors, most notably on the manufacturing, wholesale and distributive trades. Some specific road transport issues affecting the primary sector were discussed in chapter 3.

With respect to the broader transport issues, the Commission has previously recommended that governments initiate an independent national review of the national freight transport system, encompassing all freight transport modes (PC 2005). The MCA has also recognised the need for transport issues to be considered in the context of the whole system and inter modal issues:

> … the fundamental point in addressing the systemic failure in Australia's minerals export corridors is the efficiency and effectiveness of the whole transport and logics chain – not merely an element of it. (sub. 37, p. v)

Following on from the Commission's *Review of National Competition Policy Reforms* (PC 2005) and the Prime Minister's Exports and Infrastructure Taskforce report (see below), COAG has committed to a national transport market reform agenda covering rail, road and ports, with the objective of improving the efficiency, adequacy and safety of Australia's transport infrastructure. COAG has also signed a Competition and Infrastructure Reform Agreement which aims to reduce regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure — including ports and export related infrastructure (see access discussion below).

With respect to bulk commodity transport, notwithstanding significant investment in recent years to build capacity, growth in export demand has put pressure on the rail and port infrastructure. Bottlenecks have been a particular problem in the transport and handling of high volume bulk commodities such as coal and iron ore. The situation is especially acute in the delivery of coal by rail through the ports of Newcastle in New South Wales and Dalrymple Bay (near Mackay, central Queensland). Some of Australia's largest export coal customers (Japanese and South Korean steel makers) have been so concerned about coal ship queues at Newcastle and they have recently made representations to State governments stressing the importance of improving the infrastructure. The situation is exacerbated by a tight global shipping market which sees substantial demurrage costs incurred for ships waiting offshore. One coal company, Gloucester Coal, has estimated that queues at the Newcastle Port have resulted in cost increases of $2.50 a tonne, equating to a '$4 million cost increase over the year, which represented about 10 per cent of the company's bottom line'. (Australian Financial Review 18 July 2007, p. 12).

Rail and port infrastructure comprises both state-government owned and private rail systems and ports. The Pilbara iron ore industry in Western Australia, for example, owns and operates highly integrated mining, transport and ship loading assets. Generally, the private transport infrastructure is operated by third parties, rather than mining companies.

There are many *non-regulatory* factors contributing to the current transport infrastructure bottlenecks, including under investment, fragmentation of ownership, poor management or work practices, a lack of coordination and planning, inadequate integration of supply chain elements, or a lack of coordination and cooperation between parties (although some of these factors can be an *indirect* consequence of disincentives created by regulation).

Many of these issues were highlighted in the recent report of a parliamentary inquiry into integration of regional rail and road networks and their interface with ports. The Report identified an urgent need for substantial government funding to upgrade ports and surrounding transport corridors, but also found that a lack of integration was a major problem:

> What we discovered as we moved from port to port, was a pattern of logistics or infrastructure failures in the access to, or the operation of, ports — a missing supply link, a lack of rail capacity, a need for bypass or ring roads, road and rail loops, and the functionality of channels to cater for larger or more frequent vessels. (HRSCTRS 2007, p. vii)

Although *non-regulatory* issues, including funding, are clearly very important *regulation* can also have a significant impact, both directly and indirectly, on transport infrastructure capacity and efficiency. The main areas of regulation are:

- planning approval processes, for the construction of export infrastructure, including ports — the responsibility of state and territory governments or local governments, with approvals covering matters such the environment, OHS, local planning and zoning and industrial relations
- Australian and State/Territory Government competition regulation (access regimes) for critical infrastructure
- legislative restrictions (cabotage) on coastal shipping services.

The rest of this section looks at: concerns relating to the national access regime (under Part III of the Trade Practices Act); other access concerns relating to access regimes governed by state and territory legislation; and concerns about coastal shipping.

Part IIIA concerns

The national access regime is a regulatory framework which provides an avenue for firms to use certain infrastructure services owned and operated by others when commercial negotiations regarding access have been unsuccessful. These arrangements are contained in Part IIIA of the *Trade Practices Act 1974* which sets out the mechanisms for permitting third party access to the services provided by

eligible facilities or infrastructure, the arbitration of access disputes and the roles and responsibilities of the institutions which administer the arrangements.

These arrangements were seen by some participants as being problematic. Fortescue Metals Group were of the view that the national access regime was ineffective for those seeking access to infrastructure.

In contrast, Rio Tinto (sub. 21) claimed that the access arrangements presented a low threshold for those seeking access and had major efficiency impacts on export dedicated infrastructure. It was critical of a number of aspects of the access arrangements, in particular:

- the declaration criteria used under the Part IIIA arrangements which focused on marginal increases in competition rather than on overall economic efficiency and productivity. As increases in competition need not be in Australia, export facilities could be required to provide access to third parties even where the benefits from increased competition are provided to foreign buyers at the expense of domestic producers
- the reduction in investment in infrastructure due to the regulatory risk associated with being mandated to provide access to privately owned infrastructure.

To over come such problems, Rio Tinto called for the legislation to be amended to include an 'efficiency override' for vertically integrated export facilities by providing the Minister with the ability to exempt key export facilities on national interest grounds.

The Institute of Public Affairs (IPA) (sub. 4) said that Part IIIA had created an unnecessary and intrusive regulatory regime which had hindered overall economic welfare. The most costly impact of the regime was its 'chilling effect' on investment due to the risk that the business undertaking the investment may be required to provide unrelated businesses and competitors access to their facilities. Moreover, it was unnecessary as the Trade Practices Act provided a general prohibition on market power. This was due to the access regime, Part IIIA having been conceived when the prohibitions on market power were seen as inadequate. However, since then certain court decisions had provided greater clarity to the misuse of market power by infrastructure owners and, in the IPA's view, rendered the Part IIIA provisions unnecessary.

Assessment

The national access regime as set out in Part IIIA has proved to be an innovative, but often controversial, piece of economic regulation since its inception in 1995. Although there have been relatively few determinations under Part IIIA, the high

profile nature of the handful of applications for access made under the legislation and related court actions have created ongoing attention on the regime. This is not surprising given the value of the essential infrastructure covered by the regime and the importance of the services provided by this infrastructure to Australian businesses and the wider economy.

The regime has also been subject to scrutiny through a comprehensive review in 2001 as part of the National Competition Policy reforms which provided for a review of the regime after five years of operation. This review was undertaken by the Productivity Commission. Among other things, the Commission was asked to:

- clarify the objectives of the regime
- examine its benefits and costs and ways to improve it
- consider alternatives to achieving the regime's objective
- examine the role of the bodies administering the regime.

The Commission supported the retention of the regime, but noted that it needed to provide a greater emphasis on ensuring there were appropriate incentives to invest in essential infrastructure and made a number of recommendations to improve the operation of the regime.

As to using alternatives such as the Part IV provisions of TPA to regulate access, the Commission in its review noted that, 'reliance on the competitive conduct provisions of Part IV of the Trade Practice Act would not be a viable stand-alone mechanism for facilitating access to essential facilities' (PC 2001).

The Government endorsed the majority of the recommendations and made a number of legislative amendments to Part IIIA in 2006 through the Trade Practices Amendment (National Access Regime) Bill 2006. The majority of the amendments focused on procedures and were designed to:

- encourage efficient investment
- clarify the regime's objectives
- strengthen incentives for commercial negotiation
- improve the transparency, certainty and timeliness of the regulatory process.

The key changes made to the legislation involved:

- inserting an objects clause that provides for Part IIIA to 'promote the economically efficient operation and use of, and investment in, essential infrastructure services and promote effective competition in upstream and downstream markets'. The National Competition Council (NCC), the Minister

and the Australian Competition Tribunal are required to take into account these objectives in their decision making processes

- changes to the declaration criteria requiring a lifting of the threshold to have a service declared. Declaration must promote a *material increase* in competition in at least one market where previously declaration was only required to promote competition in at least one market. The explanatory memorandum states that this means a 'not trivial' increase in competition
- the adoption of pricing principles and the requirement for the ACCC to have regard to these principles when arbitrating access disputes and considering undertakings
- time limits on the NCC, the Minister, the Australian Competition Tribunal and the ACCC in making access decisions and the requirement that all decision making processes be published.

Importantly, in responding to the review, the Government announced that there would be a further independent review five years after the changes have been in place. This is due to take place in 2011.

Also, further amendments to Part IIIA have been proposed by the Government in response to the Productivity Commission review of the price regulation of airport services (PC 2006). The Government accepted the recommendation to amend Part IIIA to address uncertainty surrounding the competition test in the declaration criteria that had arisen in light of the Federal Court decision surrounding the declaration of domestic air services at Sydney Airport (Costello 2007). In effect, this should ensure that the interpretation of the legislation does not lower the 'entry bar' in relation to accessing major infrastructure.

The issues raised by participants concerning the national access regime and the court's interpretation of these matters are particularly complex. Amendments to the legislation following the previous review may in part address some of these concerns. However, these changes are relatively recent and will require time to be 'bedded down'. For these reasons, the Commission considers that the independent review of the national access regime due in 2011 would be a more appropriate forum in which to examine these concerns in detail and to assess the impact of the recent amendments.

The forthcoming review would also be better able to assess the implications of any legal decisions over the intervening period as to the appropriateness of maintaining a generic access regime versus relying on the market power provisions of Part IV.

In the interim, the Minister, the NCC and the ACCC should fulfil all requirements to make more transparent and publish their considerations in reaching decisions, thus providing greater clarity to infrastructure providers and access seekers.

However, the 'no action - no declaration' provision in the legislation reduces clarity and transparency in the decision making process. Where the designated Minister does not make a decision within 60 days of receiving the final recommendation from the National Competition Council in regards to declaring a service, the Minister is deemed to have published a decision not to declare the service. To further improve transparency, clause 44H(9) of the legislation should be amended to require the designated Minister to publish reasons as to why the service has not been declared following the expiry of the 60 day time limit.

DRAFT RESPONSE 4.20

The proposed 2011 review of Part IIIA is the appropriate forum to assess the national access regime. In the interim, to further improve transparency, clause 44H(9) of the Trade Practices Act 1974 should be amended to require the designated Minister to publish reasons as to why the service has not been declared following the expiry of the 60 day time limit.

State and Territory access regimes

There have been ongoing concerns surrounding bottlenecks in the operation of export infrastructure mainly involving rail and port facilities operating under State access regimes. Most of these industry specific access regimes are governed by State and Territory legislation administered by a variety of regulators applying criteria which vary from regime to regime.

The MCA (sub. 37) voiced frustration at this inconsistency in access regulation which had added to the regulatory burden faced by mining companies operating in more than one jurisdiction. This had adversely impacted on the effectiveness and efficiency of Australia's mineral's export corridor contributing to the bottlenecks at export infrastructure facilities.

It said:

> All of the major rail systems are subject to some form of economic access regime however, regulatory processes, mechanisms for determining prices and the provisions for resolving disputes vary from system to system. Furthermore, the process of seeking an access determination by the relevant regulator (ACCC or State/Territory authority) can be both time consuming and expensive, typically taking many months and, for major infrastructure developments, a year or more.

> Jurisdictional variations in structures and pricing policies add unnecessarily to the regulatory compliance burden both for minerals companies and their independent transport service providers operating in more than one state. Clearly greater regulatory harmonization is necessary for the modern Australian economy. (sub. 37, p. 28)

In 2005, the Prime Minister commissioned a Taskforce (Exports and Infrastructure Taskforce 2005) to identify any physical or regulatory bottlenecks that could impede Australia's export opportunities. The Taskforce found that some parts of Australia's export infrastructure faced immediate capacity constraints. Localised bottlenecks emerged when an unexpected increase in world demand for Australia's minerals ran into tight and inflexible supply. Although these difficulties were localised, impediments to efficient investment in infrastructure needed to be addressed before capacity constraint problems involving Australia's export infrastructure became more widespread.

The Task Force found that the greatest impediment to the development of necessary infrastructure was that an excessive number of regulators were administering cumbersome, complicated, time consuming and inefficient regulatory regimes. It specifically recommended that COAG examine the scope for a single national regulator or other ways to reduce the number of regulators administering export related infrastructure. It also recommended that COAG explore the scope for simplifying and streamlining regulatory processes applying to export infrastructure by encouraging commercial negotiations between infrastructure providers and users and by a greater reliance on light handed regulation. Where more intrusive regulation was required, COAG should make changes to the regulatory arrangements to improve timeliness, consistency and clarity of objectives (Exports and Infrastructure Taskforce 2005).

In response to the Taskforce's report, COAG in February 2006 signed a Competition and Infrastructure Reform Agreement to provide for a simpler and consistent approach to the economic regulation of nationally significant export related infrastructure, including ports and railways and an agreed timetable for the implementation of specific reform commitments (COAG 2006a). This agreement was welcomed by the MCA (sub. 37).

The agreement contained:

- requirements for regulators to make decisions within binding time limits
- a commitment to review the regulation of ports, port authorities and handling facilities at major ports by the end of 2007, these reviews are currently in progress, with the findings of these reviews to be implemented by the end of 2008

- a commitment to implement a simpler and consistent system of rail access rail regulations for agreed interstate rail track and intrastate freight corridors by the end of 2008.

COAG also agreed to amend the Competition Principles Agreement to incorporate the following into all access regimes:

- the inclusion of an object clause that promotes the economically efficient use, operation and investment in significant infrastructure
- consistent pricing principles
- merit review of regulatory decision to be limited to the information submitted to the regulator (COAG 2006a).

Although the Australian Government considered a single regulator was preferable, it advised that it would adopt a 'wait and see' approach and reserved the right to legislate to this effect if the new arrangements were not effective (COAG 2006a).

Coastal shipping

Coastal shipping in Australia typically carries bulk commodities over long distances. It is of particular importance to the minerals sector, with shipments of iron ore, bauxite, crude oil and petroleum products together making up 61 per cent of coastal freight loaded in Australia by tonnage in 2004-05 (BTRE 2007).

Australian Government cabotage requirements restrict the coastal trade to only Australian licensed vessels (which includes both Australian and, subject to conditions, foreign owned vessels). Such restrictions can impact on the cost of shipping services to Australian businesses through higher crew costs, less flexibility and less competition in shipping services.

In light of such costs, the MCA suggested that:

> A review of Australia's cabotage arrangements should be undertaken through completion of the Australian Government's Legislation Review Program … (sub. 37, p. 33)

The MCA also raised some concerns relating to intra-state voyages:

> …[Given] CVPs and SVPs are only required when unlicensed vessels are engaged on inter-state voyages and that the requirements for unlicensed intra-state voyages vary between individual States, these requirements need also to be reviewed and standardised. (sub. 37, p. 33)

Similarly, in the agriculture sector, Australian Pork Limited also called for a review of coastal shipping, noting that licensing arrangements had led to increased costs for the grains industry:

> During recent droughts, it was more costly to ship grain from WA ports to the eastern seaboard than to do so from the major US grain ports.(sub. 44, p. 17)

Assessment

These costs have been partly ameliorated by the use of the permit system. Continuous or single voyage permits (CVPs or SVPs) allow unlicensed vessels to engage in coastal trade where the service provided by licensed vessels is inadequate or unavailable. In commenting on cabotage, the MCA noted that:

> In the absence of any change to cabotage arrangements aimed at improving efficiency and reducing transport costs, the MCA supports the Australian Government's current position on CVPs and SVPs. … [because]
>
> - the bulk commodity industry has no alternative but to use foreign flagged and crewed bulk carriers (eg. to meet seasonal fluctuations and demand spikes) given the small number (17) of Australian flagged dry bulk carriers, the majority of which have fixed contract commitments; and
> - the use of the CVP/SVP system is now integral to the efficient transport of domestic dry bulk commodities with the Australian economy being the obvious beneficiary. (sub. 37, p. 42)

However, the permit system does not represent a long-term solution regarding coastal shipping in Australia:

> … reliance on these permits without a definitive judgement on the future of cabotage is said to be creating uncertainty within the industry and … hampering investment. (PC 2005, p. 221).

As such, the Commission reiterates its previous call for a review, made as part of its 2005 *Review of National Competition Policy Reforms*, where the Commission considered that coastal shipping should be included as part of a wider review of the national freight transport system (PC 2005, pp. 220–22).

The Commission believes that intra-state requirements should also be considered as part of an overall review covering coastal shipping. As mentioned above, COAG has already committed to a national transport market reform agenda.

DRAFT RESPONSE 4.21

Given its importance within Australia's freight transport task, coastal shipping should be included in COAG's national transport market reform agenda.

4.11 Safety and health

In the context of this study, participants from the mining sector raised a number of concerns about OHS laws (many mirrored similar concerns raised by the agricultural sector and reported in chapter 3). The MCA, for example, submitted:

> The current approach to OHS regulation in the minerals sector is based on eight separate State/Territory legislative regimes resulting in inefficiency, unnecessary cost, complexity and uncertainty for industry… some OHS legislation and its application hinders rather than assists business in achieving its objective of improved safety outcomes. (MCA, sub. 37, p. 15).

Other specific barriers to efficient outcomes that were highlighted by participants, included:

- the difficulty understanding what will be deemed 'reasonable' and therefore constitute compliance with OHS obligations
- too much discretion and scope for inconsistent interpretations by regulators
- conflicts *within* jurisdictions between OHS regulations and other regulations
- a lack of understanding and emphasis by governments of the role of risk management
- a shortage of mine managers attributed in part to concerns about criminal liability
- enforcement policies where the penalty is disproportionate to the level of fault; and increasing emphasis on prosecution as an initial response to non-compliance — the industry is particularly concerned at the inconsistent approach to industrial manslaughter laws across Australia with differences in penalties, length of jail terms, the nature of an offence subject to prosecution, the availability of defences and the basic rights of appeal.

A challenge for the industry and regulators is to strike the right balance between, on the one hand broadly specified 'duty of care' obligations, and prescriptive rules on the other. While the industry supports a risk-based preventative system with minimal prescription, it can lead to uncertainty for businesses and employees. In this regard, MCA recommended:

> codes of practice and guidelines should be developed and applied on a national basis and provide consistent parameters for mining operators. (MCA, sub. 37, p. 16)

As noted in chapter 3, the Commission does not intend to comment extensively, or make recommendations, on the *general* OHS regulatory frameworks. The regulations are, in the main, of a generic nature and do not *particularly* impact on the primary sector — offshore petroleum safety and the National Mine Safety

Framework are the exception and are discussed below. Moreover, COAG has included OHS as one of its 10 regulatory hotspots and has developed a program and timeline for achieving a nationally consistent framework and standards as recommended by the Regulation Taskforce. This area of regulation has also been the subject of many reviews (including recently by various State Governments and a major review by the Productivity Commission (PC 2004e)).

Offshore petroleum safety

The offshore petroleum regulatory safety regime for both Commonwealth and states' waters and some offshore islands is administered, on behalf of the respective ministers, by a single National body — NOPSA.

NOPSA commenced in January 2005 after a major review of offshore safety regulation. Key features of the NOPSA model include:

- Ministers have not ceded their regulatory responsibilities to another minister, but instead have opted to use the one regulator to administer each minister's responsibilities for offshore petroleum safety (Commonwealth waters and State and NT coastal waters).
- The Authority is fully funded by an industry safety fee.
- It was established under Australian Government legislation.
- The Authority has an expertise-based advisory board and is responsible to the Australian Government Minister, the MCMPR and individual State and NT Ministers.

The industry strongly supports the regulatory efficiencies that have been generated by NOPSA's creation, indeed APPEA have suggested NOPSA represents a good model for achieving greater consistency in petroleum regulation more broadly.

However, as noted in section 4.3, some concerns remain about requirements to submit the same or similar information to NOPSA as is submitted to various regulatory agencies and the relevant Designated Authorities. APPEA have also argued that NOPSA should be jointly funded because there are both public and private benefits associated with safety regulation (APPEA 2007).

The Commission notes that some of these issues are being considered in the context of the current review of offshore petroleum regulations (section 4.3), while others including cost recovery issues, will be best addressed early next year when the operations of NOPSA are to be reviewed. An independent review team is to:

> … make recommendations to improve the overall operation of NOPSA and its Board and the safety performance of the Australian offshore petroleum industry … [and] provide a report to the Commonwealth Minister within six months of the completion of the review. (MCMPR Meeting Communique, 3 August 2007)

National Mine Safety Framework

For more than ten years the MCA and others have been calling for a more consistent national approach to mine health and safety regulation.

The Australian Government has no direct responsibility for mine safety. Its primary goal is to ensure an effective and consistent nationwide approach and it has provided resources to help achieve this goal.

In March 2002, the MCMPR endorsed the National Mine Safety Framework (NMSF) as a mechanism for delivering a nationally consistent (not necessarily identical) mine health and safety regime across jurisdictions. The NMSF is made up of seven strategies which have been identified as key elements of improving the health and safety record of the Australian mining industry, which are:

- the development of a nationally consistent legislative framework
- competency support (i.e., support for the establishment of an effective basis for determining the competency of key management and employees in meeting their mine safety and health obligations)
- compliance support (particularly through the development and promulgation of a range of guidance material)
- consistent and reliable data collection, management and analysis
- consistent and effective approaches to consultation at workplace and State/Territory and industry levels, and investigation of the need for a national consultative body
- a nationally coordinated and consistently applied protocol on enforcement
- a collaborative and strategic approach to mine safety and health research and development.

In November 2005, the MCMPR re-endorsed the initiative by establishing a tripartite Steering Group with representation from the States/Northern Territory and Australian Governments, industry associations and unions.

Consistent with this development, the Regulation Taskforce recommended ‘the Council of Australian Governments should establish a high-level representative

group to oversee the NMSF. This group should work closely with the MCMPR to oversee the next stage of reform, including the delivery of a single national regulatory body' (Recommendation 4.30).

This recommendation was supported by the Australian Government, which agreed to implement the NMSF and explore options for establishing a single national regulatory body.

The NMSF Steering Group has been focusing on three out of the seven NMSF strategies: nationally consistent legislation; consultation and data collection, with Working Groups established to advance each strategy. An Overarching Principles and Key Features document has been drafted, which forms the basis of the legislative framework. Extensive public consultations have been conducted on these first three strategies.

At the August 2007 MCMPR meeting, Ministers:

> … endorsed the process going forward for the development of the remaining strategies over the next 12 months. Ministers noted that there remained some significant issues/challenges to implementation but reinforced that they remained highly committed to the process, and expressed their pleasure at the level of goodwill apparent between the parties in the Steering Group. This augurs well for a successful outcome. (MCMPR Communique, 3 August 2007)

While the NMSF is intended to achieve a nationally consistent approach towards legislation, enforcement, compliance, competency, data, consultation and research, progress in implementing the Framework has clearly been extremely slow — governments first reached agreement on draft principles and key goals of the framework in 2000. Some progress is now being made, but substantive implementation of the Framework will not occur for at least 12 months, extending the development process to more than 8 years.

The MCA strongly supports the implementation of the NMSF (sub. 37, p. 16) but has emphasised that the ultimate goal should be a single national regulatory body replacing the existing state bodies, and a single piece of national legislation supplanting the existing state legislative frameworks.

The Commission understands that Ministers have agreed to defer consideration of the establishment of a national authority, given the complexity of the work underway to implement the NMSF, until the framework is complete.

Finally, in its submission to the Regulation Taskforce (sub. 7) the MCA expressed concern that the responses to state reviews of OHS in Western Australia, New South Wales and Queensland would have the potential to undermine efforts to achieve national consistency through the NMSF. These concerns were drawn to the

attention of the MCMPR and its Standing Committee of Officials. A particular concern was that the Stein Review of OHS laws in New South Wales — currently being considered by the New South Wales Government and not yet publicly released — may have recommended retention of strict liability offences for safety breaches that are the most stringent in Australia and which have been a barrier to efforts to harmonise laws across jurisdictions.

DRAFT RESPONSE 4.22

Despite in principle agreement between Ministers, reform in this area is taking too long. Governments should maintain a strong commitment to the implementation of the National Mine Safety Framework as soon as possible. Transparent, clear and staged timelines should be agreed and adhered to. Further, individual jurisdictions should not undertake initiatives which would have the effect of impeding the introduction of a national regime and authority.

5 Forestry, fishing and aquaculture

5.1 Forestry

Introduction

The forestry and logging subdivision of the *Australian and New Zealand Standard Industrial Classification* covers those business units mainly engaged in:

- growing standing timber in native or plantation forests, or timber tracts, for commercial benefit, and the gathering of forest products such as mushrooms, kauri gum or resin from forest environments
- logging native or plantation forests, including felling, cutting and/or roughly hewing logs into products such as railway sleepers or posts, including cutting trees and scrubs for firewood.

Forestry activity takes place in a range of settings, for example: old-growth native forests; hardwood and softwood plantations; and on farms (where trees are intercropped with other farm crops — agroforestry). Generally, its ultimate objective is to harvest trees for such uses as chips, pulp, paper, paper products, timber and timber products. Quite often the downstream value added exceeds that of the unharvested or harvested tree itself. Some forestry activity is directed at other objectives, for example the enhancement or preservation of a forest, or the planting of trees as wind breaks on farms.

The responsibility for forestry policy and forestry regulation largely lies with state and territory governments, and most forestry activity is regional in nature. The Australian Government plays a role both through funding and through its involvement with certain aspects of environmental policy and regulation.

- Funding is advanced through such means as the regional forests agreements, softwood forests agreement and the Tasmanian native forestry agreement.
- Forestry is subject to national oversight in terms of certain world heritage aspects and other environmental and biodiversity goals.

Rationales for some form of intervention in forestry activity, including possible regulation, include addressing possible market failure and externalities, for example in terms of environmental effects.

Issues that may need to be addressed include: erosion; reduced water runoff and compromised water purity from excessive clearing of forests; and enhancing the risk of fire through inappropriate forestry practices. Any future role for forestry in sequestering carbon dioxide would be a matter for detailed study that goes beyond the scope of this current review.

Table 5.1 **Forestry value chain and the impact of regulations**

Key Australian Government involvement/regulation	*Key stages of forestry cycle*	*Key state/territory government involvement/regulation*
• *Environment Protection and Biodiversity Conservation Act 1999* • Aboriginal land rights/native title • national heritage, world heritage • sustainable use of natural resources	**Farming proposal, strategy and planning**	• state and regional conservation and catchments management objectives, relevant planning schemes and legislation. • establishment requirements • land use and planning regulation • licensing • permits • land use and planning regulation • Aboriginal land rights/native title
• *Environment Protection and Biodiversity Conservation Act 1999* • natural heritage, world heritage	**Acquisition of permits (non-land owners)**	• state and regional conservation and catchments management objectives, relevant planning schemes and legislation. • land use and planning regulation • licensing • permits • regional development plans
• natural heritage, world heritage • licensing and approval of chemicals, fertilizers and pesticides • environmental protection and biodiversity conservation • water management • occupational health and safety legislation and policy.	**Preparation of site conditions, land, water; equipment; plant selection and breeding**	• water quality (physical, chemical, or biological) management • land use and planning regulation • soil stability • native vegetation legislation • water regulation • weed and vermin control regulation • use of chemicals and pesticides • natural heritage • environmental protection/assessment

(Continued next page)

Table 5.1 **(continued)**

Key Australian Government involvement/regulation	*Key stages of forestry cycle*	*Key state/territory government involvement/regulation*
• chemical and pesticides • National Pollutant Inventory • biosecurity regulation • occupational health and safety legislation and policy.	**Growth, farming species development and care**	• requirements on soil, water catchments, cultural landscape, roads and tracks. • disease control regulation • use of chemicals and pesticides • plantation health • fire control • natural heritage • environmental protection/assessment • chemical use approval • fire control • plant species, insect and animal pests and plant diseases control • occupational health and safety legislation and policy
• export market • export certificates • national land transport regulatory frameworks • shipping and maritime safety laws • international maritime codes and conventions • competition laws • national standards • international agreements	**Plantation processing; harvesting; product grading; classification and transport**	• certification and labelling • transport equipment • transport regulations • government owned public/private transport infrastructure • occupational health and safety legislation and policy • road access • harvesting equipments • reforestation • product classification • qualification requirements
• marketing legislation (mandatory codes and acquisition) • quarantine regulation • export controls • export incentives • taxation	**Marketing: boards and customers**	• interstate certification arrangements • taxation

Problems with the regulation of land and water use

The National Association of Forest Industries (NAFI) said that Australia's forest industry:

> … is underpinned by an extensive and complex regulatory framework which applies to all of its activities. Broadly speaking, these regulations can be classified as either resource based, in that they impact upon the growing and production of forest resources, or market based, meaning they impact upon the utilisation and marketing of timber products. (sub. 11, p. 3)

As for many other primary industries, the success of forestry operations is dependant on access to land and water, both of which are subject to a range of regulation. In particular, NAFI referred to increasing restrictions on access to forest resources, and pointed to:

- the transfer of native forests into conservation reserves, which has lead to 'mismanagement' with 'suboptimal outcomes for the conservation of biodiversity' as well as more imports from countries lacking 'Australia's comprehensive and rigorous legal [forestry] framework'
- the reduction in access to native forest resources, resulting from the ten Regional Forest Agreements, and further decisions by state governments to 'lock-up' more native forest areas 'has led to a significant "downsizing" of the native hardwood industry' (sub. 11, p. 5)
- discriminatory controls on the use of agricultural land for plantations restrict forestry operations in some regions
- inconsistent regulation and its application across jurisdictions
- in regard to water, there are 'perverse policy outcomes' for forestry under the National Water Initiative (chapter 3)
- 'undue costs, delays and uncertainty' for the forest industry arising from the Environment Protection and Biodiversity Conservation (EPBC) Act (sub. 11, pp. 4–9).

NAFI noted that while state regulations are the more predominant for this industry, 'the implementation of regulations at all levels of government can lead to outcomes which are contrary to the stated national government policy objectives' (sub. 11, p. 3). It called both for a greater role and greater powers for the Australian Government in overcoming these issues (sub. 11, p. 14).

Australian Forest Growers drew attention to the regulatory burdens faced by private forest growers in Victoria when investing in commercial tree crops. It said that the Victorian Code of Practice for Timber Production discriminates against small-scale

operations and low-impact forestry operations and creates 'an onerous legislative burden' (sub. 46, p. 1). It added that:

> … unlike many voluntary codes of practice for dry land farming pursuits, compliance with the CoP for Timber Production is compulsory and a high level of policy interpretation expertise is required. The only way to avoid compliance under the code is to plant less than 5ha, which is generally unviable. (sub. 46, p. 4)

Assessment

At a broad level, such land and water use issues have to be considered as part of the ongoing national policy debate in these areas, but this is beyond the scope of the current review. At a more detailed level, specific regional concerns are the province of state and territory governments and thus, also beyond the scope of this review.

Building regulations and the energy efficiency of timber

NAFI criticised current building codes and energy rating schemes, stating that they 'do not fully recognise the carbon benefits of wood products as they are typically not based on full life cycle assessments' (sub. 11, p. 10). By failing to recognise embodied energy, NAFI claimed that timber flooring was disadvantaged relative to, for example, concrete slab flooring (sub. 11, p. 10).

It is relevant to note that the issue of building regulation in general is a designated COAG 'hot-spot' — indeed, the April 2007 COAG Regulatory Reform Plan notes a strong commitment by all jurisdictions to a nationally consistent Building Code of Australia. That code includes building energy efficiency requirements. However, such commitment does not necessarily imply uniformity between jurisdictions — New South Wales, for example, has adopted different building energy efficiency standards.

The forestry industry also considers that the Online System for Comprehensive Activity Reporting (OSCAR) used by the Australian Greenhouse Office to help companies lower emissions, biases assessments against the use of wood by:

- measuring operational, but not embodied energy
- being insufficiently flexible to assess the energy efficiency of well-designed wooden houses.

In the industry's view, Australia's energy efficiency rating schemes should reflect the low energy emissions and subsequent carbon benefits of wood products in construction applications (NAFI, sub. 11, p. 50). And as OSCAR is based on international standards, several participants argued that Australia should address

concerns about biases in international energy rating standards in the appropriate international fora.

Assessment

In regard to embodied energy, the Commission in a 2005 report on energy efficiency noted that the need to address this issue was recognised by some relevant authorities. It concluded that:

> … the current approach of ignoring many building-related emissions has undermined the effectiveness of building standards in reducing Australia's energy use and emissions. (PC 2005, p. 218)

However, it recognised that 'a more comprehensive life cycle approach could address this problem, but it would be difficult to implement' (PC 2005, p. 218).

The Commission considers that the concern is relevant to the 2008 review year, given that the main impact is felt by the timber manufacturing industries. Deferring the review to that year would allow developments flowing from the current COAG initiatives to be assessed at that time.

DRAFT RESPONSE 5.1

Matters relating to the energy efficiency of timber construction and its recognition in building codes and energy rating schemes should be revisited in the 2008 review year.

Use of waste wood for power generation

Some jurisdictions prohibit or restrict the use of waste wood from native forest harvesting for power generation. There are also controls on the use of waste wood (from both native forests and plantations) for power generation under Australian Government legislation designed to promote the production of renewable energy. NAFI claimed that such controls 'represents a contradiction of the national policy objective of lowering greenhouse gas emissions' (sub. 11, p. 9).

Assessment

The Australian Government provisions were reviewed by the Mandatory Renewable Energy Target (MRET) Review Panel, which reported in January 2004. The Government noted that the report:

> … was inconclusive in its analysis of the use of native forest for renewable energy, as it required consideration of factors outside its terms of reference, including National Forest Policy. (AGO 2005)

In November 2005, the Government reiterated its view that only wastes from sustainable forestry operations can be eligible to create Renewable Energy Certificates under the MRET scheme:

> These criteria are designed to encourage more efficient use of existing resources, rather than promoting increased harvesting of native forests to supply wood wastes for electricity generation. (AGO 2005)

It said that it did not intend to make changes to the *Renewable Energy (Electricity) Act 2000* or the *Renewable Energy (Electricity) Regulations 2001* relating to the eligibility of native forest wood waste (AGO 2005).

DRAFT RESPONSE 5.2

The Government recently reviewed this matter and was concerned to avoid promoting increased harvesting of native forests to supply wood waste for electricity generation.

5.2 Fishing

Introduction

The fishing group of the *Australian and New Zealand Standard Industrial Classification* covers those business units engaged in fishing, including:

- line fishing in inshore, mid-depth or surface waters
- trawling, seining or netting in mid-depth to deep ocean or coastal waters
- catching rock lobsters, crabs or prawns from ocean or coastal waters.

The complex Australian marine environment, community expectations and fisheries-related social and economic concerns create a significant challenge for fisheries management. Ecologically sustainable development is becoming more important in fishing management in order to maintain a balance between exploitation of fisheries and their capacity to regenerate. Fish stocks are also affected by: the high level of recreational and commercial fishing; illegal fishing by foreigners; and environmental change and aquatic habitat degradation.

Table 5.2 **Fisheries value chain and the impact of regulations**

Key Australian Government involvement/regulation	*Key stages of fisheries cycle*	*Key state/territory government involvement/regulation*
• *United Nations Convention on Law of the Sea* • fisheries conventions • conservation conventions • shipping and maritime safety laws • international maritime codes and conventions • *Fisheries Management Act 1991* • *Environment Protection and Biodiversity Conservation Act 1999* • fisheries strategic assessment • marine protected areas, world heritage areas • species listings • Aboriginal land rights and native title • fisheries Offshore Constitutional Settlement arrangements	**Acquisition of permit**	• fishing licensing • boat survey, safety and pollution requirements • boating qualifications and licensing • equipment requirements
• *Fisheries Management Act 1991* • *Environment Protection and Biodiversity Conservation Act 1999*	**Preparation of gear and equipment**	• equipment requirements • port requirements • boating licensing • occupational health and safety legislation and policy
• *Fisheries Management Act 1991* • *Environment Protection and Biodiversity Conservation Act 1999* • protected species • recovery plans, threat abatement plans • standards • fuel excise rebates • immigration and transport security • research and development funding and support	**Fishing**	• fisheries landing and marketing requirements (size limits etc) • restricted areas • by-catch • occupational health and safety legislation and policy

(Continued next page)

Table 5.2 **(continued)**

Key Australian Government involvement/regulation	*Key stages of fisheries cycle*	*Key state/territory government involvement/regulation*
• export certificates • environmental regulation • marketing legislation (mandatory codes and acquisition) • *Environment Protection and Biodiversity Conservation Act 1999* • export approval for wildlife trade • food safety regulation • quarantine regulation • export controls • export incentives • taxation • research and development funding	**Marketing and processing**	• interstate certification arrangements • occupational health and safety legislation and policy • food safety regulation • taxation
• national land transport regulatory frameworks • competition laws • international food standards	**Packaging, transport, insurance and logistics**	• packaging requirements • transport regulations • government-owned public/private transport infrastructure • insurance requirements

Australian fisheries management is shared between the Australian Government and the states. Offshore Constitutional Settlement arrangements assign Australian Government or state management responsibility for fisheries. These arrangements:

> … are in place for all major fisheries, acknowledging jurisdictional lines, however there are numerous instances where management of a fish stock is shared and there is a need for better collaboration between jurisdictions to provide for sustainable, profitable fishing and effective efficient administration. (DAFF, sub. 31, p. 12)

Offshore Constitutional Settlement arrangements also establish some joint authorities for fisheries (for example, the Queensland Fisheries Joint Authority).

Two Australian Government Acts provide for the ecologically sustainable management of commercial species and the conservation of Australia's marine resources. Both apply to fishing enterprises active in Australian Government fisheries.

The *Fisheries Management Act 1991* provides the main Australian Government legal framework governing the fishing industry. It addresses over-fishing, maintenance of fish stocks and ensuring that ecologically sustainable development principles apply. Under the Act, management of Australian Government fisheries is undertaken by the Australian Fisheries Management Authority (AFMA), which develops management plans, regulates fishing effort, and is responsible for licensing, monitoring compliance and enforcement. In particular, AFMA is empowered to set the total allowable catch for particular species and for particular fishing periods.

The EPBC Act authorises the Minister for Environment and Water Resources to set specific fisheries management requirements and to list threatened species, including marine species, and ecological communities. (Section 6 of the EPBC Act details its interaction with the Fisheries Management Act.) The lists can determine any 'by-catches' of these marine species to be a criminal offence.

Duplication in fish stocks management

The Commonwealth Fisheries Association (CFA) expressed concern about the lack of harmonisation between the Fisheries Management Act and the EPBC Act. It said that, while it supports the broad intent of both Acts, the interaction and overlap between them:

> … creates an environment of uncertainty in terms of … future access to commercial fish stocks and ultimately brings into question the value of statutory fishing rights as an asset and financial security. (sub. 30, p. 3)

The CFA is generally satisfied with the arrangements under the EPBC Act to manage interaction with threatened, endangered or protected species and to monitor and regulate these requirements. It also accepts the need for the Minister to have authority to nominate particular fishing methods as 'threatening processes' when objective and transparent criteria justify such an action. However, it argued that the strategic assessment processes under the EPBC Act 'are widely regarded as yet another burden on the commercial fishers, focused on a relatively narrow set of conservation-orientated objectives' (sub. 30, p. 4).

It added that the 'worst possible outcome' is to have different assessment standards and processes imposed by different agencies, adding that any strategic assessment regime should be effectively integrated and harmonised with existing fisheries management, monitoring and compliance regimes.

It proposed that DEW and AFMA should be required to jointly review their respective requirements and processes and develop an agreed and transparent process to integrate and harmonise these assessment activities:

> The strategic assessment processes required under the EPBC Act are resource intensive and potentially disruptive processes. Accordingly, it is essential that within DEW, assessments undertaken as part of issuing a permit to export wild caught product are fully harmonised and accredit with strategic assessments undertaken to conform to the requirement that all fisheries undergo strategic environmental impact assessment before new management arrangements are brought into effect. (sub. 30, p. 4)

It added that, even if all of the requirements of the Fisheries Management Act were met, a fishery could be closed by the listing under the EPBC Act of a key target species (or one that may be caught unintentionally). It expressed concern that:

- the EPBC Act listing criteria adopted for marine species is derived from criteria developed for terrestrial flora and fauna and are thus in the main inappropriate for marine species
- it is not clear how species listed under the EPBC Act can subsequently be removed from that list.

In its view, the Fisheries Management Act is an effective vehicle to manage Commonwealth fisheries and should be the sole legislative mechanism by which commercial species are managed. It argued that any species managed under the *Commonwealth Fisheries Harvest Strategy Policy* being developed by DAFF (see below) should not be subject to listing under the EPBC Act. (It also noted that the draft *Harvest Strategy Policy* (HSP) provides for the Minister to approve actions to rebuild stocks that are considered to be at risk.)

> The CFA understands that it is the intention of the Commonwealth Government to incorporate a statement in the HSP in an attempt to address the concerns identified above within the limitations of the current legislation. However, the CFA does not expect that this statement will fully and effectively address its concerns because of the limited power of a policy statement of this type to qualify legislation. (sub. 30, pp. 5–6)

It proposed that the EPBC Act be amended to acknowledge the clear primacy of the Fisheries Management Act in managing commercial marine species. Alternatively, it argued that:

- the criteria by which species are judged to be threatened and the criteria by which fish stocks are judged to be 'over fished' should be harmonised
- the listing of fish species as threatened, endangered or protected under the EPBC Act should not be contemplated when the stock is above the level that would be considered 'overfished'

- the HSP should clearly set out all of the consequences of fishing beyond limit reference points defining when a fish stock is overfished and the actions that need to be taken to have any potential EPBC Act listing removed (sub. 30, p. 6).

The draft HSP and *Guidelines for Implementation of the Commonwealth Fisheries Harvest Strategy Policy* were released for public consultation between March and May 2007. The policy is a key component of the Australian Government's *Securing our Fishing Future* program. DAFF said that the HSP will provide assurance that commercial fish species are being managed for long-term biological sustainability and economic profitability. It added that the associated *Guidelines* will provide advice on how to interpret and apply the policy and will contain details of the science behind fisheries management decisions.

The HSP seeks to provide a framework for applying an evidence-based, precautionary approach to set harvest levels for each fishery:

- harvest strategies will be based around desired levels of stocks and fishing intensity and will set out management actions to monitor, assess and control fishing intensity in order to achieve defined biological and economic objectives in a fishery
- overlap with the EPBC Act will arise where the stock approaches the point at which the risk to the stock is regarded as unacceptably high (and in such cases, AFMA and the Minister for the Environment and Water Resources must determine a stock rebuilding plan)
- AFMA is to report on implementation of fishery-specific harvest strategies in its annual reports. In addition, the HSP is to be reviewed within five years of its commencement.

The HSP will also assist fishing businesses to exit from the industry if they so choose, or to rationalise their activities. Funding is also earmarked for scientific, compliance and data collection to improve the management of Commonwealth fisheries.

Response

As both the Fisheries Management Act and the EPBC Act have powers to determine limits to catching species of fish, this can result in conflicting targets on allowable catches. A possibility might be to place greater reliance on the Fisheries Management Act as the primary regulatory instrument and only trigger additional requirements under the EPBC once additional criteria are met. One issue appears to be the degree to which ecological risk assessments can be harmonised between the two Acts, in view of the different responsibilities of AFMA and the Department of

Environment and Water Resources. A related issue is the scope for effective sanctions to apply under each Act to deter overfishing and the taking of endangered fish and other species from commercial fisheries.

The Commission will report further on the overlap between these two Acts in its final report, following release of the final HSP and associated guidelines.

DRAFT RESPONSE 5.3

There appears to be scope for rationalising requirements under the Fisheries Management Act and the EPBC Act. The Commission seeks views on this matter.

Recreational fishing: the cost and availability of information about regulations

The Recreational Fishing Alliance of New South Wales (RFA) said that recreational fishing is a multi-billion dollar industry, with recreational fishers spending about $1.8 billion each year on fishing and undertaking about 23 million fishing trips. It highlighted the effect of regulations on recreational fishers in New South Wales,

The RFA expressed concern about the significant cost of informing the public of Australian Government and state government rules and regulations, some of which is borne by the Alliance. It noted, for example:

- information brochures explaining regulations are now only available at stores which collect recreational fishing fees
- greater use of the internet for information dissemination is of limited usefulness because not all recreational fishers have access to the internet.

It argued that government has an obligation to effectively disseminate information concerning rules and regulations to all recreational fishers, and before rules such as the banning of fishing from dangerous areas are imposed, education campaigns should be undertaken. It said that 'this will ensure that excessive regulations are avoided' (sub. 10, p. 5).

Assessment

In principle, reasonable efforts need to be made to ensure that government rules and regulations are widely known and understood, especially by the target group. But this also needs to be balanced against the costs involved. In practice, information about recreational fishing in New South Wales is made available through most fishing tackle stores, via a 1300 telephone service and the internet, and through information sent to recreational fishing groups. Some information relates to

Commonwealth fisheries, but an important function is to disseminate information about the rules, restrictions and exemptions concerning recreational fishing in New South Wales waters, including size limits, bag limits and fishing methods and the obligation to pay the New South Wales Recreational Fishing Fee.

These matters are for the New South Wales Government to determine and fall outside the scope of this review.

Recreational fishing: endangered species — the grey nurse shark

The RFA also expressed concern about the adverse effect on recreational fishers in New South Wales of regulations that protect the grey nurse shark, which became the first protected shark in the world under New South Wales legislation in 1984. The east coast population of grey nurse sharks is also listed as a critically endangered species under the EPBC Act.

The RFA said that these developments have disadvantaged recreational fishers, as they have led to the establishment of fishing exclusion zones intended to help rehabilitate the population of this species. This places a burden on recreational fishers, who are not permitted to fish in protected areas, which would otherwise be highly desirable recreational fishing grounds. Only recently, the Australian Government established the 500 hectare Cod Grounds Commonwealth Marine Reserve off the coast from Laurieton on the mid-north coast of New South Wales (DEW 2007b). This follows recommendations in the *Recovery Plan for the Grey Nurse Shark*, prepared by the Environment Australia (EA 2001). All commercial and recreational fishing will be prohibited in the reserve. The New South Wales Government is also implementing a recovery plan to protect the grey nurse shark.

In the RFA's view, the methodology relied upon by government departments to assess current shark populations is potentially flawed and there are large discrepancies between estimates made by government departments and those of recreational fishers. It argued for more extensive research on grey nurse shark habitats, and the public release of such research, before further measures are taken to exclude recreational fishers from particular fishing areas.

Assessment

The Commission understands that the science behind the assessment of grey nurse shark numbers is disputed and remains topical. (It is, for example, an issue in a current case before the Administrative Appeals Tribunal.) In addition, recreational fishers argue that the killing and injuring of grey nurse sharks is primarily caused by commercial, not recreational, fishing. The controversy about these matters will be

ongoing and may only be resolved by better information and research, as proposed by the RFA.

For the meantime, while both state legislation and the EPBC Act have roles in regulating fishing, the principal restrictions on recreational fishers in New South Wales waters are matters for the New South Wales Government.

Recreational fishing: the cost of licensing

The RFA expressed concern about the New South Wales recreational fishing licensing system. In its view, the administration and department overhead costs that contribute to the cost of the licence are a burden on recreational fishers. It recommended that the New South Wales Government and its departments investigate the scope to reduced these overhead costs (sub. 30, p. 6).

This is a matter for the New South Wales Government and falls outside the scope of this review.

5.3 Aquaculture

Introduction

The aquaculture subdivision of the *Australian and New Zealand Standard Industrial Classification* covers those business units mainly engaged in:

- offshore farming of molluscs and seaweed using longlines or racks
- offshore farming of finfish using cages
- farming finfish, crustaceans or molluscs in tanks or ponds onshore.

State and territory governments have primary responsibility for the regulation of aquaculture production, and local government is usually responsible for development approval for aquaculture activities on land. Within their respective jurisdictions, they have varying levels of planning, development and management control relating to:

- ecologically sustainable development and environmental protection
- allocation and management of resources, disease notification and access to broodstock or juveniles
- compliance with state food safety regulations.

Table 5.3 **Aquaculture value chain and the impact of regulations**

Key Australian Government involvement/regulation	*Key stages of aquaculture cycle*	*Key state/territory government involvement/regulation*
• *Fisheries Management Act 1999* • *Environment Protection and Biodiversity Conservation Act 1999*	**Acquisition of permits**	• land use and planning regulation • licensing • permits
• natural heritage, world heritage • licensing and approval of chemicals, fertilizers and pesticides • environmental protection and biodiversity conservation • quarantine regulations	**Preparation of land, water, area, species, eggs and equipment**	• land use and planning regulation • native vegetation legislation • water regulation • weed and vermin control regulation • use of chemicals and pesticides • natural heritage • environmental protection/assessment
• chemicals and pesticides • National Pollutant Inventory • biosecurity regulation • National Strategic Plan for Aquatic Animal Health	**Growth, farming, species development and care**	• animal welfare regulation • disease control regulation • use of chemicals and pesticides • natural heritage • environmental protection/assessment • chemical use approval • occupational health and safety legislation and policy
• export certificates • national standards (food and packaging) • AQIS national pesticide residues testing • AQIS export program • national land transport regulatory frameworks • shipping and maritime safety laws • international maritime codes and conventions • competition laws	**Harvest, packaging and transport and insurance**	• certification and labelling • packaging requirements • transport equipment • boat licences • transport regulations • government-owned public/private transport infrastructure • occupational health and safety legislation and policy • insurance requirements
• marketing legislation (mandatory codes and acquisition) • food safety regulation • quarantine regulation • export controls • export incentives • taxation • market access	**Marketing:** **– boards** **– customers**	• interstate certification arrangements • taxation

The Australian Government has a limited direct regulatory involvement in aquaculture. Through the EPBC Act, the *Native Title Act 1993*, the *Quarantine Act 1908*, and the *Great Barrier Reef Marine Park (Aquaculture) Regulations 2000*, it has power to deal with matters of national environmental significance, ecologically sustainable development, food safety, aquatic animal health, quarantine, trade and taxation.

In March 2007, some amendments were made to the *Great Barrier Reef Marine Park (Aquaculture) Regulations 2000*. Regulations relating to land-based aquaculture that may discharge to waterways leading to the marine park are currently under review by the Great Barrier Reef Marine Park Authority.

Recent developments

Over recent years, the aquaculture industry has been growing in size, and expanding the number of species it farms. It operates in all states. The Australian aquaculture industry is facing similar challenges to the industry worldwide: in developing improved breeds of species, developing better and economically viable feeds, and improving health and environmental management systems to support sustainable growth of the industry.

The Aquaculture Industry Action Agenda (AIAA) is a strategic framework developed in 2002 between the aquaculture industry and the Australian Government to help the industry achieve its vision of $2.5 billion in sales by 2010. The AIAA contains a set of ten strategic initiatives to work towards this goal.

One of the AIAA's objectives is to promote a regulatory and business environment that supports aquaculture. To this end, the *National Aquaculture Policy Statement* was developed and agreed to by all states, territories and the Australian Government in 2003 (DAFF website). This commits all Australian governments to working with the industry to achieve maximum sustainable growth, while meeting national and international expectations for environmental, social and economic performance.

In 2004, the Commission studied environmental regulatory arrangements for aquaculture in Australia (PC 2004d), finding significant differences across jurisdictions in the way that aquaculture is regulated. It concluded that there was an unnecessarily complex array of legislation and agencies in the areas of marine and coastal management, environmental management, land use planning, land tenure, and quarantine and translocation.

The Commission's report was used by the AIAA Implementation Committee to pursue reform in the regulatory and business environment for aquaculture. In 2005, the Committee released the *Best Practice Framework of Regulatory Arrangements*

for Aquaculture in Australia for consideration by jurisdictions in undertaking aquaculture planning, regulation and management. The framework was endorsed by the Primary Industries Ministerial Council in 2005.

Australia's *National Strategic Plan for Aquatic Animal Health* (Aquaplan 2005–2010) was also published in 2005. It sets out a shared vision of the Australian governments and the aquaculture industry to implement an integrated and planned approach to aquatic animal health.

Concerns

Broadly, the aquaculture industry, through submissions by the National Aquaculture Council (sub. 18) and the Tasmanian Salmonid Growers Association (sub. 16), expressed concern about:

- chemical registration (minor use permits)
- AQIS and testing of seafood exports
- the National Pollutant Inventory
- animal health.

Some of these matters are discussed in chapter 3 in the context of their importance to agriculture. The aquaculture industry's views were considered in that chapter.

A Consultation

A.1 Introduction

Following receipt of the terms of reference, the Commission placed advertisements in national and metropolitan newspapers inviting public participation in the study. An initial circular was distributed in February 2007 and an issues paper was released in April 2007.

The Commission has held informal consultations with governments, peak industry groups in the primary sector as well as with a number of mining companies and individual farmers. A list of the meetings and informal discussions undertaken is provided below.

The Commission received 49 submissions and a list of these submissions is provided below. All public submissions are available on the Commission's website.

The Commission would like to thank all those who have contributed to the study so far.

A.2 Submissions

Table A.1 **Submissions received**

Participant	*Date received 2007*	*Submission no.*
ACCORD Australasia Ltd	8 June	8
Animal Health Alliance (Australia) Ltd	1 June	7
Australasian Compliance Institute Inc	13 June	20
Australian Beef Association Inc	1 May	3
Australian Forest Growers	22 August	46
Australian Maritime Safety Authority	29 August	49
Australian Pesticides and Veterinary Medicines Authority	1 August	42
Australian Petroleum Production & Exploration Association Ltd	23 July	39
Australian Pork Ltd	8 August	44

(Continued next page)

Table A.1 **(continued)**

Participant	*Date received 2007*	*Submission no.*
Australian Property Institute (NSW) and Australian Spatial Information Business Association (Joint submission)	4 July	34
Australian Quarantine and Inspection Service and Biosecurity Australia (Joint submission)	28 August	48
Australian Uranium Association	5 July	33
AWB Ltd	8 June	23
Centrelink	23 August	47
Coles Group Ltd	7 June	9
Commonwealth Fisheries Association	3 July	30
Country Womens' Association of New South Wales	20 July	38
CropLife Australia	8 June	14
Department of Agriculture, Fisheries and Forestry (Australian Government)	5 July	31
Department of Agriculture and Food (Western Australia)	9 July	35
Department of Immigration and Citizenship (Australian Government)	13 August	45
Department of Industry and Resources (Western Australia)	9 July	36
Fortescue Metals Group Ltd	24 July	40
Growcom	8 June	15
Institute of Public Affairs	2 May	4
Professor Paul Martin	23 May	6
McKenzie Rural	20 March	1
Minerals Council of Australia	9 July	37
National Aquaculture Council Inc	12 June	18
National Association of Forest Industries	8 June	11
National Farmers' Federation	15 June 1 August	24 43
Northern Territory Horticultural Association Inc	18 June	25
New South Wales Farmers' Association	22 June	27
Plastics and Chemicals Industries Association Inc	3 July	29
Queensland Farmers' Federation	13 June	19
Queensland Resources Council	13 June	22
Recreational Fishing Alliance of New South Wales Inc	8 June	10
Red Meat Industry (Joint submission)	8 June	12
Rio Tinto Ltd	13 June	21
South Australian Farmers Federation	17 May	5

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Table A.1 **(continued)**

Participant	*Date received 2007*	*Submission no.*
Standards Australia Ltd	31 July	41
Tasmanian Salmonid Growers Association Ltd	8 June	16
Veterinary Manufacturers and Distributors Association Ltd	25 June	28
Victorian Farmers' Federation	8 June	13
Virginia Horticulture Centre	5 July	32
Western Australian Farmers' Federation Inc	12 June	17
Mr Len Wheatley	16 April	2
Woolworths Ltd	20 June	26

A.3 Consultations with organisations and individuals

Agforce Queensland

Australian Lot Feeders' Association

Australian Petroleum Production and Exploration Ltd

Australian Property Institute

Australian Government

- Department of Agriculture, Fisheries and Forestry
- Department of Environment and Water Resources
- Department of Industry, Tourism and Resources

Australian Spatial Information Business Association

Australian Uranium Association

Cadia Valley Mine, Newcrest

CBH Group/Grain Pool Pty Ltd

Commonwealth Fisheries Association

Chamber of Minerals and Energy of Western Australian

Fortescue Metals Group

Grains Council of Australia Ltd

Hawthorne, Barry

Ingey, James

Krieg, Gary and Pam

Minerals Council of Australia

Monsanto Australia Ltd

National Aquaculture Council Inc

National Association of Forest Industries
National Farmers' Federation
Newcrest Mining Ltd
New South Wales Farmers' Association
New South Wales Government
- Department of Premier and Cabinet
- Department of Environment and Conservation
- Department of Primary Industries

Northern Territory Government
- Department of the Chief Minister
- Department of Primary Industry, Fisheries and Mines

Northern Territory Horticultural Association Inc
Northern Territory Minerals Council Inc
Queensland Farmers' Federation
Queensland Government
- Department of the Premier and Cabinet
- Department of Natural Resources and Water
- Department of Primary Industries and Fisheries
- Queensland Treasury

Queensland Resources Council
Rio Tinto Ltd
Santos Ltd
Smith, Andrew and Hilary
South Australian Chamber of Minerals and Energy
South Australian Farmers' Federation
South Australian Government
- Department of the Premier and Cabinet
- Department for Environment and Heritage
- Department of Primary Industry and Resources
- Department of Trade and Economic Development
- Department of Water, Land and Biodiversity Conservation

Tasmanian Government
- Department of Premier and Cabinet
- Department of Primary Industries and Water
- Department of Tourism, Arts and the Environment

Department of Treasury and Finance
Victorian Farmers' Federation

Victorian Government
- Department of Premier and Cabinet
- Department of Treasury and Finance

Western Australian Farmers' Federation Inc

Western Australian Government
- Department of the Premier and Cabinet
- Department of Agriculture and Food
- Department of Industry and Resources
- Department of Treasury and Finance
- Office of Development Approvals Coordination

Western Australian Pastoralists and Graziers Association

B Selected reviews

This appendix lists selected reviews initiated by the Australian Government in relation to the primary sector and regulation impacting on that sector. This is not a comprehensive listing, but indicates the range and number of reviews undertaken in recent years. In addition, there have been numerous state and territory government reviews into these areas.

Table B.1 **Selected reviews**

Review area	*Title*	*Review body*	*When completed or due*
Access	Report on the Inquiry into the Provisions of the Trade Practices Amendment (National Access Regime)	Senate Economics Legislation Committee	2005
Agriculture	Creating Our Future: Agriculture and Food Policy for the Next Generation	Agriculture and Food Policy Reference Group (Peter Corish Chair)	2006
Assessment of site contamination	National Environment Protection (Assessment of Site Contamination Measures) Review	Review team established by the National Environment Protection Council	2006
Competition policy	Review of National Competition Policy Reforms	Productivity Commission	2005
Energy	Report on the Inquiry into the Provisions of the Energy Opportunities Bill	Senate Economics Legislation Committee	2005
Environment Protection and Biodiversity Conservation Act	Review of the EPBC Act	Chris McGrath	2006
Export	USA Beef Quota Review	Department of Agriculture, Fisheries and Forestry	2005

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Table B.1 **(continued)**

Review area	*Title*	*Review body*	*When completed or due*
Export	Export Efficiency Powers: Three Year Review	Richard Ryan (Chair), Peter Hancock and Mark Napper	2005
Export	Export Certification	Australian National Audit Office	2006
Export infrastructure	Australia's Export Infrastructure	Exports and Infrastructure Taskforce	2005
Food	Reducing the Food Regulatory Burden on Business	Mark Bethwaite (Chair), Department of Health and Ageing	2007
Food	A Growth Industry, Report of the Food Regulation Review	Food Regulation Review Committee, Dr Bill Blair (Chair)	1998
Fuel tax	Fuel Tax Credit Reform Discussion Paper	Department of the Treasury	2005
Gas	Review of the Gas Access Regime	Productivity Commission	2004
Gene technology	Review of the Operations of the Gene Technology Act 2000 and the Intergovernmental Agreement on Gene Technology	Susan Timbs (Chair), Murray Rogers and Kathryn Adams	2006
Imported food	National Competition Policy Review of the Imported Food Control Act 1992	C. Tanner, A. Beaver, A Carroll and E. Flynn	1998
Industry self-regulation in consumer markets	Industry Self Regulation in Consumer Markets: Report of the Taskforce on Industry Self-regulation	Department of the Treasury	2000
Livestock identification	Report of Findings from a Review of the Operation of the National Livestock Identification System	Price Waterhouse Coopers	2006
National Competition Policy	Review of the Wheat Marketing Act 1989	Mr Malcolm Irving, Mr Jeff Arney and Prof Bob Lindner	2000

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Table B.1 **(continued)**

Review area	*Title*	*Review body*	*When completed or due*
National Competition Policy	Review of the Export Control Act 1982	Department of Agriculture, Fishing and Forestry	2000
National Pollutant Inventory	Review of the National Pollutant Inventory	CH Environmental and JD Court and Associates	2005
Native Title	Claims Resolution Review	Graham Hiley and Dr Ken Levy	2006
Native Title	Native Title Representative Bodies (NTRBs)	Office of Indigenous Policy Coordination	2006
	Structures and Processes of Prescribed Bodies Corporate		
Native vegetation and biodiversity	Impacts of Native Vegetation and Biodiversity Regulations	Productivity Commission	2004
OH&S	National Workers' Compensation and Occupational Health and Safety Frameworks	Productivity Commission	2004
Pesticides and veterinary medicines	Report on the Australian Pesticides and Veterinary Medicines Authority	Australian National Audit Office	2006
Plant breeders' rights	Review of Enforcement of Plant Breeders' Rights	Advisory Council on Intellectual Property	2007
Quarantine	Managing for Quarantine Effectiveness — Follow Up	Australian National Audit Office	2005
Rail	Progress in Rail Reform	Productivity Commission	1999
Security sensitive chemicals	Review of Hazardous Material (Chemicals of Security Concern)	COAG (coordinated by Attorney General's Department)	2008
Small business	Time for Business	Small Business Deregulation Taskforce (Bell Report)	1996

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Table B.1 **(continued)**

Review area	*Title*	*Review body*	*When completed or due*
Sugar	Independent Assessment of the Sugar Industry (also known as the Hildebrand Report)	Clive Hildebrand (Chair)	2002
Taxation: Business Activity Statements	Review of Tax Office Administration of GST Refunds Resulting from the Lodgment of Credit BASs	Inspector-General of Taxation	2005
Third party infrastructure access	Review of the National Access Regime	Productivity Commission	2001
Transport	Inquiry into Integration of Regional Rail and Road Networks and their Interface with Ports	Standing Committee on Transport and Regional Services	2007
Uranium	Uranium Industry Framework	Report of the Uranium Industry Framework Steering group	2006
Uranium	Australia's Uranium — Greenhouse Friendly Fuel for an Energy Hungry World	Standing Committee on Industry and Resources	2006
Uranium	Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?	Taskforce appointed by the Prime Minister	2006
Water	First Biennial Assessment of the National Water Initiative	National Water Commission	In progress
Wheat marketing	2004 Wheat Marketing Review	Department of Agriculture, Fisheries and Forestry	2004

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