



National Farmers'
FEDERATION

**PRODUCTIVITY COMMISSION:
REGULATORY BURDENS ON BUSINESS
(PRIMARY INDUSTRY)**

NFF SUBMISSION

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The National Farmers' Federation

The National Farmers' Federation (NFF) was established in 1979 and is the single national voice for Australian agriculture.

The NFF's membership comprises all of Australia's major agricultural commodities. NFF does not have individual farmer members, but through its members represents the interests of approximately 100,000 farmers. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity councils deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

Introduction

The task of regulatory compliance has become a significant cost impost on Australian farm 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.

It is often forgotten that 99% of Australian farm businesses are family owned and operated, the majority of which fall within the definition of 'small businesses. As a result, the burden of bookwork often falls on the same personnel who are also required to farm the productive land on which they operate. It is therefore no surprise that in a recent "reality check" hotline conducted by an NFF member organisation, the South Australian Farmers' Federation, asking farmers to list issues of concern, two-thirds of the responses were in relation to Government regulatory burdens. The competitiveness of Australian agriculture in world markets, in which the industry heavily depends, will therefore begin to suffer unless immediate action is taken to alleviate the stress.

The NFF therefore welcomes the ongoing annual review by the Productivity Commission (PC) into regulatory burdens impacting on business and looks forward to considerable rationalisation in red tape for farmers. This submission aims to identify key areas in which regulation is

impinging on farm businesses while making recommendations for change. The submission will also be supported by additional submissions from NFF member organisations who will identify key pressure points highlighting problems faced by their respective farmer members.

In addition, the NFF is engaging with farm consultancy groups to draw additional insights into the costs imposed by farm regulations. This subsequent information will provide greater detail in attempting to quantify the actual impacts incurred.

The NFF perspective on red tape

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 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. 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-fits-all approach is not an appropriate basis in which to regulate. Flexibility is often needed to account for the multitude of circumstances and hugely varied scenarios faced by the farm 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 header 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 taking their produce to market. 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 regulations where State rules often conflict, causing confusion for farmers and their supply chain partners. In such a circumstance, industry is looking for 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 efforts by 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 efforts of streamlining reporting requirements. The benefits of reducing red tape can easily be eroded if the possibility exists for different government agencies to access data for which they have no entitlement. It is important under a streamlined reporting process, that farm businesses know which agencies will ultimately have access to their data, and for what purposes. 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 compliance. Governments should take the time and dedicate the required resources to ensure that education is provided giving context behind regulations, especially where mandatory compliance costs are involved.

Regulation pressure points for the farm sector

The NFF has identified the following key areas where regulations impinge on the effective operation of farm businesses. Where possible, recommendations are included. It should be noted that while this list is in itself exhaustive, it does not include all areas of regulatory burden faced by the farm sector. Other areas of regulatory burden facing farm business are also found in areas including, but not limited to, native title compliance, animal welfare administration, and export documentation compliance.

Transport infrastructure regulations

National consistency and coordination in transport regulatory frameworks – including of safety, operational and technical standards – is severely lacking.

The NFF believes that a key to the future efficiency of the national transport network is the need to have uniformity between state transport/road authorities. There are currently inherent differences between state authorities in areas such as header transportation guidelines, livestock loading, varying speed rules, multi-trailer restrictions and general permit thresholds, all of which create inequities between transport in various state jurisdictions. For example, livestock loading schemes exist in Victoria and Queensland, however, disappointingly an equivalent scheme does not exist in NSW. This adds an additional level of complexity and cost to interstate transport of livestock, a trend that is increasing as rationalisation occurs within the processing sector.

There are currently 750 separate agencies across the nation responsible for controlling Australia's 800,000km of roads, representing a \$100 billion asset.¹ 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. Over-regulation or unpredictable regulation can adversely impact on the cost of transport and on incentives for new investment, particularly given the large costs and lengthy time-horizons involved. A coherent, transparent and stable

¹ Export Freight, *Friction Freight*, October 2006

regulatory environment is needed to encourage investment in appropriate modes of transport.

The cost impost of poor regulation is a real factor for farmers looking to compete on the highly competitive global market. This is clearly demonstrated by the plight faced by an abattoir based in regional New South Wales that has undertaken work to quantify the costs imposed from poor road regulations. With Queensland's road truck weight regulations 2.5 tonnes higher than those allowed in New South Wales, Queensland processors gain a 6.3 cent per kilogram cost advantage in exporting to the global market. This gives Queensland processors a significant competitive advantage and places downward pressure on prices received for livestock in New South Wales.

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. This fact appears to be overlooked by many State regulatory authorities, detracting further from agriculture's global competitiveness.

Recommended solutions

- The Federal Government, through the National Transport Commission, to take proactive measures to ensure all state authorities develop consistent transport standards and procedures.
- All jurisdictions (local, state, federal) should have an involvement with setting standards that effective access to the national transport network.

Environmental regulations

Australian farmers have expressed concerns over the approval process involved when looking to change existing land use and function on-farm. This may include land clearing practices, dam development or the formation of subdivisions.

In such circumstances, the Environmental Protection and Biodiversity Conservation (EPBC) Act requires farmers to gain Commonwealth approval on matters of national environmental significance including operations on heritage listed sites, Ramsar wetlands, nationally threatened animal and plant species and ecological communities. Applications through a detailed referral process must be completed to ascertain

whether the actions meet the national environmental significance test and to determine what actions are required. The outcome of this process, which can take up to six months if approvals are required for controlled actions, may include non-controlled action, non-controlled action in a prescribed manner or controlled action. 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.

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.

Recommended solutions

- There is a genuine need in this area for simplifying and adding flexibility to the process of environmental approval.
- Need to provide quicker assessment for straight forward applications.
- Need to streamline State and Commonwealth application processes.

Livestock Traceability

The Australian cattle industry has developed a system for the identification and tracing of livestock called the National Livestock Identification Scheme (NLIS). NLIS is a permanent, whole-of-life identification system that enables individual animals to be tracked from property of birth to slaughter for food safety, product integrity and market access purposes. Participation is mandatory and all cattle must be tagged when they leave a property. Cattle are marked with machine-readable ear tag or rumen bolus - ear tags are cheapest and cost about \$3 each. This cost is born by the farmer together with the cost of an applicator and on farm record keeping.

Australia's food safety reputation for livestock is also underpinned by the National Vendor Declaration (NVD) system. Producers use the NVD/Waybill to declare valuable information about the food safety status of the livestock being sold. Buyers rely on the NVD/Waybill for accurate information on the livestock purchased and processors rely on the information to ensure only the safest food enters our food chain. Ongoing work is being undertaken to simplify the system, thereby making it less onerous for industry to comply.

However, while the livestock industry acknowledges that complying with NLIS and NVD's involves added cost for the farmer, they recognise that there is a global trend in adopting animal traceability and consumer safety assurances. Australia's major competitors and customers have, or are in the process of, adopting animal identification systems, and Australia's systems have been designed to maintain our competitive advantage.

For further detail regarding regulatory burdens being faced by the Australian livestock sector, the NFF would like to refer the Productivity Commission to the joint Red Meat Industry submission.

Recommended solutions

- Industry to continue work to simplify the NLIS system.

Food safety regulations

The NFF has welcomed the independent public review into Australia's food regulatory system in order to improve the competitiveness of the Australian food industry. The NFF is fully supportive of the reform process to ensure the food regulatory environment imposes a minimum burden on the food supply chain, while ensuring that public health and safety standards are upheld.

As outlined by the Agriculture and Food Policy Reference Group (the Corish Report), food safety will continue to be non-negotiable, and the regulatory framework must continue to deliver food safety outcomes². However, the NFF is becoming increasingly concerned about what appears to be an overly restrictive Australian food regulation environment that often inhibits the domestic food chain's ability to generate price premiums from consumers. This is having a direct impact on the profitability of Australia's farm sector.

² Creating our future – Agriculture and food policy for the next generation (2006)

The domestic and international food consumer is becoming increasingly fastidious about the product range and attributes of the food they purchase. As a result, this places greater pressure on Australian food businesses to respond to the changing demands through the adoption of product innovation that allows them to meet consumer needs more effectively. Timeliness is often crucial to ensure that Australian food businesses can quickly get these products to market, allowing participants within the supply chain to capitalise on the product innovations and recoup some of the significant costs incurred.

It is therefore disappointing to note that under the current food regulatory framework, approvals for food innovation proposals are taking as long as four and a half years to be accepted into the food standards code³. Such timeframes are stifling product innovation by food companies and delaying consumers from benefiting from the additional product attributes that they demand.

The NFF remains committed to Australia's high food health and safety record which has underpinned our competitiveness on domestic and international markets. This record must not be compromised and does not need to be under a streamlined regulatory system. We therefore refer to the Corish Report, which clearly outlines where efficiency gains can be attained.

Recommended solutions

- A reduction in the duplication of review responsibilities given to both Food Standards Australia and New Zealand (FSANZ), and the Ministerial Council. This is particularly concerning given the lack of capacity and capability in some jurisdictions voting within the Ministerial Council.
- Streamlining the implementation and enforcement of food standards, which currently occurs at state, territory and even local government level.⁴

Taxation

The Business Council of Australia study, *Tax Nation – Business Taxes and the Federal – State divide*⁵ identified that Australia's business sector is increasingly weighed down by a tax system that is inefficient, overly complex and levies too many taxes for little return. The report found that Federal, State and Local Governments impose 56 taxes on businesses,

³ Creating our future – Agriculture and food policy for the next generation (2006)

⁴ Creating our future – Agriculture and food policy for the next generation (2006)

⁵ Business Council of Australia – Business Taxes and the Federal State divide (2007)

which adds a significant drag on the economy. The study also notes that the proportional costs of tax compliance on small business can be significant and fall disproportionately on small businesses that have fewer resources available to them.

While farmers recognise that benefits are linked with the Business Activity Statements (BAS) in managing their GST credits and accounting for their Fuel Tax Credits, there remain a significant number of producers who have declared the BAS system is too onerous and where possible, have elected not to register.

This is demonstrated by recent figures released linked to farmer utilisation of the Fuel Tax Credit scheme. The Australian Taxation Office (ATO) reports that as of April 2007, 101,418 businesses within the agriculture, forestry and fishing sector had registered for the new fuel tax credit scheme. This suggests that approximately 25% of farm businesses had yet to register for the fuel tax credit system.

The NFF's concern with the failure of farmers to register for fuel tax credits is that approximately 25% of farmers are not accessing fuel tax and GST credits for which they are entitled. This roughly equates to the percentage of farmers who have turnover of less than \$50,000 per annum and are therefore now required to register for GST and complete a BAS.

While we accept that the turnover threshold issue may not be the sole cause of the non-registration percentage, we believe that a reluctance to adopt the BAS system may be a significant contributing factor to this relatively high non-registration rate and is deterring many farmers from claiming benefits for which they are entitled.

However in saying this, the NFF is buoyed by efforts by the Australian Taxation Office (ATO) to streamline their systems and reduce reporting burdens for business through eliminating unnecessary or duplicated reporting, and improving the interface between business and government agencies. The NFF urges this work on the Standard Business Reporting project to be fast tracked as much possible, ensuring that the information provided by farm businesses to government is rationalised by reducing duplication, as well as aligning terms and reporting periods. In addition, we urge the Federal Government to encourage the State Governments to embrace the program through their own regulatory frameworks.

Recommended solutions

- Fast-track work on the Standard Business Reporting project.

- Streamline State, Federal and Local government taxation reporting requirements.

Security sensitive chemicals

National consistency and coordination between Commonwealth and State/Territory governments, statutory bodies and industry groups is of paramount importance in the area of security sensitive chemicals. Farmers are keen to be part of an effective security framework, however this will not be possible without a nationally consistent and coordinated approach. 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.

The NFF has advocated that a solution for managing chemicals of security concern will be one that builds on the existing framework of industry self-regulation, but incorporates a top layer of government-mandated requirement. For example, the information currently provided under industry regulation could be mandated to be passed to government for verification and tracking purposes. This would have the least impact on users and suppliers of chemicals while still providing government with sufficient information to counter terrorism.

The NFF considers that a level of government regulation, or sanction or industry self-regulation, is required to achieve national consistency and an enhanced security environment. Government is best placed to provide leadership on this issue, and regulations are a typical mechanism to exercise this leadership.

In exercising this leadership, however, the NFF cautions that regulation is typically an inflexible and less responsive tool. Given the nature of the security concerns to be addressed, a level of flexibility to add or remove chemicals to the control list according to the threat environment is necessary. Often government regulations can be developed without due regard for the true compliance impact of that regulation on the community. In this case, NFF acknowledges a more proactive approach by government.

Inconsistent regulations between Commonwealth, State and Territory governments would be a worse outcome than no regulation. From a

security perspective this is likely to create loopholes that can easily be exploited by terrorists. From a compliance perspective this will artificially create competitive anomalies between producers according to location.

Recommended solutions

- National consistency and coordination between Commonwealth and State/Territory governments, statutory bodies and industry groups.
- Build on the existing framework of industry self-regulation, incorporating a top layer of government-mandated requirements.
- Incorporate national standards under State legislation.

Barriers to adjusting business structure

More than 90% of farming entities in Australia are operated as partnerships, trusts or sole traders. The decision to operate through these types of entities reflects the nature of farming businesses that are traditionally family owned and operated and have a strong succession planning aspect in seeking to pass the family farm onto the next generation. Partnerships and trusts have been effective business structures in which the farm can be operated and passed on without the need for complex sale arrangements. While the incorporation of a business allows its continuity, the actual ownership of the land in the company means that the land is not able to be passed-on in accordance with the wishes of the owner. Trust structures also allow a level of protection of the valuable asset, which is the actual land.

The NFF has commissioned an independent study looking into the regulatory barriers that prevent Australian farmer businesses from incorporating. These include:

Access to Farm Management Deposits - The Farm Management Deposit (FMD) scheme is restricted to individuals, which includes partners in a partnership and beneficiaries in a trust. Companies are not eligible to hold FMDs.

Access to tax losses - For companies, tax losses are quarantined within the company. If the company makes a loss, this loss cannot be distributed to the company directors to offset other income but is instead carried forward to following years.

Applicable tax rate - Companies are taxed at a flat tax rate of 30% on each and every dollar of income. There is no lower tax rate for lower income and there is no tax-free threshold.

Capital gains tax - Any capital gain made after 20 September 1999 can be reduced by 50% for an individual or trust. No discount is allowed if the capital gain is made by a company.

Other - Loss of primary producer status and access to drought and other relief restructuring, issues including cost of incorporation, cost of professional advice, stamp duty and compliance costs.

The barriers to incorporation have therefore been deemed to be so significant for farming businesses that when all of the above factors are taken into consideration, it is difficult to envisage any reason why a farming business would choose to incorporate.⁶

Recommended solutions

- Remove barriers to incorporation.

Drought support access

Inconsistencies with accessing Exceptional Circumstances (EC) benefits linked to drought support are also adding unnecessary compliance complexity for Australian farmers. Firstly, farmers with properties spanning both sides of a State border find that the EC interest rates subsidy component of the program is administered separately by each State. This means that farmers in this scenario are required to complete two sets of forms to access interest rate subsidies, with no consistency between each set of forms.

However, not all elements of the EC support program is administered by the States, and the Farm Help and EC Relief Payment components are administered federally by Centrelink. Again, there is no consistency between the Centrelink application process and that of the State Government's. This means that a farmer applicant with a property crossing a State border is required to complete three separate application processes, each requiring a different set of requirements, in order to access their full entitlement under the EC program.

Recommended solutions

- Streamline application process between Federal and State Governments.

⁶ NFF, Incorporation for farming entities 2006

Pension access

Farmers are frustrated with the current pension policy that limits access to retired farmers. Only curtilage (the single title of land attached to a dwelling) is currently exempt from the pension assets test therefore ruling out many retirement age farmers from accessing their retirement benefits. This is because most farmers have a number of titles attached to the land asset they have isolated for retirement, despite the land holding being too small to realise the asset or lease the land to realise an income.

The NFF agrees that farmers must demonstrate that it is not reasonable for them to realise the asset or lease the land to realise an income in order for their land assets to be exempt from the pension assets test. However, we contend that a significantly larger area of land than the amount covered by a single curtilage title will still meet this requirement.

Recommended solutions

- Provide reasonable flexibility to the pension assets test.

Workplace relations regulation

The 2006 workplace relations reforms were a significant step in the right direction in reducing red-tape in respect to the cumbersome workplace relations laws in this country. However, the NFF believes that there is still too much regulation in respect to workplace relations laws in this country and further reforms are required.

Recommended solutions

- That Government only regulate in respect to a federal minimum wage with other wages being determined at the individual workplace.
- Agreements are only measured against the current five safety net minimum conditions. That is, removal of the fairness test and no test requiring comparison between the agreement to all of the conditions contained in an industrial award that would otherwise apply at the workplace.
- That agreements are not required to be filed and approved but rather are only subject to scrutiny against the five minimum conditions by the Office of Workplace Services (or equivalent body) upon a request by an employee, an employee's representative or due to an audit process initiated by the regulator.
- Amendment to the parental level standard that currently entitles pregnant employees paid leave under the transfer to a safe job provision. The paid leave entitlement in the event that safe alternative

employment is unavailable represents major cost implications for the agricultural sector because of the frequent lack of safe alternatives within the industry. This was not a requirement that applied in any agricultural awards prior to the introduction of WorkChoices. As the impact is most significant for small businesses that are unlikely to have alternative positions available, NFF seeks a small business exemption from this provision for at least those employers of 20 employees or less.

Occupational Health and Safety

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 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. Further details of the NFF position in respect to Occupational Health and Safety can be found in our submission to the Productivity Commission Inquiry into National Workers' Compensation & Occupational Health & Safety Frameworks.

Recommended solutions

- Changing regulation to make OHS a joint responsibility between the employee and the employer.

The NFF expectations of the PC review

The NFF is looking to the PC to provide the following through its review of the regulatory burdens on the primary sector:

- Quantify the costs of regulatory compliance and the financial burden that it places on Australian farming businesses.
- Demonstrate to the Australian State and Federal Governments that inefficient regulation has a real impact on the international competitiveness of Australian agriculture.
- Identify regulatory burden that can be removed or streamlined without compromising the intended policy outcomes.

- Make tangible recommendations to Government on how the regulatory burden can be eased on primary industry, taking into account the complete agricultural supply chain.

Conclusion

The NFF recognises that the through-chain costs of regulation are difficult to quantify as they are often integrated within farmers' day-to-day operations. We also understand that many regulations deliver significant value and clarity to Australian farm businesses when delivered in a reasonable and flexible way that effectively demonstrates the benefits provided.

However, regulatory burdens are having an increasing impact on Australian farm businesses and immediate steps must be taken to ensure that our international competitiveness does not suffer as a result. Areas such as inconsistencies between various government jurisdictions and departments, streamlining reporting requirements and providing effective education about the benefits can generate demonstrable gains and must be immediately addressed.