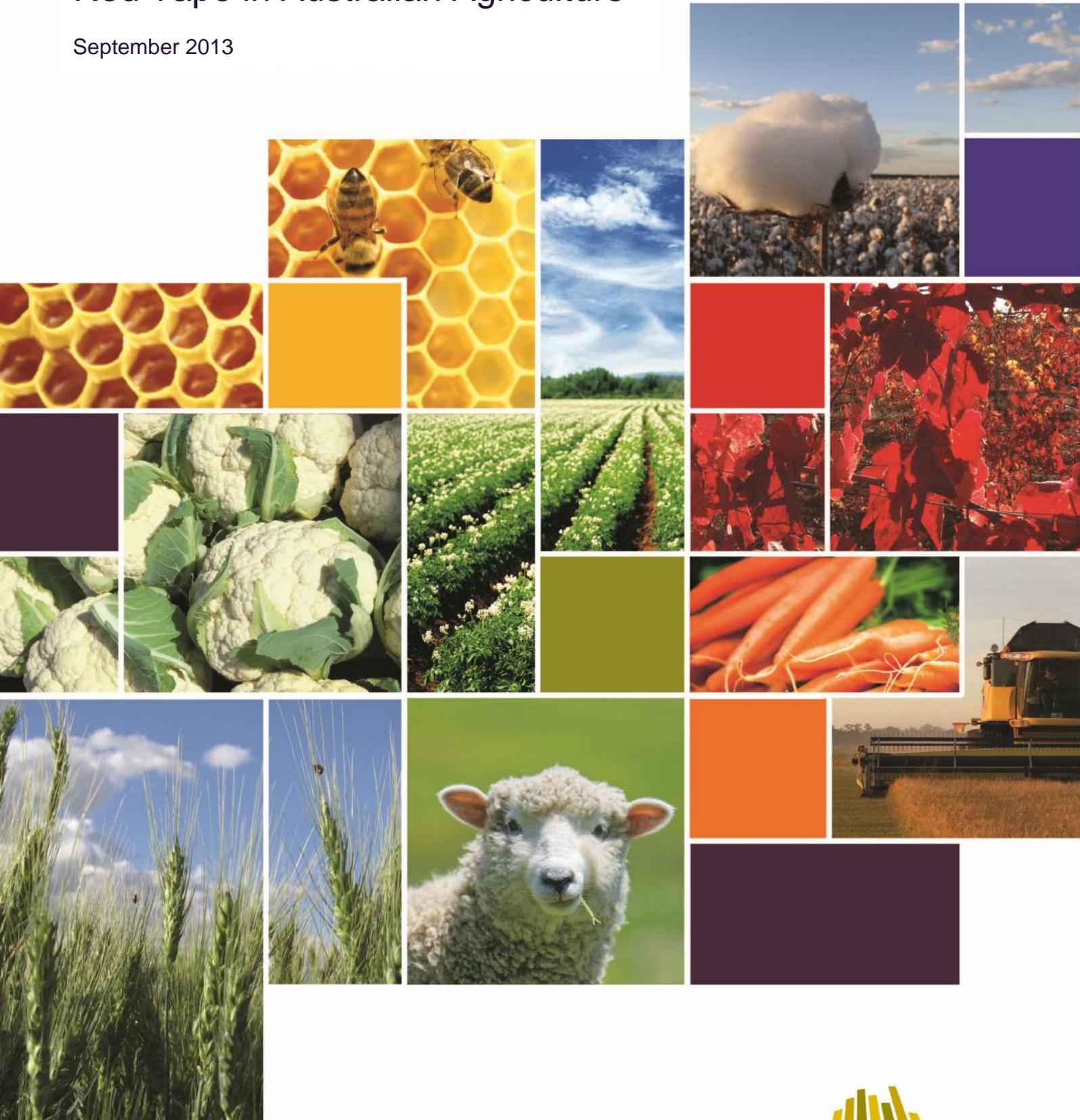


NFF Issues Paper

Red Tape in Australian Agriculture

September 2013



National Farmers'
FEDERATION

NFF Member Organisations



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Overview

Every day Australian farm businesses work to deliver a reliable, consistent and sustainable supply of high-quality food and fibre products for millions of domestic and international customers. Agriculture is a highly productive, innovative and efficient sector of the economy, using modern technology and rigorous assurance processes to maintain food safety, product quality and environmental protection. The opportunities for the agricultural sector in the coming century have been well documented through former Government initiatives such as the *National Food Plan* and *Australia in the Asian Century* white paper. And yet, the sector is being limited in its efforts to seize these opportunities through a tangle of complex regulations which increase costs to industry and governments, and limit our competitiveness as individual businesses and a nation as a whole.

The National Farmers' Federation (NFF) acknowledges the need for effective regulation. Regulation provides important protections for the business owners, employers, workers, and the community, and sets a minimum level of performance required to meet community standards and expectations. However, it is important that regulation is appropriately targeted, clearly communicated, and that its restrictions are minimised as far as possible to avoid perverse outcomes. Governments also need to purposefully consider whether a regulatory approach is the best way to achieve the desired outcome.

The two key questions that need to be answered when considering regulation are:

1. Is new regulation the most efficient and effective way to address the issue at hand?
2. If it is, how can that regulation deliver the desired result with least impact for industry and government?

Each day farm businesses battle through a myriad of hard to understand, complex or duplicative regulations, making it difficult for farmers to ensure Australia has an ongoing, reliable and sustainable source of domestically produced food and fibre. Regulation comes in many forms and from many sources (both government and industry-driven).

The NFF is of the view that while there are a range of necessary regulatory imposts across the entire agricultural sector it is the cumulative impact of the multitude and overall accumulation of minor or peripheral regulations that underpin the industry concern. On their own, minor regulatory impacts may not appear too burdensome or costly. It is when the Commonwealth and state based regulations are added to sector or regionally based regulations that the impacts becomes clearer. The administrative and cost burden to comply with and carry on business in the agricultural sector are significant. Challenges to maintain competitiveness on farm are already substantial with the high Australian dollar and increased input prices driving a declining terms of trade.

The problem becomes compounded when unnecessary regulatory burdens are imposed on industry. This can arise in a number of ways, including through¹: 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; or creation of perverse incentives.

In 2007, the Productivity Commission (PC) undertook a review of regulatory burdens facing businesses in the Primary Industry sector². At the time, the NFF stated³ that "*The task of regulatory compliance has become a significant cost impost on Australian farm*

¹ Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

² Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

³ NFF submission to Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 <http://www.nff.org.au/get/submissions/3484.pdf>

businesses. An increasing portion of the working day is now dedicated to overcoming hurdles imposed by the three tiers of government and other bodies looking to regulate the way in which farmers operate. Whether it be meeting environmental criteria to enable them to adjust their land management practices or complying with the multitude of taxation regulations, farmers are constantly being pushed from their core business of producing top quality food and fibre.”

This was supported by a report at the time indicating that farm businesses had an expense of \$22,542 per annum (and rising) relating to bureaucratic red tape, which equated to 14 percent of net farm profit of these farm businesses ⁴.

With a comprehensive PC report highlighting a number of areas where improvements could be made to regulatory processes to ease the burden on the sector, it would be expected that governments would be working towards a lighter regulatory touch, where possible, to help keep Australian farm businesses profitable.

However, it would seem not much has changed in recent years, and in many cases farm businesses are faced with a greater level of accumulated red tape driven through Government decisions made in isolation, impeding their ability to take advantage of growing global demand for the food and fibre they produce. In 2012, the NFF led the development of the Blueprint for Australian Agriculture⁵ and as part of this process, stakeholders from across the agricultural sector rated regulatory burden as one of the key issues⁶ increasing costs in farm businesses and reducing competitiveness of the sector.

Over regulation is not just an issue for business, but also can create significant challenges for and impose costs on governments. It is in the interest of governments to actively pursue red tape reduction as both a way to stimulate economic activity, and therefore government revenues, and to limit their own costs associated with administering and enforcing regulations.

It is also in the interests of government to consult early with industry to determine the industry perspective on the perceived problem or concern that needs to be addressed. While there are regular opportunities for consultation, often the problem has been identified and agreed upon without debate and discussion with the key stakeholders who will be impacted by the proposed measures. As part of the regulatory development process it is critical that there is a clear understanding of the market failure or problem that the regulation is seeking to remedy. Industry must be part of the conversation early to ensure there is an open and comprehensive consideration of the issues.

How does red tape cost business?	How does red tape cost governments?
<p>Compliance – from time required to understand and fulfil requirements, or through the expense of changing systems or equipment</p> <p>Direct charges – as governments look to increase cost recovery or shift the cost burden for the delivery of regulatory services</p>	<p>Administration – regulations require a workforce to manage and administer</p> <p>Compliance – systems and processes are required to ensure regulations are met. Duplication can mean the same administration and compliance actions are required multiple times.</p>

⁴ The Cost of Bureaucratic Red Tape In Agriculture, Holmes Sackett Pty Ltd, 2007
<http://www.nff.org.au/get/2982.pdf>

⁵ <http://www.nff.org.au/get/3841.pdf>

⁶ From over 2,000 survey responses, government policy, funding and decision making was identified as the biggest issue currently (and into the future) facing the agricultural sector, Blueprint for Australian Agriculture, Initial Findings Report, October 2012
<http://www.nff.org.au/blueprint.html?download=DOWNLOAD1>

Limitations – on accessing or using new technologies or pursuing efficiencies

Enforcement – significant regulatory breaches can lead to lengthy and expensive legal processes and significant punitive costs

Limitations – unnecessary regulation is a drag on the economy which limits business activity and government revenues while increasing the administrative and compliance costs

Enforcement – significant regulatory breaches can lead to lengthy and expensive legal processes and significant punitive costs

Current situation

While successive governments (and oppositions) have made statements about the need to improve regulations, these changes often come at the expense of business, as a higher level of consumer expectations are pursued through a heavy handed approach. In 2007-08, Australia ranked 68th in terms of burden of government regulation – in 2013-14 we rank 128th⁷. Continuing in this direction is seeing Australian businesses become less competitive against our international competitors and may have long-lasting negative impacts on the Australian economy if not addressed. A business as usual approach will not suffice.

The layers of regulation across all levels continues to creep higher. In 2012, NFF member AgForce Queensland conducted a desktop analysis⁸ and found that just at a state level, Queensland farm businesses are regulated through over 55 Acts and Regulations covering over 9,000 pages – this is in addition to local government by-laws, associated codes or Federal legislation.

The story is no better in other states, with the Tasmanian Department of Economic Development, Tourism and the Arts releasing a report in January 2013⁹ with some astounding figures. The gross value of production of agriculture, fishing and forestry in Tasmania is \$1.982 billion, of which the agricultural sector accounts for \$1.150 billion. The total cost of red tape for those three sectors of the industry is \$321.4 million a year.

That figure is staggering enough as a standalone number, but it represents 16.2 percent of the value of production. It means that one dollar in every six at the farm/fishery/forest gate is lost on regulatory imposts, meeting the cost of compliance. So where agriculture, fisheries and forestry account for 10 percent of Tasmania's Gross State Product, they wear 25 percent of the total bill for compliance. NFF member, the Tasmanian Farmers and Graziers Association have indicated that this study had a limited scope and that by taking into account the areas that were not measured as part of the report, the actual cost could be double the estimate¹⁰.

An improvement in red tape impacts for agriculture is particularly important as government agencies move more services into cost recovery arrangements, directly increasing regulatory costs on individual businesses. A 2001 Productivity Commission report¹¹ noted that between 1999 and 2000, cost recovery raised \$3 billion for Commonwealth agencies alone, and grew by 24 percent in the previous five years. The

⁷ The Global Competitiveness Report 2012-13, World Economic Forum, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf

⁸ AgForce submission to Queensland Competition Authority: Reducing the Burden of Regulation, 2012 <http://www.qca.org.au/files/OBPR-AQ-sub-MeasuringReducingBurdenRegulation-0812.pdf>

⁹ Measuring Red Tape: Understanding compliance burden on Tasmanian businesses, a study for the Tasmanian Department of Economic Development, Tourism and the Arts, January 2013 http://www.business.tas.gov.au/__data/assets/pdf_file/0015/3363/Measuring-Red-Tape-Report.pdf

¹⁰ <http://www.tfga.com.au/in-the-news/from-the-ceo/compliance-has-industry-on-edge/>

¹¹ 2001 Productivity Commission, *Cost Recovery by Government Agencies Inquiry*, Report No 15, AusInfo, Canberra

Productivity Commission further noted that cost recovery had the potential to create perverse financial incentives such as to “*encourage regulatory creep and cost padding by agencies*”¹².

As well as red tape costing farm businesses directly, it also has numerous implications on associated industry activities. A clear example of this relates to “Farm Day”, where farmers invite visitors onto their farms to experience a day to see how food and fibre is produced. Despite running successfully for a number of years and without major incident, the event was not held this year due to concerns about occupational health and safety liabilities¹³. While there is a need to ensure human health and safety is not unduly compromised, it is a sad day when children are excluded from directly experiencing where their meals and clothes come from.

The NFF perspective on red tape

The NFF acknowledges the need for effective regulation. However, it is important that regulation is assessed as the most appropriate course of action for any given issue, properly targeted, clearly communicated, and that its restrictions are minimised as far as possible to avoid perverse outcomes. Part of the challenge of regulation is ensuring flexibility, but also ensuring that there is consistency of application and outcomes that clearly incorporate into the policy objective of the regulation.

Poorly designed regulation can act like a tax on business, raising costs and stifling innovation. This, and inadequate competition, can lower living standards over time – for example, by reducing employment or increasing prices¹⁴. Unnecessary regulatory burdens falling on business can increase costs, restrict flexibility and limit growth for no net benefit¹⁵. It is in no one’s interest to have consumers paying more, farmers making less and a growing part of the margin being tied up in regulatory burden. While it can be difficult for governments to roll back regulation, it is important that decision-makers prioritise efforts to increase efficiency and effectiveness, and reduce costs on industry of regulation across the board. This includes identifying and resolving unnecessary regulatory burden.

In 2007, the NFF outlined¹⁶ its perspective on red tape – these principles are still appropriate today:

Not all regulations are bad

The NFF realises that while regulation can be onerous to comply with, we also recognise that in many instances there is sound reasoning behind why it has been imposed. For instance, it is widely recognised that the agricultural sector led the push for a National Livestock Identification Scheme in the cattle industry. While imposing a time and cost burden on farmers, the Scheme is also integral to securing, maintaining and protecting access to key overseas markets. Not all regulation is bad for Australian farmers, and in many instances it has ensured that Australian agriculture can build on its global competitiveness in a sustainable manner.

A more flexible, common sense approach is needed

However, severe frustrations are felt by farmers when regulations impose unnecessary costs on the way in which they do business. Too rarely is it recognised that a one-size-

¹² Ibid, p.xxviii

¹³ <http://www.abc.net.au/site-archive/rural/news/content/201303/s3709947.htm>

¹⁴ National Food Plan White Paper, Australian Government, 2013

http://www.daff.gov.au/__data/assets/pdf_file/0011/2293328/national-food-plan-white-paper.pdf

¹⁵ Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007
http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

¹⁶ NFF submission to Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 <http://www.nff.org.au/get/submissions/3484.pdf>

fits-all approach is not an appropriate basis on which to regulate. Flexibility is often needed to account for the multitude of circumstances and hugely varied scenarios faced by the agricultural sector. One example can be found when a farmer manages separate properties that are split by a public road. It is difficult to understand why the farmer requires a permit each time they transport their unregistered harvester between properties. Currently, the NFF believes that there is no flexibility in the system to ensure that common sense prevails in such circumstances.

A similar example exists with the restriction of moving farm machinery at night, despite new technologies meaning that many farmers are increasingly working during night hours. Regulations must be flexible enough to take into account the advent of new technologies that are changing the way in which farmers undertake their business.

Increasing interstate business has intensified the problem

With escalating rationalisation taking place within the agricultural processing sector, farmers are increasingly required to cross state borders when distributing product to supply chain partners such as retailers or processors, for example. This intensifies the importance of providing consistency between the regulations imposed by the various tiers of government. Nowhere is this better demonstrated than by transport and agricultural and veterinary chemical regulations where State rules often conflict, causing confusion for farmers and their supply chain partners. In such a circumstance, industry is looking to the Federal Government to take a leadership role in providing consistency across borders.

Streamlining is possible

Australian farm businesses currently report the same or similar data in multiple forms to multiple agencies (or even to different parts of the same agency). It is often frustrating for farmers when they are required to complete multiple forms covering a range of aspects, many of which call for similar, if not the same, information. The NFF believes that a real potential exists for governments to streamline their data requirements, ensuring that consistency is achieved both across departments and jurisdictions. Continual technological enhancements are adding to the potential for streamlining regulatory requirements and the NFF is buoyed by the efforts of agencies such as the Australian Taxation Office to harness such technology and processes through its Standard Business Reporting project. Much more can be done in this area.

Confidentiality must be maintained

The NFF does, however, recognise that maintaining the confidentiality of individual business information is crucial to the efforts of streamlining reporting requirements. It is important under a streamlined reporting process, that farm businesses have an understanding of which agencies will have access to their data, and that the data is being used as intended. Strong safeguards must be in place to deliver the appropriate protection.

The importance of education

The NFF also sees education playing a vital role in the effective implementation of regulation. Too often, farmers are not provided with an appropriate perspective on the benefits being delivered by government regulations and, as a result, they become bitter about the process of decision-making and practice of compliance. Governments should take the time and dedicate the required resources to ensure that education is provided to give context behind regulations, especially where mandatory compliance costs are involved. A key example where inadequate communication has led to confusion is the recent introduction of the Personal Property Securities Register, with many uncertainties in the farming community about how they should utilise the register.

Key areas for reform

There are a number of areas where the NFF believes that Governments can make a real difference in lifting the burden of regulation off farm businesses. The following examples largely focus on Commonwealth administered regulations and it is worth noting that this is only one level of Government that has a daily impact on the operation of farm businesses. State and Local government regulatory impacts also need to be examined, specifically if the cumulative impact is to be assessed. While these will not immediately solve the issue of accumulation and creep of regulation over time, they can be seen as a starting point for Government action.

The interaction between farming and the environment

Australian farmers have frequently expressed concerns over the approval process involved when looking to change existing land use and function on-farm. In addition to the myriad of local and state government environmental regulations farmers have to comply with on a daily basis, the 1,000-odd page *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act), which extends its footprint across the country through a multitude of listings each year, is an ever-changing minefield for any business to understand, let alone comply with. For farmers, awareness of any environmental law is around 30 percent (mostly related to state based vegetation regulation)¹⁷. However, a concern is that awareness of the EPBC Act specifically is much lower, despite any good intentions farmers might have to comply with the regulation.

The EPBC Act requires farmers to gain Commonwealth approval where development will have a 'significant impact' on matters of national environmental significance, including operations on heritage listed sites, RAMSAR wetlands, nationally threatened animal and plant species and ecological communities. A detailed referral process must be completed to ascertain whether the actions meet the national environmental significance and threshold tests, and to determine what mitigating actions will be imposed should an approval be required.

The outcome of this process, which can take up to six months, may include not a controlled action (business as usual), not a controlled action in a prescribed manner (business as usual with caveats) or a controlled action (an approval is required) decisions. This process, however, does provide legal certainty as to what activities the land holder can proceed with so that sustainable and desired conservation and environmental outcomes can be achieved. This could include avoidance and mitigation activities, and will likely require offsets for approval decisions.

In addition to the Commonwealth approval process, Australian farmers may also require environmental approval through their State accreditation processes for the same on-farm actions. Each State has a separate (and often overlapping) set of protected matters, guidelines, rules and requirements which just add complexity. In many instances, the State approval processes have no set timeframe for a decision and response back to the farmer on whether they can proceed, and this increases uncertainty.

A key challenge for environment law is that the same species or ecological community can be listed under both the EPBC Act and state legislation. However, these are likely to have different geographic coverage, different scientific descriptions, and different impact and threshold tests. This creates a minefield for any business seeking to understand and comply with the relevant legislation.

As a result of this complex and duplicative system, 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. Often, the opportunity for farmers to improve their profitability is forgone, due to the barrier of red

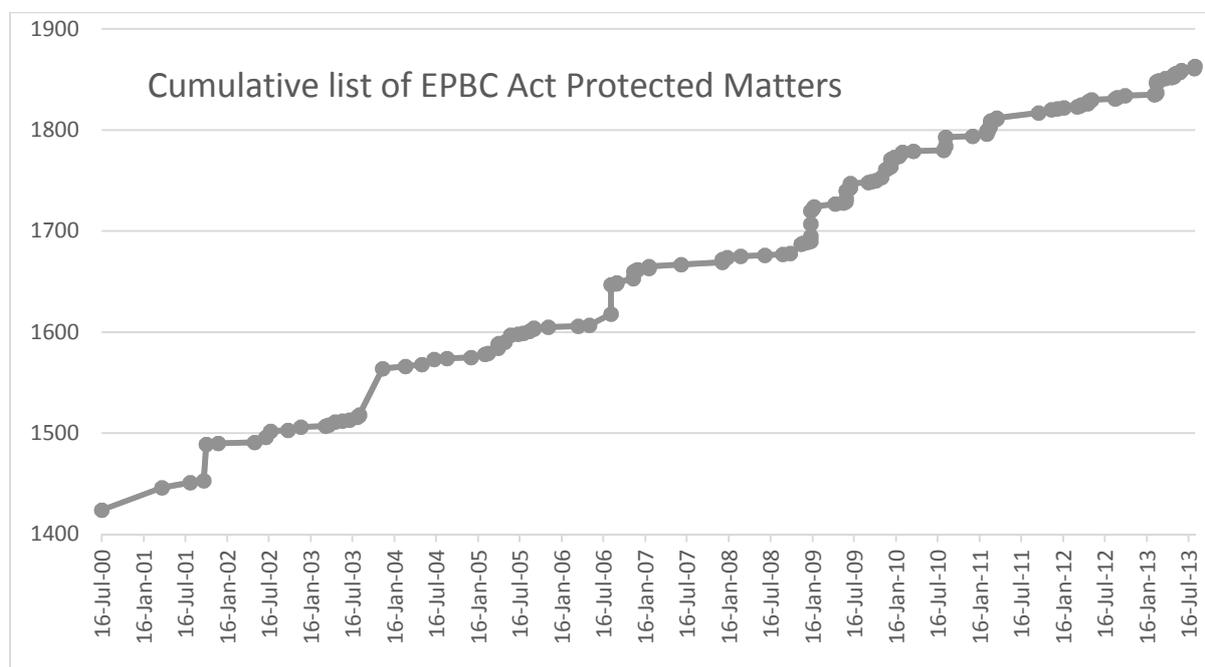
¹⁷ Information based on past assessments from NFF-based Government liaison officers

tape. However, in some circumstances, this has regrettably placed pressure on farmers to take land use decisions into their own hands, with instances of poor judgement leading to convictions or poor environmental outcomes.

While farmers are able to gain some exemptions under the EPBC Act for prior approval and existing use, these provisions may also lead to perverse outcomes. For example, changing to more current farming practices may deliver better environmental outcomes (for example, minimum tillage cropping), but the requirement for a larger plant may not be accepted as an existing use. Another example is farmers changing cropping or livestock intensity in reaction to market forces in order to remain profitable, which may be considered as having significant environmental impacts and therefore contravene the EPBC Act, even if it may overall improve environmental outcomes on the farm.

Moreover, the current proposal to introduce cost recovery for EPBC Act referral and approvals will undoubtedly lead to perverse outcomes as farmers seek to minimise the cost implications. Although agriculture is not a driver for the recent increase in assessment against the EPBC Act, the industry is being caught up in the process due to increased numbers of listings (the graph below outlines the recent accumulation of protected matters under the EPBC Act) and increased resources exploration and extraction.

The confusion, lack of transparency and failure to follow due process in the recent listing of the *River Murray and associated wetlands, floodplains and groundwater systems, from the junction of the Darling River to the sea*, demonstrates inadequacies in administration of the Act. Many of these perverse outcomes could be avoided through simplification of environmental assessments by multiple jurisdictions and greater communication of the procedures in place.



The ongoing jurisdictional creep of the EPBC Act compounds the uncertain operating environment for farm businesses. The EPBC Act is aimed largely at protecting matters of National Environmental Significance from any actions that may have a negative impact. However, many environmental groups seek to use national environmental law when a state government rejects threatened species and ecological communities at the state or territory jurisdiction level.

The Federal Government has responded to these actions by extending the scope of the Act in an ad hoc and ongoing manner, including through frequent redefining of the list of protected matters and subsequently what actions may constitute a 'significant impact'. This extending reach of the EPBC Act directly impedes landholders' ability to understand

the extent of the Act and the ability of regulators and service providers to deliver against the Productivity Commission's recommendation¹⁸ to "improve communication about the significant impact trigger".

There have been a number of inquiries into environmental regulatory burden. For the 2004 Productivity Commission Inquiry, the NFF submitted¹⁹ a number of case studies on regulatory burden that were collected for a 1998 Senate Inquiry into the EPBC Bill²⁰. In summary, key concerns included time delays, confusion, opportunity costs for the farm business, and negative outcomes for the environment.

Another example is recent changes to include the 'water trigger' as a new national matter of environmental significance. While aimed at the resources sector the new water trigger has created a precedent for the EPBC Act to be used to target specific industries. In future, a trigger could be introduced specifically for agriculture, to address issues such as use of agricultural chemicals or fertiliser, or land clearing.

This is a major change in direction for the legislation and the NFF believes the uncertainty created through this change could have significant implications for the agricultural sector. Moreover, the water trigger duplicates a range of state based legislation, including those governing the environmental, mining and petroleum sectors; and the introduction of the water trigger came only two years after the Australian Government responded to the Hawke Review of the EPBC Act²¹, a review which did not consider it appropriate to implement such a measure. These developments send conflicting messages to agricultural sector about the national environmental law. As a first step in improving certainty, the NFF would support removal of the 'water trigger' from the EPBC Act.

Finally, there are parts of the EPBC Act that directly duplicate other Commonwealth Acts, despite a number of independent reports highlighting the issue and recommending change^{22,23} and redrafting processes occurring for each of the Acts shortly after. The risk assessments undertaken in order to import live animals is governed by both the EPBC Act and the *Quarantine Act 1908*. This is just one example of two very complex pieces of Commonwealth legislation that perform a duplicated function.

Recommendations:

- The Australian Government must provide certainty for farmers regarding their ongoing ability to utilise the natural resources on their farm.
- Address the cost, delay and lack of integration between Commonwealth and State legislation through removing duplication and adequately resourcing the departments responsible for the management programs; specifically through the development of a one-stop-shop for environmental approvals.
- Development of a consolidated (one) list of protected matters to streamline confusion over state/territory and Federal Government legislation and overcome the confusion around geographic coverage, scientific definitions and thresholds for significant impact.

¹⁸ Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

¹⁹ NFF Submission to the Productivity Commission Inquiry into the Impacts of Native Vegetation and Biodiversity Regulations http://www.pc.gov.au/__data/assets/pdf_file/0014/52205/sub128.pdf

²⁰

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=ecita_ctte/completed_inquiries/1999-02/bio/report/contents.htm

²¹ Australian Government Response to the Report of the independent review of the EPBC Act, 2011 <http://www.environment.gov.au/epbc/publications/pubs/epbc-review-govt-response.pdf>

²² Report of the independent Quarantine and Biosecurity Review Panel, 2008 http://daff.gov.au/__data/assets/pdf_file/0010/931609/report-single.pdf

²³ The Australian Environment Act: Report of the Independent Review of the EPBC Act, 2009 <http://www.environment.gov.au/epbc/review/publications/pubs/final-report.pdf>

- Clear division of the responsibilities of the application of state/territory and national environmental law aimed at reducing duplication, and avoiding the use of the EPBC Act when protection fails at a state/territory level.
- Ongoing provision of resources for communicating the EPBC Act and its implications for farmers.
- Repeal the 'water trigger' in the EPBC Act.
- Take steps to remove duplication between separate pieces of legislation, such as the duplicative process for import of live animals.

The complexities of Carbon Farming

It has been recognised that agriculture would play a significant role in assisting meet Australia's Kyoto targets through carbon mitigation and sequestration opportunities – with methane management and soil carbon most commonly discussed. Significant assistance has been provided to develop methodologies and to entice the agriculture sector to engage. However, to date, no methodologies have been approved for soil carbon, cropping or grazing land management. This considerable lag time means that the promise of financial rewards are unlikely to be realised any time soon. Combined with policy uncertainty, the majority of farmers are coming to view carbon farming will not deliver the additional income streams promised by Government rhetoric.

Those farmers who have engaged through mostly vegetation management methodologies, convinced of the “golden egg” at the “end of the rainbow” that carbon will deliver to farm profitability, have invested at their enormous cost. With a carbon price expected to plunge over the short term, carbon farming projects are becoming uneconomic. Changing regulations while in an implementation phase of a commercial business venture is expensive for that business. The promises from political parties of all persuasions are unrealised and will only result in the agricultural sector turning its back on carbon farming over the medium term – damaging the prospects for both farmers and government.

When this is combined with the onerous and complex process and sheer scale of the paperwork involved in this program, these act as a disincentive for farmers to participate in the CFI scheme, and consequently undermines the CFI's potential for uptake and success. It also substantially increases transaction costs, and increases the price at which any project breaks even – with one recent study suggesting that the carbon price of \$36 Mg²¹ CO₂-e was required for farmers to make a profit²⁴. The application process to participate in the Carbon Farming Initiative (CFI)²⁵ scheme involves completing an 18-page 'Application for Recognition as an Offsets Entity' (and providing supporting documentation) as well as an eight-page 'Application for Declaration of an Eligible Project' form. The application for receiving CFI credits includes completing a 16-page 'Offsets Report Submission Form' and an additional 'Application for Certificate of Entitlement' form plus providing supporting documentation.

The NFF supports streamlining the process to be fit for purpose and facilitate participation. The NFF also supports targeting of information of any given program specifically to the agricultural sectors able to participate in the program. It is confusing for farmers to receive broadly applied program promotion when they are unlikely to be eligible to participate.

Recommendations:

- The CFI could engage many more farmers and be more successful against its aims if it was easier to participate.
- CFI monitoring, compliance and audits need to be fit for purpose and cost effective to encourage farmer participation.

²⁴ Lam, S.K., Chen, D., Mosier, A.R. & Roush, R. The potential for carbon sequestration in Australian agricultural soils is technically and economically limited. *Sci. Rep.* 3, 2179; DOI:10.1038/srep02179 (2013)

²⁵ <http://www.climatechange.gov.au/reducing-carbon/carbon-farming-initiative>

Transport of agricultural goods

The extensive rural location of agricultural production across Australia means that freight and transportation are important and integral components of ongoing production and any future development.

The principle constraints²⁶ on driving productivity through a more efficient freight sector include:

- Encroachment of freight activities.
- Restricted use of infrastructure.
- Uncertainty about the capacity for growth.
- Lack of responsiveness of infrastructure to economic demand.

Urban encroachment on many freight corridors is causing opportunities to improve freight efficiency to be lost, highlighting the ongoing importance of well-considered land use planning. Infrastructure restrictions (whether physical or regulatory) limit vehicle sizes, configurations and operating hours, as does the application of different regulations in different jurisdictions. Inefficiencies abound when a truck or truck configuration cannot drive the full distance of a freight journey; this is the 'first and last mile' issue'. The next generation of freight vehicles or 'interoperable high productivity vehicles' (long, double stacked trains and B triple or super B double trucks at higher mass limits) offer improvements in freight efficiency but their use is currently restricted. Choice of technology may also act to increase the long term cost and 'lock out' or reduce interoperability, even though local cost benefit may result²⁷.

This year has seen the move towards a single National Heavy Vehicle Regulator (NHVR). This is a step in the right direction and will lead to productivity improvements across the nation, but there is still a lot of work required to implement consistent requirements across states. Processes aiming to harmonise regulations nationally need to engage closely with industry bodies in relevant jurisdictions, to ensure individual businesses are not unduly impacted in the quest for overall improvements for the economy.

An example where there has been concern is with driver fatigue arrangements under National Heavy Vehicle Law (NHVL). Through the process of harmonisation, the NHVL requires drivers engaged in work that takes them more than 100km from their base to complete a work diary. This presents a change for some Queensland operators from the 200km radius limit that has previously applied in Queensland.

NFF member organisation, AgForce objected²⁸ to this clause as the Queensland legislation allowed 200km, in recognition that it is a large state and in some cases for farmers, 100km does not even allow them to get to their nearest town, and in some farm businesses, to their nearest depot. While it is recognised that the NHVR will have an exemption category, this will ultimately depend on how the regulator enacts the legislation and if flexibility and common sense is not provided there may be an inappropriate level of regulatory burden imposed on those operators in remote regions.

Another area for concern is the inconsistency in fatigue management laws and the animal welfare requirements for transport of livestock. The greatest impact of these is in remote areas where drivers work / sleep / live in their trucks and are required to comply with both fatigue management laws and also standards for transport of livestock, in regions often without facilities to rest livestock within the specified period. Again, it is in

²⁶ AgForce Submission: Queensland Competition Authority , Reducing the Burden of Regulation, August 2012

²⁷ AgForce Submission: Queensland Competition Authority , Reducing the Burden of Regulation, August 2012

²⁸ http://www.parliament.qld.gov.au/documents/committees/THLGC/2012/INQ-HVNLA/submissions/HVNLA_121207_Submission%2012.pdf

these situations where rigid rules can have perverse outcomes and a certain level of flexibility and common sense is required to ensure positive outcomes for both the welfare of the driver and the livestock.

The costs (and continuing regulatory creep) imposed on businesses by the chain of responsibility and fatigue management rules in relation to heavy vehicles is an ongoing concern. In 2007, the Productivity Commission²⁹ indicated these appear to be unavoidable if health and safety objectives are to be served. However, there may be an opportunity to revisit these obligations and consider whether health and safety policy objectives could still be achieved with a lower cost burden on business. Ultimately, the chain of responsibility requirements have shifted some of the burden of compliance to farmers. This effectively makes one business partly responsible for the performance and compliance of a separate business entity. It is unreasonable to expect a farm business to police the actions of a separate business³⁰.

Recommendations:

- Decision making on access to infrastructure, particularly the road and rail network, may be improved with greater information (noting importance of collecting data in a manner that minimises cost and impacts on business), including on overall implications for road safety. An independent review and public report on impediments to access, followed by an economic assessment would be a positive first step.
- Flexibility and common sense needs to be applied in the enactment of National Heavy Vehicle Laws and guidelines governing the transport of livestock, this includes chain of responsibility and fatigue management rules. Compliance and enforcement functions will need to be carefully monitored as new regulatory regimes are rolled-out.

The agricultural workforce

Australian businesses face a distinct disadvantage in competing with international competitors for products that require a certain level of labour to produce. Australia has the fourth highest wage rates in the world, and workers in industries such as food processing are paid twice the wages for similar work in New Zealand, and more than three times the wages paid in the USA³¹. Without streamlined and efficient processes in place to manage employment of staff, the impact of higher wages is compounded.

Small businesses, including on-farm and throughout the supply chain face a minefield when it comes to employing staff. The legal obligations that have to be met barely change whether someone is employing one staff member or dozens. In general terms, the larger a business is, the greater their ability to absorb the overheads required as part of the process of employing staff. If a staff member needs to be moved on, the process is even more complex. These disincentives are a major barrier to farm businesses looking to expand and take on additional staff.

The ability of farm businesses to fill labour shortages with the use of overseas workers on relevant visas is limited by relevant ANZSCO codes being outdated and not appropriately defined for modern agricultural occupations. Part of the problem appears to lie in agricultural workers in similar roles not using common terms to describe their occupation in the census, and so the ABS data does not feature enough people in each occupation to justify a code.

²⁹ Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007
http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

³⁰ Victorian Farmers Federation submission to Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007
http://www.pc.gov.au/__data/assets/pdf_file/0003/64119/sub013.pdf

³¹ http://www.farminstitute.org.au/_blog/Ag_Forum/post/are-labour-costs-killing-the-australian-food-industry/

For example, a head stockperson is a skilled job, but sits between the ANZSCO codes for “Livestock farm worker” (low skilled) and “Livestock farmer” (degree qualified). Such a person may be variously employed as, and describe themselves as “leading hand”, “overseer”, “head stockperson”, “head stockman”, “head stockwoman”, “assistant manager”, yet all do much the same job and require a high level of skills, but are not degree qualified. This is also relevant for the other agricultural categories of Dairy and Mixed Crop. Changes need to be made to the ANZSCO codes to reflect modern agricultural occupations and allow the flexibility of various titles describing similar roles.

The consideration of a specific pork industry Labour Agreement template by the Australian Government³² in response to chronic labour shortages has taken an unnecessary length of time, to the detriment of the industry. The lack of competent and suitably qualified staff has the potential to reduce both productivity and animal welfare outcomes. The process for progressing this issue commenced in March 2012, with formal documentation for the associated individual labour agreements submitted September 2012. The initial timeframe for conclusion of the industry-wide Labour Agreement was December 2012. However, this has been constantly pushed out, with changes to Ministerial portfolios within the Government leading to indefinite delays.

Recommendations:

- Progress the pork industry Labour Agreement as a matter of urgency.
- Extend the Pacific Seasonal Worker program.
- Update the ANZSCO codes to reflect modern agricultural occupations.
- Support greater flexibility for jobs growth, by endorsing Individual Flexibility Agreements. With the labour force becoming more casualised, such Agreements would allow more people to join the workforce at times that may suit the employer and the employee.

Agricultural and Veterinary Chemicals

Recent years have seen a number of reforms in the laws governing the registration and control-of-use of agricultural and veterinary chemicals. Poorly managed processes and a lack of strategic vision has led to confusion and additional burden on the agricultural sector, without improved outcomes for human safety, the environment or farmers costs.

Most recently, the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2013*, saw the introduction of mandatory re-registration of agricultural and veterinary chemicals every 7–15 years. This clearly duplicates the Chemical Review Program³³ undertaken by the Australian Pesticides and Veterinary Medicines Authority (APVMA), which was already in place and provided the opportunity to review chemicals that posed any concerns. The agricultural sector supports the regular review of chemicals to ensure their safety and efficacy.

However, such processes do not require legislative changes duplicating an existing process and adding to the workload of an already stretched regulator, without adequate public funding in recognition of the public good nature of their functions. Such policy reforms should also have been underpinned with sufficient incentive for newer and safer chemicals onto the market, particularly in cases where there may not be a commercial incentive for manufacturers due to the small Australian market. An adequately funded minor use data generation program would no doubt ease the burden on industry in years to come from products that are removed due to commercial decisions by chemical manufacturers not to go through with re-registration of their product.

Although effectiveness of the APVMA is sound, inefficiencies within the regulatory system have continually been highlighted to the NFF. For example, an animal health company recently explained that for simple changes the APVMA may take up to double the legislated timeframe - 6 months for the APVMA to approve an additional pack size

³² <http://www.nff.org.au/get/3749.docx>

³³ <http://www.apvma.gov.au/products/review/>

(legislated timeframe is 3 months). Such matters are compounded by additional processes added to the functions of the regulator by the Government, without sufficient funding also attached.

Recent reforms to move towards harmonisation of control-of-use of agricultural and veterinary chemicals have been slow to progress with more work required. While a National Framework has been agreed by jurisdictions³⁴, there is still no uniform arrangements across state borders. A produce monitoring scheme has been introduced to further inform future reforms and while this program has committed government funding for the next few years, the agricultural sector is left wondering if it will have to pay for this monitoring scheme into the future, even though it was not consulted in its introduction. The control-of-use of agricultural and veterinary chemicals is particularly confusing for many farm businesses when they are given conflicting advice from various bodies (such as fire departments and work cover) on matters such as safe storage of dangerous goods.

The Chemicals of Security Concern program has been an important initiative of the Australian Government and while the agricultural sector has supported a process to limit the risk of legitimate agricultural and veterinary chemicals being made into bombs, the program has not adequately aligned with existing tight regulatory regimes for farm chemicals. For example, many of the recommended actions under the National Code of Practice for Chemicals for Security Concern are less than what is already required under state control-of-use regulations, or impractical to implement. To avoid confusion in the farming community, new Government policies should first and foremost be holistic and look to align with existing regulatory regimes, rather than re-invent the wheel and overlap with existing policy for a single purpose.

Recommendations:

- Adequately fund the APVMA and a minor use program, recognising the public good from these actions and the subsequent improvements to regulatory burden facing the agricultural sector.
- Pursue alternative options for ensuring safe and effective chemicals available for the Australian market through alternative mechanisms such as the chemical review program, which will not see the need for a mandatory re-registration scheme under legislation.
- Ensure all work undertaken with the Chemicals of Security Concern program align with existing arrangements for agricultural and veterinary chemicals.

Data collection

A common complaint for farmers is the inability of governments to share information internally, and across jurisdictional boundaries. Even within agencies, farmers and industry representative bodies have to provide the same data numerous times. Farmers are always looking to ensure the data they collect in their business is done in an efficient manner and only collected when it serves a valuable purpose, and they expect Government to do the same.

In 2007, The Productivity Commission recommended³⁵ that improved coordination between ABARES and other Government agencies in collecting farm data could reduce the time spent by farmers in completing surveys. Five years down the track, there is little evidence that any steps have been taken to improve the situation.

One example that was brought to the attention of the NFF recently was a farm business that had received a number of onerous and excessive requests for information from the Australian Bureau of Statistics (ABS). In this particular case, four requests for

³⁴ <http://www.daff.gov.au/agriculture-food/ag-vet-chemicals/domestic-policy/history-of-coag-reforms/iga-coag>

³⁵ Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

information had been received over the last three years, covering specific details of operations including off-farm financial information. The farmer estimated that proper completion of the surveys would take at least a full day each time. The farmer was also concerned that information requests may have been on a non-random basis, due to a survey officer indicating that the surveys were particularly focused on larger farm businesses. On top of these issues, there was often a lack of time to provide the information, with the ABS providing only fourteen days from date of the covering letter, which is unrealistic in rural areas where mail is not delivered daily and other farm tasks may be a priority during that period of time. This one example highlights the large amount of work required for just one agency and becomes more frustrating for farmers when multiple requests come from a variety of sources.

With the Australian Government's implementation of the *Water Act 2007*, there are now several Australian government agencies and authorities collecting water data. These include the National Water Commission, the Murray-Darling Basin Authority, the Bureau of Meteorology, the Australian Competition and Consumer Commission, the ABS, and the Department of Sustainability, Environment, Water, Population and Communities. In many cases, the different entities require slightly different water data, or in different formats. State agencies also collect water data. All these different data requirements increase the cost of doing business for the irrigation organisations and farmers who are required to provide the information – or they pay the costs of doing so through water charges.

The NFF strongly urges the Australian Government to agree on what information is to be collected and who will collect and distribute this to other entities.

Recommendations:

- Data collection agencies should improve consultation with industry to explain the information they are seeking and take advice on the best approach on how to obtain it. Agencies should then consult with industry to ground-truth the data they have collected, as there are many occasions when it is clearly not a true representation of reality.
- The Australian Government consider ways to streamline data collection from farm businesses, to minimise time taken, while ensuring important information is still collected and made available for policy and on-farm decision making.
- The Australian Government implements a one stop shop for water data collection, and that this be progressively expanded to include the provision of water data to state agencies.

Improving regulatory processes

In addition to adjusting some of the individual regulations, Governments can also reduce the regulatory burden on farm businesses into the future through improving their own internal processes.

The Productivity Commission's July 2013 Draft Report on Regulator Engagement with Small Business³⁶, found that small businesses feel the burden of regulation more strongly than other businesses and almost universally, their lack of staff, time and resources present challenges in understanding and fulfilling compliance obligations. The report argued that the capacity for small business to fulfil compliance tasks should be at the forefront of a regulator's mind when administering regulation. The NFF agrees with this position and argues that as well as within regulators, this approach also needs to be taken by governments whenever considering a regulatory approach.

The impact of regulatory imposition on businesses can be minimised through appropriate regulatory impact analysis (RIA) during the policy development phase. However, as the Productivity Commission found in their 2012 Regulatory Impact

³⁶ http://www.pc.gov.au/__data/assets/pdf_file/0005/124277/small-business-draft.pdf

Analysis: Benchmarking Study³⁷, there are shortcomings in system design and a considerable gap between agreed RIA principles and what happens in practice, reducing the efficacy of processes. The Productivity Commission found that the Regulatory Impact Statement is often written after a decision has been made and effectively becomes an ex post justification for the decision³⁸.

Agencies that seek to maximise efficiency for themselves can quickly create large industry impacts. When considering the best way to achieve a desired policy outcome, agencies should always consider various approaches, such as working collaboratively with the agricultural sector, and avoid seeing regulatory imposition as the only answer. While regulation may often be a cheap and easy way for Governments to achieve objectives, the flow-on impacts to the sector, the economy and broader society should always be considered.

A lack of commitment by Governments and agencies and a basic misunderstanding of the effect of their policy decisions on industry is having long-term implications for the agricultural sector. An example of agencies lack of understanding of commercial realities of farm businesses is demonstrated in the Report of the Primary Industries Ministerial Council Working Group on a National Livestock Identification System (Sheep and Goats)^[1]. The Working Group recommended that “there are no insurmountable barriers to commencing the phased implementation of an electronic NLIS (Sheep & Goats) system”. However, this fails to consider the practical realities of sheep production systems and the current limitations of infrastructure and technology. The cost and the lack of evidence on commercial throughput, reliability and long term performance represent significant barriers to the introduction of RFID. Such a report from agricultural agencies demonstrates a clear lack of understanding of the sector.

Governments and regulators need to be transparent in the way they interact with farm businesses, particularly regarding any costs they wish to recover from industry. The NFF often receives concerns from the farming sector regarding increases in costs from regulatory processes, without sufficient justification.

The recent moves to cost recover for Government services have been inconsistent with many policy objectives and encourages different areas of the same agency to work at cross-purposes. For example, recent rapid increases in charges for Biosecurity services have provided a disincentive for small exporters and ultimately worked against the Government’s broader priority of increasing agricultural exports. Similarly, the current proposal to introduce cost recovery for EPBC Act referrals and approvals is complex and lacks transparency, increasing the risk of non-compliance.

Another area of inconsistent application of Government principles, is in the gene technology sector, where new insect resistant genetically modified crops (those containing a plant-incorporated insecticide) such as cotton, undergo similar risk assessment processes by the APVMA and the Office of the Gene Technology Regulator (OGTR).

Currently, the cost of the APVMA risk assessment is cost recovered from applicants, while the OGTR process is covered through Government appropriation funding. With the Australian Government Department of Health currently reviewing the potential application of cost recovery to the OGTR’s regulatory function, there is a risk that if implemented, applicants could be ‘double-charged’ for what is effectively a single

³⁷ Regulatory Impact Analysis: Benchmarking Study, Productivity Commission, 2012
http://www.pc.gov.au/__data/assets/pdf_file/0003/120675/ria-benchmarking.pdf

³⁸ Regulatory Impact Analysis: Benchmarking Study, Productivity Commission, 2012
http://www.pc.gov.au/__data/assets/pdf_file/0003/120675/ria-benchmarking.pdf

^[1] Report of PIMC Working Group on a National Livestock Identification System (Sheep and Goats) to the Standing Council on Primary Industries, 2012
http://www.mincos.gov.au/__data/assets/pdf_file/0016/2252320/nlis-working-group-report.pdf

process, but undertaken by multiple regulatory agencies. Like any regulatory cost, this would ultimately be passed onto growers in the form of higher seed costs.

While the Australian Government cost recovery guidelines focus on the issues for Government, there is also a need to look at the outcomes for industry sectors affected by cost recovery. This means that the application of cost recovery must be based on efficient service delivery, transparency, adequately balance the need for government risk management to industry's expectations of risk management that is fit for purpose, and the recovered costs must be prudent expenditure for the services being delivered. It is also imperative that government agencies implement improved service delivery standards that meet industry expectations of best management practice for monopoly service providers.

Recommendations:

- Government agencies need to be committed to carefully considering regulatory impacts on the agricultural sector during the policy development process. This should not be seen as unnecessary work for the agency, but a true commitment to achieving appropriate policy outcomes.
- Governments and regulators need to be transparent, efficient and consistent in the way they interact with farm businesses, particularly regarding any costs they wish to recover from the sector.

Conclusion

Each farmer, or other producer is faced with a significant array of complex and often overlapping regulation, some of which is unnecessarily burdensome³⁹.

The NFF supports the aim in the National Food Plan White Paper⁴⁰ for Australia to be among the top five most efficiently regulated countries in the world. However, a 'business as usual' approach will not be conducive to achieving this role and it will be important for Governments at all levels to work closely with the Australian agricultural sector to ensure that farm businesses are not unfairly disadvantaged by poorly designed or incorrectly targeted regulation.

Steps must be taken to enhance opportunities for business and unlock economic growth. Sound decisions cannot be made in a policy vacuum and it is critical Governments consider the cumulative impact of many small regulations, just as much as one or two large ones. Without decisive action, red tape will continue to strangle agricultural businesses and limit the ability for Australia to take advantage of growing market demands in the Asian Century. This Federal Election year, the NFF calls on all political parties to think carefully about decisions they make and ensure they are in the best long-term interest of the agricultural sector, including the ability of farming businesses to remain profitable in the short-term. Farmers operate in an uncertain environment and the least Governments can do is provide certainty through sensible policy.

³⁹ Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

⁴⁰ National Food Plan White Paper, Australian Government, 2013

http://www.daff.gov.au/__data/assets/pdf_file/0011/2293328/national-food-plan-white-paper.pdf