

8 November 2011



Performance Benchmarking Australian Business Regulation
Productivity Commission
PO Box 1428
Canberra City ACT 2601

RE: BUSINESS REGULATION BENCHMARKING: ROLE OF LOCAL GOVERNMENT AS REGULATOR

The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly, agriculture across Australia. The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

Following a restructure of the organisation in 2009 a broader cross section of the agricultural sector has been enabled to become members of the NFF, including the breadth and the length of the supply chain.

The NFF appreciates the opportunity to provide input into the Productivity Commission review on Business Regulation Benchmarking: Role of Local Government as Regulator.

The NFF notes that the Productivity Commission has been requested to benchmark the extent to which particular approaches to the exercise of regulatory responsibilities by local government authorities affects costs incurred by business and specifically to:

- Identify the scope of local government regulatory responsibilities in each state and territory;
- Clarify the extent to which the local government role includes implementing policies of national and state/territory governments;
- Assess whether different responsibilities and the approach taken to their exercise has a material impact on business costs;
- Identify best practices which have the capacity to reduce unnecessary regulatory costs for business.

NFF members have been keen to highlight the increasing cost burden of local government rates for farmers. As cost shifting occurs from state to local governments, this has a detrimental impact on local government's ability to offer core services without increasing local government taxes.

While the NFF notes that some states and territories have pegged local government rates, the NFF notes complaints from local governments that this pegging system does not allow them to recover costs, and hence they risk running a backlog of infrastructure projects and running deficits. The NFF Members acknowledge that the balance between local government taxes and service delivery is therefore a delicate one.

NFF Members have noted on the ground examples of how local governments are being required to undertake a greater share of the regulatory responsibilities of national and state/territory governments. The impact of this on primary producers will vary not only with the requirements of the state/federal laws being administered but also to the extent that these are actively enforced by the various local government councils.

NFF Members within Queensland and Tasmania have provided examples below that the NFF believes will assist the Productivity Commission in their analysis. The NFF believes that similar examples can be replicated out across all Australian states:

Queensland

According to the Local Government Association of Queensland (LGAQ), Queensland councils have responsibility for administering over 3,000 individual local laws across Queensland. Recent council amalgamations have meant that these councils have also had to review and consolidate all of their local laws by 31 December 2011.

Within Queensland, the amount of State legislation where councils have a regulatory role is increasing and includes:

- Environmental Protection Act 1994 and Environmental Protection Regulation 2008;
- Environmental Protection (Waste Management) Regulation 2000 and Waste Reduction and Recycling Bill 2011 (proclaimed late October 2011);
- Land Protection (Pest & Stock Route Management) Act 2002 and Regulation 2003, Stock Route Network Management Bill 2011;
- Nature Conservation Act 1992 and Vegetation Management Act 1999
- Sustainable Planning Act 2009 (and Regulations);
- Transport Operations (Road Use Management) Act 1995.

LGAQ also points out that Queensland councils that have a high proportion of leasehold agricultural land are also faced with the issue of the Queensland State Government looking to increase the rents on leasehold land, particularly post 2017. This will also have an impact on the capacity of landholders to pay council rates.

Concerns have been expressed by the more remote councils about a number of areas including:

- A 'one size fits all' approach by the state government to regulations devolving to local councils. As an example, this means that Brisbane City Council is treated in the same way as the much smaller Boulia Shire Council;
- An increase in administrative/bureaucratic staff and fewer operational staff;
- A lack of funding to support the implementation of regulations e.g. the Rural Lands Protection Officer role in Boulia Shire is not funded by the State Government;

- The issue of resourcing/staffing is a particular concern to remote rural councils in Queensland as they have a limited rate base (e.g. Boulia has only 300 to 400 people) and it is often difficult to attract and retain appropriately qualified staff. In August 2011, 90% of councils in Queensland were facing a skill shortage;
- In rural councils, increased delegation of decision making or self-assessment (e.g. control of weeds under the Land Protection Act), may improve efficiency or minimise costs but with the potential for poorer outcomes.

NFF Members also note emerging conflict with a rise in local government regulation relating to peri-urban agriculture within Queensland (although this issue is also relevant to other states and territories). This has the potential to impact on larger commercial operations (e.g. fencing restrictions/requirements on public roads, stock movement restrictions/requirements on public roads including excessive signage, and permits for roadside slashing/vegetation management).

Tasmania

In Tasmania, it has been noted that a lack of a coordinated approach and communication between local government and other government bodies regarding the administration of regulation can result in wasted time and money. This has been demonstrated by the compulsory micro-chipping of dogs introduced in Tasmania in 2011. Councils are responsible for administering this regulation but were not advised by the relevant state government department that a last minute review had seen an exemption for farm dogs. The result was that many local councils were unnecessarily advising farmers to have their dogs micro-chipped.

This highlights the need for better communication between state and local government in the administration of state laws.

A lack of a uniform and consistent application of regulations by local government is also causing confusion. It should be noted that Tasmania has a large number of councils (29) covering a relatively small area which means that farmers can be dealing with more than one council for the same property. This emphasises the need for a more consistent approach in application between council bodies.

NFF Members also note that Tasmania's local governments have, in some instances, been delegated the task of regulating an area without clear guidelines. This can lead to different approaches and application of regulation between various local government bodies. For example:

- The Tasmanian government has developed a state policy on the protection of agricultural land that seeks to protect both prime and non-prime agricultural land from conversion to non-agricultural use. As this policy document is somewhat vague and generalised it has led to each council applying its own terms, with at times vastly different requirements on land owners.
- The triggers for requiring heritage or aboriginal heritage studies also vary from council to council. These studies can run into tens of thousands of dollars and take considerable time to develop.

An overlay of administration of regulation by multiple levels of government bodies leads to a lack of clarity and creates the impression of unnecessary complexity. This

can lead to farmers spending an inordinate amount of time trying to ascertain which tier of government they should be dealing with for a particular matter. For example:

- *Land clearing approvals* – administered by local council under some circumstances and the Forest Practice Authority for others. In some cases both bodies must be dealt with simultaneously.
- *Quarry approvals* - Getting a permit for a quarry can involve local government, Environmental Protection Authority (EPA) and/or Mineral Resources Tasmania.
- *Environmental approvals* – Local government now administer a number of approval processes such as those surrounding burn off, nuisance and noise. There now appears to be a blurring of the lines between their role and that of other bodies such as the EPA.
- *Roads in general* – the treatment of stock crossings and agricultural waste on roads varies between the statutory bodies that control them.
- *Effluent management* - The management of effluent is regulated by local government however the Tasmanian Dairy Industry Authority sets compliance for the management of dairy effluent. The management of effluent from a food processing operation varies. Under the Tasmanian Environmental Management and Pollution Control Act (EMPCA), processor production levels determine whether the regulatory authority is the Director of Environmental Management (DEPHA) or local government. Operators of processing plants are usually also required to hold a permit issued by the local council under the Land Use Planning and Approvals Act 1993. Some waste management and pollution control conditions may be included as part of the permit requirements, which would then become legally binding. Meat processors are also subject to regulation under the Meat Hygiene Act 1985 as enforced by the Meat Hygiene Section of the Department of Primary Industries, Parks, Water and Environment (DPIW).

For further information regarding the NFF views on this matter, please contact the NFF General Manager – Policy, Charlie McElhone on (02) 6269 5666.

Yours faithfully



JOHN MCKILLOP
Chair NFF Economics Committee