

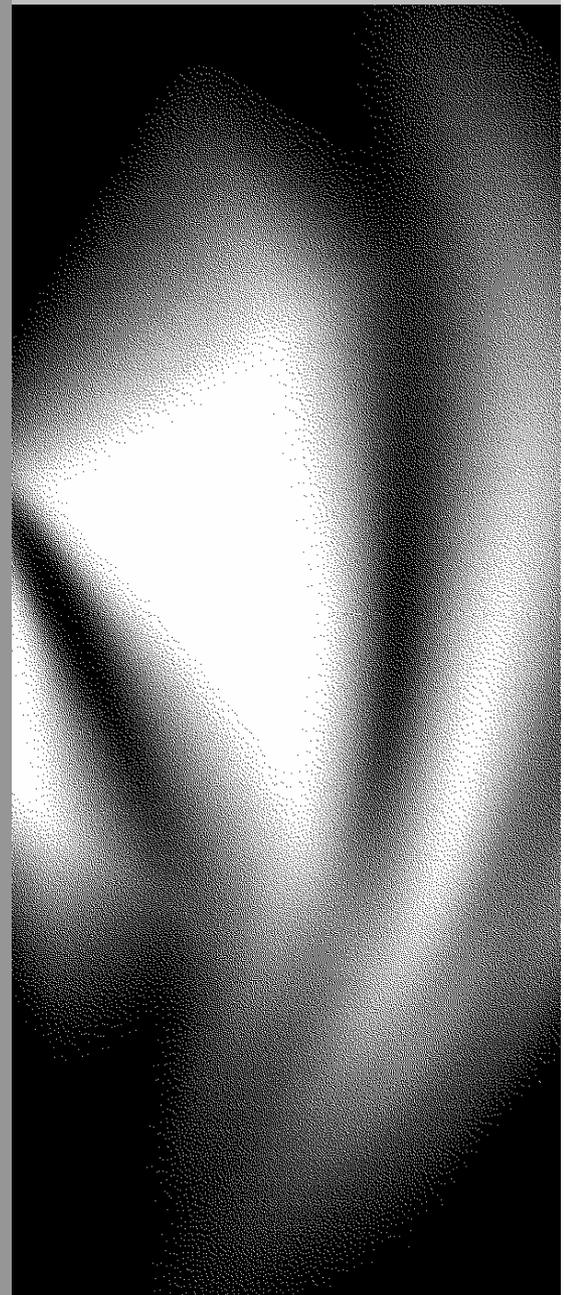


Australian Government
Productivity Commission

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

Productivity
Commission
Research Report

5 November 2007



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The Productivity Commission

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

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

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

Foreword

The reduction of unnecessary compliance burdens associated with regulation has become an important part of the reform process to improve the competitiveness of business and the performance of the Australian economy. Following the Regulation Taskforce's report last year, the Productivity Commission was requested by the Australian Government to conduct annual targeted reviews of regulatory burdens on business, over a five year cycle. This study of primary sector regulation is the first in that series.

Each farmer, mining company or other producer is faced with a significant array of complex, and often overlapping, regulation, some of which is unnecessarily burdensome. In undertaking this review, the Commission has put forward proposals to remove or simplify Australian Government regulation wherever that can be done without jeopardising the underlying policy objectives. The Commission has also offered suggestions to ensure good design of future regulatory frameworks affecting the primary sector.

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

The Commission has been greatly assisted by many discussions with participants in the sector and by the 79 submissions which have been provided. Thanks are extended to all those who have contributed.

Gary Banks
Chairman

November 2007

Terms of reference

ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS

Productivity Commission Act 1998

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

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

Background

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

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

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

Scope of the annual review

In undertaking the annual reviews, the Commission should:

1. identify specific areas of Australian Government regulation that:
 - a) are unnecessarily burdensome, complex or redundant; or
 - b) duplicate regulations or the role of regulatory bodies, including in other jurisdictions;
2. develop a short list of priority areas for removing or reducing regulatory burdens which impact mainly on the sector under review and have the potential to deliver the greatest productivity gains to the economy;
3. for this short list, identify regulatory and non-regulatory options, or provide recommendations where appropriate to alleviate the regulatory burden in those priority areas, including for small business; and
4. for this short list, identify reforms that will enhance regulatory consistency across jurisdictions, or reduce duplication and overlap in regulation or in the role of regulatory bodies in relation to the sector under review.

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

- seek public submissions at the beginning of April in 2007, and at the beginning of February in each following year, and consult with business, government agencies and other interested parties;
- have regard to any other current or recent reviews commissioned by Australian governments affecting the regulatory burden faced by businesses in the nominated industry sectors, including the Australian Government's response to the report of the Taskforce on Reducing Regulatory Burdens on Business;
- report on the considerations that inform the Commission's annual review of priorities and reform options and recommendations; and

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

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

PETER COSTELLO

[received 28 February 2007]

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Abbreviations

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

OVERVIEW

Key points

- From the perspective of farmers, mining companies and other primary sector businesses, governments impose a heavy burden of regulation. This study looks to remove or reduce Australian Government regulations which are unnecessarily burdensome, complex or redundant or are duplicative across portfolios or with state and territory regulation.
- The effectiveness of regulatory reform efforts would be enhanced if there were greater coordination among all jurisdictions.
- Many Australian Government agencies have processes in place to identify and progressively remove unnecessary regulatory burdens, while still meeting policy objectives.
- Through this study, the Commission has identified actions which the Australian Government can take without delay, including:
 - removing duplication in applying for drought assistance
 - amending Part IIIA of the Trade Practices Act to provide greater clarity and transparency
 - ensuring employers can more easily check the work eligibility of overseas visitors
 - improving communication about the significant impact trigger under the EPBC Act
 - undertaking negotiations for specific bilateral agreements for approvals under the EPBC Act.
- In a number of cases, where reforms have been agreed to by governments at the policy level, primary sector businesses have yet to see tangible results. It is taking too long to:
 - adopt and implement the National Mine Safety Framework
 - remove barriers to the recognition of skills acquired across borders and/or under the Vocational Education and Training framework
 - remove interjurisdictional inconsistencies in the regulation of road transport.
- A number of potentially unnecessary regulatory burdens can only be removed after a full policy and framework review, including:
 - market arrangements for wheat exports
 - the regulation of onshore and offshore petroleum
 - coastal shipping, as part of the national transport market reform agenda
 - whether the mining of uranium should remain a matter of national environmental significance
 - the reporting thresholds and funding of the National Pollutant Inventory.
- The removal of unnecessarily burdensome regulations relating to agricultural chemicals and veterinary medicines is being addressed in the Commission's study into chemicals and plastics regulation.
- There are some regulatory design issues of particular relevance to the primary sector, including a need for:
 - evidence-based risk assessments and rational risk management
 - assessments of the loss of property rights imposed by regulatory changes which are aimed at achieving community-wide objectives.

Overview

Good regulation can deliver agreed social, environmental and economic goals. However, unnecessary regulatory burdens falling on business can restrict flexibility and growth for no net benefit. One important feature of effective regulatory governance is the systematic assessment of existing regulation to ensure that the benefits being delivered continue to exceed the costs imposed and to determine whether there may be better, less burdensome ways to achieve policy objectives.

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

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

all Australian governments would review, annually and publicly, existing regulation to identify priority areas where reform would provide significant net benefits to business and the community

these reviews should identify reforms that will enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and regulatory bodies.

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

The terms of reference (on page iv) require the Commission to identify specific areas of Australian Government regulation that are unnecessarily burdensome, complex or redundant, or duplicate regulations or the role of regulatory bodies, including in other jurisdictions. The Commission has included, within the ambit of the review, regulatory regimes of a national character that involve the Australian Government.

While all governments are undertaking annual reviews, they are not coordinated. Jurisdictions are not reviewing the same areas of the economy at the same time. As a result, the opportunity to reach collective agreement more rapidly on ways to enhance the consistency and reduce the duplication of regulations and their administration across jurisdictions for any given sector has been diminished. The Commission has recommended that future annual reviews should be coordinated across all jurisdictions.

Industries and regulation under reference

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

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

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

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

In 2006-07, the primary sector accounted for 9 per cent of GDP (\$97 billion), over 60 per cent of exports (\$137 billion), and 5 per cent of employment (480 000 persons) in the economy. Within the primary sector, the mining sector contributes the most to GDP (77 per cent) and total exports (78 per cent) while agriculture,

forestry and fishing account for the majority of employment (72 per cent). Throughout this decade, the trend has been for mining to contribute an increasingly greater proportion to output and exports and for agriculture, forestry and fishing's relative contribution to decline.

Significant structural change has been occurring in all of the industries making up the primary sector. Some of the major forces at work include: very rapid growth in demand for mining exports, particularly from China and India; growing demand for water combined with severe droughts; increasing demand for skilled labour combined with an ageing workforce; declining wild fish stocks to possibly unsustainable levels; and greater competition to agriculture, fishing and forestry from increased imports of food, fibre and wood. In addition, growing concern over global warming is leading to the development of greenhouse gas emission trading schemes, and greater attention is being given to the role of uranium as an energy source.

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

Concerns raised by participants have covered a wide range of regulated schemes and activities, such as: marketing schemes, infrastructure access, animal welfare, restrictions on land use, water allocations, existing and future greenhouse gas and energy controls, mining safety, export controls, transport (including export infrastructure), fish stock preservation and hiring temporary labour. The burden imposed on the agricultural sector through the regulation of farm chemicals was raised more than any other concern.

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

Conduct of the Review

The process for the review was to invite submissions from, and to consult with, a wide range of interested parties, including industry associations, state and territory governments and individual farmers, mining, oil and gas companies and other primary sector enterprises. The issues examined in this review were all identified through this process. Where no concerns were raised by participants in relation to

an area of Australian Government regulation, the Commission took this as prima facie evidence that there were no perceived problems of excess burden.

There are several other review processes that are currently underway regarding aspects of Australian Government regulation. To avoid duplication, some concerns raised in submissions and consultations during this review have been drawn to the attention of the relevant officials.

Due to the considerable regulatory reform activity initiated by COAG and in individual jurisdictions in recent years, many areas of regulation have only just been reviewed and the effects of any policy changes have yet to be worked through. Given their early stage of implementation, it would be inappropriate in most cases to suggest further changes at this time.

The terms of reference for this review have set important boundaries on the scope of the Commission's work and its recommendations. First, the specific focus on the primary sector has the potential to miss important interactions with other parts of the economy. For example, there are significant constraints on the mining industry from infrastructure, especially transport, which is not part of the primary sector. To partially overcome this, the review considered some Australian Government regulations which apply to the parts of the economy that have a major impact on the primary sector.

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

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

Increased awareness of the need to reduce regulatory burdens

For more than 15 years, successive Australian governments have been increasing the requirements on regulation makers to fully consider the impacts of new or changed regulations. While there is still room for improvement, many agencies

appear to have a greater awareness of the need to address the complexities and unintended side-effects of regulations.

This is evident in the large array of recently completed and ongoing reviews. For example, regulations under the Native Title Act and the Petroleum Submerged Lands Act have been under review by the responsible agencies explicitly to identify and remove duplication and unnecessary burdens. In addition, the Commission has commenced a study on chemical and plastics regulation which is examining, among other matters, the regulatory burden on farmers, horticulturalists and the like associated with their use of agricultural chemicals and veterinary medicines.

There is an opportunity for the new national frameworks for water and for greenhouse gas emissions to be developed in accordance with best regulation-making practice. The adverse impacts of existing piecemeal interventions can be removed through the adoption of a nationally coordinated approach. The frameworks should facilitate market transactions in order to establish prices which embody all costs and reflect scarcities, in order to provide incentives to manage all resources well. In the case of water, it will encourage allocation to those areas valued most highly by society. In the case of greenhouse gases, it would enable society to maximise the value of production derived from greenhouse gas emitting activities while achieving environmental goals at minimum cost.

The frameworks should also minimise the extent of any special treatments or exemptions unless they are fully justified against national interest criteria. The greater the number of unwarranted exemptions from paying the full price for water or from the incentives to reduce greenhouse gas emissions, the greater will be the economic burden on others and the more difficult it will be to achieve the underlying environmental and economic goals.

With regard to some existing regulatory frameworks such as those affecting vocational education and training and on transport infrastructure (especially for exports), regulatory reform can play some role in removing bottlenecks along the delivery chain and in achieving consistency across jurisdictions. However, funding and pricing are also very important.

The regulatory impact of federalism

All primary sector businesses are subject to both Australian Government and state/territory regulation. Many also operate in two or more states or territories or at least sell their product in other jurisdictions.

Although there are many areas of strong national policy consensus achieved through COAG and Ministerial Councils, unjustified regulatory inconsistencies and

duplication across jurisdictions persist. Pragmatic changes which would significantly reduce unnecessary burdens on business, while continuing to serve agreed policy goals, regularly falter before full implementation, undermined by the variations each jurisdiction introduces when creating its specific body of regulation or by prolonged delays in adopting agreed uniform regulations and standards.

A recent COAG decision requires that regulation impact analysis include in the assessment whether a uniform, harmonised or jurisdiction-specific model for a particular regulatory framework would serve a policy goal with the least burdens. This may go some way to ensuring that ministers and regulators more often select a uniform model, unless there are good reasons for adopting jurisdiction-specific features.

Four particular observations on reform within our federal structure emerged from this study:

- realistic and achievable timeframes should be set for the delivery of results
- where policy objectives for a particular issue have been agreed, implementation should not be unnecessarily prolonged by subsequent lengthy reviews of the proposed administrative procedures
- the practice of each jurisdiction adopting variations to meet specific local interests, when implementing nationally agreed positions, can negate many of the benefits of national regimes. That said, it is essential that the framing of nationally agreed positions has regard to regional differences which may require differential treatment
- implementation is regularly frustrated by a succession of contemporary circumstances to the point that the prospect of achieving the outcomes originally agreed by COAG diminishes. Examples highlighted in this report include the very slow progress with implementing the National Mine Safety Framework and cases where reforms agreed through the National Transport Commission and the Australian Transport Council fail to be given priority by the jurisdictions.

Common regulatory issues facing the primary sector

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

- questioned why they should carry a disproportionate share of the cost of pursuing national objectives such as meeting climate change objectives,

preserving native vegetation or improving the efficiency of water markets which are for the benefit of the community as a whole

- argued that where compensation is provided, it is often much less than the loss imposed.

Another concern arises from the formulation of regulatory responses which reflect popular opinion, without adequate reliance on scientific assessment of the actual risk, or of ways to manage it (as part of the cost-benefit analysis). Evidence-based hazard identification, risk assessment and risk management should be central to the regulatory approach taken for all potentially risky activities, such as uranium mining and using ammonium nitrate. This could provide the basis for the rationalisation of, and improvement to, a number of regulations, thus allowing businesses to more freely pursue economic opportunities within agreed policy frameworks.

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

Some of the other concerns of the primary sector are regularly seen across the whole economy:

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

Where regulations administered by different agencies within the one jurisdiction overlap and/or conflict, there may be a case for having a memorandum of understanding, a coordinator who can adjudicate on conflicts, and/or a ‘single

window to government'. These approaches may also have a place across jurisdictions.

In a number of cases, the Commission found that regulation impact analysis had not been prepared or was judged by the Office of Best Practice Regulation (previously the Office of Regulation Review) to be inadequate. In this respect, the questions set out in regulatory impact analysis guidelines provide an excellent framework designed to identify all the impacts of a proposed regulation and to prevent unnecessary regulatory burdens from being imposed.

Limitations on quantitative evidence

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

As a result, the Commission has little data which relate specifically to Australian Government regulation, and more particularly, to the smaller subset of costs of regulations which were unnecessarily burdensome. Hence, the Commission has based its prioritisation of reforms on informed judgments about, rather than quantitative estimates of:

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

Overview of case-by-case assessments

The concerns and recommended responses set out in this report can be grouped according to any further actions that are warranted. Those actions should reduce unnecessary burdens on the primary sector and deliver a net benefit to the Australian community.

Unnecessary burdens which can be removed without delay

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

Agriculture

- removing duplication in applying for drought assistance
- consolidating information requirements in order to reduce time spent by agricultural producers in completing surveys
- addressing misconceptions surrounding the testing requirements for on-farm-produced biodiesel
- communicating that the same standards apply to imported and domestic food
- improving communication about the ‘significant impact’ trigger under the Environment Protection and Biodiversity Conservation Act (EPBC Act)
- ensuring predictable implementation of the Emergency Plant Pest Response Deed
- implementing the recommendations of the 2005 evaluation of the Reef Water Quality Protection Plan concerning consultation and communication, and the development of more effective partnerships

Mining, oil and gas

- establishing fora to address concerns over the inconsistent administration of regulations applying to offshore petroleum
- embedding explicit timeline commitments for regulators in petroleum regulation
- undertaking negotiations for specific bilateral agreements for approvals under the EPBC Act
- amending Part IIIA clause 44H(9) of the Trade Practices Act so that at the end of the 60 day decision period, if the Minister has not made a decision on an access application, the National Competition Council’s recommendation is the deemed decision, thereby preventing the application being refused without explanation

All sectors

- ensuring the technical capacity of visa verification systems is sufficient to enable employers to promptly and effectively assess the work eligibility of overseas visitors.

Reforms that are progressing

Partly as a result of recommendations made by the Regulation Taskforce, a number of concerns raised during this study are the subject of a specific review that is already underway or has recently been finished, and reform is generally seen as progressing. In part, the outcome will depend on the adequacy of the review, including its independence, transparency, consultation and the terms of reference.

Agriculture

- implementing announced reforms to import risk analysis
- reduction of duplication concerning the importation of veterinary vaccines among the Australian Quarantine and Inspection Service, Biosecurity Australia and the Australian Pesticides and Veterinary Medicines Authority
- reforming the National Pollutant Inventory to reduce the compliance burden on intensive agricultural operations
- addressing concerns related to chemicals raised in this current review, in the Commission's separate study of chemicals and plastics regulation, including:
 - the regulation of agricultural chemicals and ammonium nitrate
 - inconsistencies over maximum residue levels in fresh food between food standards and chemical regulation
- addressing, through COAG, the regulation of other security sensitive materials
- reducing inconsistencies and improving timeliness with regard to food regulation through the Bethwaite Review, although concerns were expressed about its own timeliness

Mining, oil and gas

- streamlining specific uranium regulations
- consolidating and streamlining offshore petroleum regulation managed by the Department of Industry, Tourism and Resources, while noting that this exercise has not addressed cross-portfolio issues within the Australian Government
- negotiating bilateral agreements on assessments under the EPBC Act
- improving public awareness of, and the quality of data reported to, the National Pollutant Inventory
- addressing the inappropriate use of investigation thresholds as a trigger for site clean-up operations by the Assessment of Site Contamination National Environment Protection Measure

-
- as agreed through COAG, providing a simpler and consistent approach by the states and territories to the regulation of access to nationally significant ports and rail networks.

Fishing

- streamlining the environmental and economic management of fisheries

All sectors

- introducing a new national system of greenhouse gas and energy reporting
- giving all employers, regardless of size, capability and volume of reporting, access to Centrelink's electronic information system

Reforms that have commenced but are taking too long

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

- reducing unjustified inter-jurisdictional inconsistencies in road transport
- developing and implementing animal welfare standards
- reforming water rights and trading
- removing regulatory barriers to the recognition of skills acquired from across borders and/or under the Vocational Education and Training framework
- adopting and implementing the National Mine Safety Framework.

Some time should pass before assessing recent reforms

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

- reducing delays in reaching agreement under the Native Title Act and capacity building for Native Title representative bodies
- the efficiency and the effectiveness of the National Livestock Identification System
- the operation of Part IIIA of the Trade Practices Act (other than clause 44H(9)) although, once reviewed in 2011, reforms should be implemented promptly
- the operation of the Horticulture Code of Conduct.

Examine the case for making some changes

In several instances, the Commission considers that some changes have the potential to reduce regulatory burdens, but that the design of the changes should be guided by an appropriate level of impact analysis, such as that conducted when preparing a Regulation Impact Statement. This applies particularly to:

- establishing a threshold exemption for the non-commercial blending of biodiesel and diesel if excise has been paid
- increasing the thresholds for the superannuation guarantee exemptions
- examining the scope for accrediting Biosecurity Australia's risk assessment processes and reports in relation to the importation of live animals under the EPBC Act
- with respect to the National Pollutant Inventory, examining:
 - cost-effective alternatives to obtaining data, including expanding the role of industry associations
 - aggregating pollution data to geographic locations
- evaluating animal health and welfare requirements applying to the export of livestock (administered by the Department of Agriculture, Fisheries and Forestry and the Australian Quarantine and Inspection Service) and identifying more cost-effective alternatives
- evaluating the Marine Orders Part 43 applying to the export of livestock (administered by the Australian Maritime Safety Authority) and identifying more cost-effective alternatives
- exploring options for consolidating environmental assessments of uranium under the EPBC Act
- establishing a single point of access for information regarding Aboriginal cultural heritage areas listed in all jurisdictions.

Conduct a fundamental policy review

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

- wheat export marketing arrangements
- the regulatory framework for onshore and offshore petroleum and its administration
- coastal shipping, in the context of COAG's broad national market reform agenda

-
- treatment of uranium as a matter of national environmental significance
 - the National Pollutant Inventory with regard to:
 - reporting thresholds for all substances on the inventory
 - funding its administration
 - the establishment of national standards and procedures for the consistent operation of plant health certification services including the Interstate Certification Assurance Scheme services — while this review is already in prospect, its independence and transparency should be established and it should be better advertised.

Responses

In this section, all material concerns raised by participants are stated even though the Commission does not necessarily agree with each concern. Each concern is followed by the Commission's response.

Review processes

Concern: The potential effectiveness of the annual reviews by all jurisdictions is significantly reduced by insufficient interjurisdictional coordination.

RESPONSE 1.1

The annual reviews of existing regulation being undertaken by all jurisdictions as part of the national reform agenda established by the Council of Australian Governments should be coordinated more extensively. The same areas of the economy should be reviewed by all jurisdictions each year. All jurisdictions should also establish a process by which to reach collective agreement, after reviews are completed, on a coordinated reform agenda and ways to implement it. This would provide the greatest likelihood of achieving agreed objectives, and reducing duplication and unnecessary burdens of regulations and their administration across jurisdictions. The Australian Government should take the initiative in this matter.

Agriculture

Environment Protection and Biodiversity Conservation Act (EPBC Act)

Concern: Import of live animals – overlap and duplication with the Quarantine Act.

RESPONSE 3.1

While acknowledging that the processes of environment and import risk assessments are different, the Department of Environment and Water Resources and Biosecurity Australia should assess whether there is further scope for

accrediting Biosecurity Australia's risk assessment process and reports in relation to the importation of live animals under the EPBC Act. Both agencies should commence this assessment as soon as practicable, including identifying a timeframe as well as consulting widely.

Concern: Lack of clarity about what constitutes 'significant environmental impact'.

RESPONSE 3.2

Actions by the Department of Environment and Water Resources to clarify the definition of 'significant impact' under the EPBC Act for businesses in the agriculture sector have been constructive. The Department should explore more effective ways to communicate with businesses about this aspect of the Act.

Biosecurity and quarantine

Concern: Problems with import risk analysis.

RESPONSE 3.3

Reforms to the import risk analysis process are progressing. They have the potential to reduce the cost and time burden imposed on businesses as well as deal with concerns about the scientific rigour of the import risk analyses.

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

RESPONSE 3.4

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

Concern: Problems with the Interstate Certification Assurance Scheme.

RESPONSE 3.5

Details of a review within the Primary Industries Ministerial Council of certification services, including the Interstate Certification Assurance Scheme, should be announced as soon as practicable. These details should include terms of reference and a time frame for consultation and reporting. Consultation should be broad and transparent. In developing national standards, the benefits and costs of alternative approaches should be considered.

Concern: *Uncertainties about the Emergency Plant Pest Response Deed.*

RESPONSE 3.6

In the event of a plant health emergency, government parties to the Emergency Plant Pest Response Deed should ensure that their implementation of the Deed is consistent across all sectors and should avoid adversely affecting industry expectations and confidence in the Deed.

National Pollutant Inventory (NPI)

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

RESPONSE 3.7

Reforms through the Environment Protection and Heritage Council are progressing to reduce the compliance burden on individual farmers in intensive agricultural operations resulting from the reporting requirements in the NPI National Environment Protection Measure. The Council should examine cost-effective alternatives in obtaining data, including expanding the role of industry associations in meeting reporting requirements. It should consult widely and report publicly on these alternatives.

Concern: *Intensive agricultural operations — inappropriate reporting thresholds for ammonia.*

RESPONSE 3.8

The Environment Protection and Heritage Council should review the reporting thresholds for all NPI substances by 2009.

Concern: *Intensive agricultural operations — public access to facility-based information.*

RESPONSE 3.9

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

Regulation of livestock exports

Concern: *The high costs of meeting animal health and welfare requirements.*

RESPONSE 3.10

There should be a follow-up independent evaluation of regulations arising from the Keniry Report that are administered by the Department of Agriculture, Fisheries and Forestry and the Australian Quarantine and Inspection Service by 2010. The evaluation should assess the extent to which objectives of the regulations are being achieved and at what costs to the community, and recommend cost-effective options for improvement including self-regulatory options.

Concern: The high costs of meeting the Marine Orders Part 43.

RESPONSE 3.11

There should be an independent review of the Marine Orders Part 43 and related regulations within three years. The review should assess the extent to which the objectives of the regulations are being achieved and at what costs to the community, and recommend cost-effective options for improvement including self-regulatory options.

Reef Water Quality Protection Plan

Concern: No industry input or consultation on the Reef Water Quality Protection Plan.

RESPONSE 3.12

Both the Australian Government and the Queensland Government should take immediate action to implement the recommendations of the 2005 evaluation report on the Reef Water Quality Protection Plan concerning consultation and communication, and the development of more effective partnerships.

Security sensitive chemicals

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

RESPONSE 3.13

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

Concern: Burdens arising from the regulation of other security sensitive chemicals.

The regulation of other security sensitive materials is now being developed by COAG and an effective national regulatory regime needs to be put in place as soon as practicable.

Transport issues in agriculture

Road transport concerns:

- *interjurisdictional inconsistencies in volumetric loading rules, mass and dimension regulations and with regard to the particularly high costs they impose on rural and resource businesses operating across or near state borders*
- *overly prescriptive mass and dimension regulations*
- *the burdens of chain of responsibility and fatigue regulation.*

Although there are intergovernmental arrangements in place to address interjurisdictional inconsistencies in road transport, lack of implementation and inconsistent implementation remain significant problems.

However, the application of a rational risk-based approach to transport regulation may lead to some warranted differentiation in regulatory requirements between regions.

Matters of particular concern to participants include:

- *differences in volumetric loading rules among jurisdictions — some of these may reflect differences in the carrying capacity of road infrastructure*
- *the regulatory processes for road vehicles and loads that fall outside mass and dimension limits — these are matters for state road agencies*
- *overly prescriptive mass and dimension regulations — these have been addressed with the Performance Based Standards developed by the National Transport Commission and approved by all transport ministers in 2007*
- *the costs imposed on businesses by the chain of responsibility and fatigue management rules in relation to heavy vehicles — these appear to be unavoidable if health and safety objectives are to be served.*

Wheat marketing

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

RESPONSE 3.16

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

Animal welfare

Concern: Slow progress in developing and implementing animal welfare standards.

RESPONSE 3.17

There appears to be scope to more quickly develop and implement animal welfare standards under the Australian Animal Welfare Strategy.

Drought support

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

RESPONSE 3.18

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

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

Occupational health and safety

Concern: Complex and inconsistent OHS regulation across jurisdictions.

RESPONSE 3.19

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

Food regulation

Concern: Inconsistency and lack of timeliness in food regulation.

RESPONSE 3.20

Food regulation concerns are currently being examined by the Bethwaite Review. Its current status and timelines should be made publicly available and widely circulated through industry.

Concern: Inconsistencies between domestic and imported food standards.

RESPONSE 3.21

There are misconceptions as to the standards applied to imported food. The Department of Agriculture, Fisheries and Forestry and the Department of Health and Ageing should take steps to ensure that the industry is fully aware that imported food and food manufactured in Australia are subject to the same standards.

Concern: Inconsistencies in regulation between FSANZ and APVMA.

RESPONSE 3.22

Recent amendments to the Food Standards Australia New Zealand Act 1991 are intended to overcome inconsistencies between food standards and chemicals regulation in regard to maximum residue levels in fresh food and produce. These issues are being examined by the separate Commission study of chemicals and plastics.

National Livestock Identification System (NLIS)

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

RESPONSE 3.23

The Primary Industries Ministerial Council should continue to monitor the National Livestock Identification System to assess its efficiency and effectiveness in meeting the needs of industry and the community.

Temporary labour

Concern: *Delays and difficulty in assessing the work eligibility of overseas visitors.*

RESPONSE 3.24

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

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

RESPONSE 3.25

To reduce the administration costs and regulatory creep associated with the superannuation guarantee requirements, the monthly earnings threshold should be increased through an appropriate process and subject to periodic review established by Treasury.

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

RESPONSE 3.26

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

Concern: *Concerns about skill requirements to access the 457 visa program.*

RESPONSE 3.27

Establishing minimum skill requirements to enable access to overseas workers through the 457 visa program is a matter for consultation between the Department of Immigration and Citizenship and the horticultural industry and other relevant employers.

Concern: *Burdens in meeting Centrelink reporting requirements.*

RESPONSE 3.28

Centrelink has taken steps to address employer concerns surrounding reporting requirements. In addition, it is developing electronic information transfer systems

and has indicated that these will be available to all employers regardless of size, capability and volume of reporting.

Biodiesel

Concern: Costly requirements to test biodiesel produced on-farm.

RESPONSE 3.29

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

Concern: The requirement to hold an excise manufacturer's licence to blend biodiesel and diesel.

RESPONSE 3.30

The Australian Taxation Office and the Department of Environment and Water Resources should examine having a threshold exemption from the excise licensing regime for the non-commercial blending of biodiesel and diesel, on which excise has been paid.

Agricultural chemicals and veterinary medicines

Concern: Delays, inconsistencies and complexity in agvet regulation.

RESPONSE 3.31

There are many regulatory issues concerning agricultural chemicals and veterinary medicines that require detailed examination. These issues are being examined by the separate Commission study of chemicals and plastics.

Horticulture Code of Conduct

Concern: Omissions from the Horticulture Code of Conduct.

RESPONSE 3.32

The Horticulture Code of Conduct has only recently commenced and should be given time to be fully implemented. It is scheduled to be reviewed in 2009.

Farm surveys

Concern: Time involved in completing farm surveys.

RESPONSE 3.33

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

Genetically modified crops

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

RESPONSE 3.34

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

Water issues

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

RESPONSE 3.35

All relevant agencies should apply best practice policy design in developing the national framework for property rights and trading in water in order to avoid unnecessary burdens. In particular, the new national framework for water should facilitate market transactions so that scarce resources go to their highest value uses and any exemptions from the framework should be fully justified. Ongoing monitoring and evaluation of progress will be important.

Mining, oil and gas

Uranium-specific regulation

Concern: *The scientific basis for treating the mining of uranium ore as a matter of national environmental significance under the Environment Protection and Biodiversity Conservation Act (EPBC Act) is not clear.*

RESPONSE 4.1

The case for the continued treatment of uranium mining as a matter of national environmental significance — and therefore as a potential trigger for environmental assessments under the EPBC Act — should be reviewed. This review should be informed by a science-based assessment of the most up-to-date evidence on the inherent properties of uranium and any environmental, health and safety implications. The Chief Scientist of Australia should conduct this assessment, with the involvement of the Chief Medical Officer.

Concern: *Duplication in environmental assessment requirements for some uranium mines.*

RESPONSE 4.2

Notwithstanding that some uranium mines, with future expansion or modification, are likely to become subject to the provisions of the EPBC Act, the Uranium Industry Framework Implementation Group should examine the legal options for consolidating environmental conditions for all mines under the Act.

Petroleum regulation

Concern: *Too many approvals and regulatory bodies affecting the petroleum sector, and too much duplication.*

RESPONSE 4.3

The Council of Australian Governments should endorse a broad review of the whole Australian onshore and offshore petroleum regulatory framework to:

- address inconsistencies and duplication across and within jurisdictions*
- evaluate how regulations can be restructured to reduce compliance costs*
- assess the case for a national authority to oversee onshore and offshore petroleum regulation throughout Australia.*

Concern: Some transition costs associated with moving from prescriptive to objective-based regulation under the Petroleum (Submerged Lands) Act.

RESPONSE 4.4

The current Department of Industry, Tourism and Resources' project to consolidate the Petroleum (Submerged Lands) Act 1967 Regulations has the potential to streamline and reduce compliance costs associated with the offshore regulations for which the Department is directly responsible. The necessary reforms should be implemented as soon as possible.

Concern: Inconsistent administration of regulation affecting petroleum.

RESPONSE 4.5

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

Concern: Long and uncertain approval time lines for petroleum.

RESPONSE 4.6

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

Access to land

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

RESPONSE 4.7

Recent Australian Government reforms to the native title system — aimed at building capacity for Native Title Representative Bodies and encouraging agreements — are being progressively implemented. They should be given time to take effect and then be subject to independent evaluation within five years of implementation.

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

RESPONSE 4.8

A single point of access for information regarding Aboriginal cultural heritage areas listed in all jurisdictions should be considered in the course of current reforms to the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

Environment Protection and Biodiversity Conservation Act (EPBC Act)

Concern: Overlap and duplication with state and territory environmental assessments and approvals.

RESPONSE 4.9

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

The Department of Environment and Water Resources should, in consultation with the states and territories and other stakeholders, identify specific aspects of the EPBC Act and state and territory processes that are amenable to a bilateral agreement for approvals and set a timeframe for negotiations.

National Pollutant Inventory (NPI)

Concern: Poor public awareness of the NPI and poor quality of the NPI data.

RESPONSE 4.10

Progress has been made by the Department of Environment and Water Resources to improve public awareness of the NPI, through the development of a communication and awareness plan, and to improve the quality of data reported to the NPI. The Department should, after a reasonable time, evaluate the effectiveness of these actions.

Concern: *Inadequate resourcing of the NPI.*

RESPONSE 4.11

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

Assessment of site contamination

Concern: *Inappropriate use of investigation thresholds as clean-up triggers for contaminated sites.*

RESPONSE 4.12

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

Greenhouse gas and energy

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

RESPONSE 4.13

Reform is progressing to harmonise multiple greenhouse gas and energy reporting requirements through a new national reporting system. The development of regulations under the system should be accompanied by adequate regulatory impact analysis and include effective public consultation. Reporting requirements under existing programs should be phased out expeditiously once the new national reporting system commences.

Concern: *Numerous greenhouse gas and energy programs.*

RESPONSE 4.14

The Australian Government's proposals to review existing greenhouse gas and energy programs and policies and to seek government agreement to streamline programs have the potential to reduce regulatory burdens on businesses.

An intergovernmental agreement to rationalise existing programs should be negotiated as soon as practical following the review. As part of the agreement, all governments should commit to specified timeframes for reform, which are monitored and subjected to public reporting.

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

RESPONSE 4.15

Development of the Australian greenhouse gas emissions trading scheme has the capacity to address red tape and reduce unnecessary burdens provided that best practice policy design is applied. In particular, the new scheme should establish ways to facilitate market transactions so that abatement occurs at the lowest overall cost and any exemptions from the scheme are fully justified. Ongoing monitoring and evaluation of progress is important.

Labour skills and mobility

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

RESPONSE 4.16

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

Concern: *Limitations in the mutual recognition of skills.*

RESPONSE 4.17

Recent COAG initiatives to facilitate mutual recognition of skills are welcome, but progress toward fully implementing the objectives of the mutual recognition arrangements has been slow and selective. COAG programs should be broadened to cover all trades experiencing severe skills shortages, including those specifically affecting the primary sector.

Concern: *Recent and foreshadowed reforms to 457 visas may increase compliance costs.*

RESPONSE 4.18

Given that the operation of the 457 visa scheme has been the subject of several reviews, the Commission does not propose any new actions at this stage. The operation of the scheme should be monitored, however, to ensure that it is effective and efficient and compliance costs imposed on business are justified. There should be a particular focus on the impacts of recent amendments to

regulation and whether they have unnecessarily increased red tape and processing times.

Transport infrastructure

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

RESPONSE 4.19

The proposed review of Part IIIA in 2011 is the appropriate forum to reassess the national access regime. Any required amendments to the legislation should be put in place as soon as practicable following the conclusion of the review.

RESPONSE 4.20

To further improve transparency relating to decisions made concerning access applications, clause 44H(9) of the Trade Practices Act 1974 should be amended so that, if the Minister has not made an explicit decision at the end of the 60 day period, the National Competition Council's recommendation becomes the deemed decision of the Minister.

Concern: High costs due to cabotage restrictions.

RESPONSE 4.21

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

Safety and health

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

RESPONSE 4.22

Despite in principle agreement between Ministers, reform of mine safety regulation is taking too long. Governments should maintain a strong commitment to the implementation of the National Mine Safety Framework as soon as possible. Transparent, clear and staged timelines should be adhered to. There should also be an examination of the costs and benefits of establishing a single national authority. Further, individual jurisdictions should not undertake initiatives which would have the effect of undermining efforts to achieve a nationally consistent and effective approach to mine safety.

Forestry, fishing and aquaculture

Forestry

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

RESPONSE 5.1

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

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

RESPONSE 5.2

The Australian Government has explicitly rejected the use of native waste wood for power generation, in order to avoid promoting increased harvesting of native forests.

Fishing

Concern: Duplication in fish stocks management.

RESPONSE 5.3

The recently-released Commonwealth Fisheries Harvest Strategy Policy may help address concerns about the interactions between the Fisheries Management Act and the EPBC Act, but time will be required for the full effect of this policy to be felt.

1 About the review

Governments are often called on to take action in response to undesirable social, economic and environmental events or to prevent such events from occurring. One of the responses can be the imposition of more regulation. However, as the sheer volume of regulation has grown over time, particularly in recent years, there have been concerns that the overall body of regulation has become excessive, inconsistent, poorly designed and/or overlapping — both within and between jurisdictions — and there have been calls for reform.

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

1.1 What the Commission has been asked to do

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

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

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

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

The full terms of reference are set out at page iv.

1.2 Previous and current reviews and inquiries concerning regulatory reform

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

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

Taskforce on Reducing Regulatory Burdens on Business

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

The Taskforce reported in January 2006 and recommended:

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

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

Benchmarking regulatory burdens on business

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

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

Other reviews of regulation

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

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

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

1.3 COAG's National Reform Agenda

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

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

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

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

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

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

1.4 The approach and rationale of this review

The cost of poorly designed and implemented regulation

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

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

- excessive regulatory coverage
- overlap or inconsistency
- unwieldy approval and licensing processes
- heavy-handed regulators
- poorly targeted measures

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- overly complex or prescriptive measures
 - excessive reporting requirements
 - creation of perverse incentives.

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

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

A focus on business impact

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

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

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

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

serial decision-making (as opposed to decision-making in *parallel*) will impose additional costs on business.

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

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

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

Limitations of the review process

The terms of reference set important boundaries on the scope of the review and its recommendations. First, the specific focus on the primary sector has the potential to miss important interactions with other parts of the economy. For example, there are significant constraints on the mining industry from infrastructure, especially transport which is part of the primary sector. To overcome this, the review has extended its focus to Australian Government regulations which apply to the parts of the economy that have a major impact on the primary sector.

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

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

Third, there are many regulatory areas where the Australian Government is involved along with multiple state and territory jurisdictions (and where the Australian Government's role is quite minor). In these areas, whilst there may be issues of excessive regulatory burdens, there is little the Australian Government can do unilaterally that will have a practical outcome. However, some participants called for the review to have wider terms of reference to cover all jurisdictions and levels of government.

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

RESPONSE 1.1

The annual reviews of existing regulation being undertaken by all jurisdictions as part of the national reform agenda established by the Council of Australian Governments should be coordinated more extensively. The same areas of the economy should be reviewed by all jurisdictions each year. All jurisdictions should also establish a process by which to reach collective agreement, after reviews are completed, on a coordinated reform agenda and ways to implement it. This would provide the greatest likelihood of achieving agreed objectives, and reducing duplication and unnecessary burdens of regulations and their administration across jurisdictions. The Australian Government should take the initiative in this matter.

Defining regulation

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

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

Box 1.1 Common types of regulation

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

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

The allocation process

The allocation to review years and the development of the list of the potentially most significant concerns and issues raised by participants is a matter for analysis and judgment. In responding to the draft report, participants were invited to provide

the Commission with their views on the Commission's draft conclusions on these matters to assist in developing the final report.

The approach used by the Commission is as follows:

- A concern or complaint is ruled out of scope entirely if it does not relate to existing regulation which impacts on business and it cannot be related to Australian Government regulation or to a national agreement or arrangement. Generally, also, a matter is ruled out of scope if it clearly relates to the *objectives* of regulation rather than its business impact.
- Where concerns and complaints have been reviewed this has been taken into account. The adequacy of the review process is discussed further below.
- Where interested parties did not raise any concerns in relation to an area of Australian Government regulation, the review took this as prima facie evidence that there were no perceived problems of excess burden.
- On occasion, the Commission has chosen to view a narrowly expressed concern with relatively low impact in a wider context. Usually, this results in reassigning the issue to consideration in the final year of the cycle (2011), which will address generic issues. However, in some instances, a general issue has been split into segments which impact directly or indirectly on a number of sectors. While this can have advantages in bringing forward some gains which would be delayed if the issue was completely postponed to 2011, care needs to be taken that early changes made in the context of a particular sector do not create untenable distortions between it and other sectors of business.
- With the above qualifications, an issue has generally been allocated to a review year on the basis of its main sector of impact, or to 2011 if it was judged better to assess it in a wider generic context.
- A list of priority areas was then developed from those matters allocated to 2007.

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

The adequacy of other reviews

A number of participants in responding to the draft report raised concerns in regard to the adequacy of the processes employed in the conduct of other reviews, particularly in relation to the independence of those reviews. This mainly related to those instances in the draft report where the Commission in its response to a particular concern had concluded that a forthcoming or current review was the most appropriate means of addressing the concern, or it had been addressed by a recently completed review.

The level of independence is a key factor in assessing the adequacy of the review process. Clearly, the level of independence surrounding the review process varies. At one end of the scale there can be an independent review by a body such as the National Competition Council or the New South Wales Independent Pricing and Regulatory Tribunal, while at the other end of the scale a review may be conducted in-house by the department responsible for the regulation. Nevertheless, internal reviews, with adequate consultation, may be the most cost effective means of investigating specific issues.

The Commission in determining what constitutes an adequate review has taken into account factors such as the adequacy of the terms of reference, the independence and make-up of the review body, transparency, consultation and timeliness.

Quantifying impacts

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

So as to improve the information base, the Commission, in its issues paper, requested participants to provide as much data as possible about the direct and indirect costs of unnecessary burdens. The issues paper set out examples of relevant items:

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

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

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

regulations which were unnecessarily burdensome. Hence, the Commission has based its prioritisation of reforms on informed judgments about, rather than quantitative estimates of:

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

Detailed consideration of priority areas

All relevant concerns raised by participants were examined by the Commission. Generally, the first step has been to examine the relevant regulatory objectives and, where necessary, clarifying them in terms of the underlying economic, social and/or environmental objectives to be achieved through intervention. Consideration has been given to possible alternative regulatory means of meeting those objectives, including an analysis of the associated benefits and costs.

The responses to the concerns, based on an assessment of what further action was required, can be broadly categorised as follows:

- unnecessary burdens which can be removed without delay
- reforms that are progressing
- reforms that have commenced but are taking too long
- some time should pass before assessing recent changes
- examine the case for making some changes
- conduct a fundamental policy review.

1.5 Conduct of the study

In preparing this report, the Commission has provided various opportunities for interested parties to provide input. Following receipt of the terms of reference on 28 February 2007, the Commission placed advertisements in major newspapers announcing the review and calling for submissions from the beginning of April. Following initial consultations, an issues paper was released in early April to assist those preparing submissions.

The Commission then held informal consultations with governments, peak industry groups in the primary sector as well as with a number of mining companies and individual farmers and received nearly 50 submissions before releasing a draft report in August 2007.

Following the release of the draft report a number of roundtable discussions and meetings were held to elicit views on the responses contained in the draft report.

The Commission has also had the benefit of a further 30 submissions which have commented on the draft report. A full list of those who have made submissions and/or participated in informal discussions and roundtables is contained in appendix A. The Commission wishes to thank all those who have participated in this review.

1.6 Structure of the report

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

Chapter 3 provides an overview of the concerns raised by participants in the agricultural sector, chapter 4 in relation to the concerns raised by the mining, oil and gas sector and chapter 5 in regard to forestry, fishing and aquaculture. In the appendices, appendix C sets out some broad principles that should be used to guide the development of regulatory frameworks in the future.

2 Primary sector characteristics

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

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

2.1 Industry characteristics

The primary sector is a significant contributor to economic activity in Australia. In 2006-07, the sector accounted for 9 per cent of GDP (\$97 billion), over 60 per cent of exports (\$137 billion), and 5 per cent of employment (480 000 persons).

Within the primary sector, mining contributes the most to GDP (77 per cent) and exports (78 per cent) while agriculture, forestry and fishing as a group account for the majority of employment (72 per cent) and number of businesses (97 per cent) (table 2.1).

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

Sector employment is more evenly distributed across several states. In 2006-07:

- New South Wales had the largest share of employment — 118 000 persons or 25 per cent of which the majority (95 000 persons) were employed in agriculture, forestry and fishing and
- Queensland, Western Australia and Victoria, each accounted for around 20 per cent of employment in the primary sector (table 2.2).

Table 2.1 Primary sector summary statistics

	<i>Agriculture, forestry and fishing^a</i>	<i>Mining</i>	<i>Primary sector</i>
Gross value added 2006-07			
\$ million	22 346	74 808	97 154
Contribution to primary sector (per cent)	23.0	77.0	100
Contribution to GDP (per cent)	2.1	7.1	9.3
Exports^b 2006-07			
\$ million	30 373	106 478	136 851
Contribution to primary sector (per cent)	22.2	77.8	100
Contribution to total (per cent)	14.1	49.3	63.4
Employment 2006-07			
number of persons ('000)	344.0	135.6	479.6
Contribution to primary sector (per cent)	71.7	28.3	100
Contribution to total (per cent)	3.3	1.3	4.6
Businesses 2005-06			
number operating at end of financial year	214 879	6 997	221 876
Contribution to primary sector (per cent)	96.8	3.2	100
Contribution to total (per cent)	10.9	0.4	11.3

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

Sources: Gross value added data from ABS Australian National Accounts, catalogue no. 5204.0. Export data from ABARE, Australian Commodities September quarter 2007, http://www.abareconomics.com/publications_html/ac/ac_07/ac_07.html. Employment data from ABS, Australian Labour Market Statistics, catalogue no. 6105.0, June quarter values. Business data from ABS Counts of Australian businesses including entries and exits, catalogue no. 8165.0.

Table 2.2 Primary sector employment and value added by state/territory

	<i>Value added \$ million (% total) 2005-06^b</i>			<i>Employment '000 persons (% total) 2006-07</i>		
	<i>Agriculture, forestry and fishing^a</i>	<i>Mining</i>	<i>Primary sector</i>	<i>Agriculture, forestry and fishing^a</i>	<i>Mining</i>	<i>Primary sector</i>
NSW	5 250 (20)	7 182 (11)	12 432 (13)	94.9 (28)	23.5 (17)	118.4 (25)
Vic	6 173 (24)	3 477 (5)	9 650 (10)	74.0 (22)	10.8 (8)	84.8 (18)
Qld	6 758 (26)	20 341 (31)	27 099 (29)	74.4 (22)	37.1 (27)	111.5 (23)
SA	3 032 (12)	1 792 (3)	4 824 (5)	38.8 (11)	9.6 (7)	48.4 (10)
WA	3 708 (14)	29 799 (45)	33 507 (36)	43.0 (12)	49.6 (37)	92.6 (19)
Tas	1 042 (4)	332 (1)	1 374 (1)	15.0 (4)	3.0 (2)	18.0 (4)
NT	285 (1)	3 014 (5)	3 299 (4)	3.7 (1)	1.9 (1)	5.6 (1)
ACT	8 (0)	2 (0)	10 (0)	0.3 (0)	0.2 (0)	0.5 (0)
Total	26 256 (100)	65 940 (100)	92 196 (100)	344.0 (100)	135.6 (100)	479.6 (100)

^a Fishing includes aquaculture. ^b Latest available ABS state accounts data at the time of printing.

Sources: Value added data from Australian National Accounts, State Accounts 2005-06. Employment data from ABS Australian Labour Market Statistics, catalogue no. 6105.0, June quarter values.

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

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

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

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

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

Forestry

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

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

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

Fishing and aquaculture

Australian fisheries production is valued at around \$2 billion a year with exports valued at \$1.5 billion a year. The major commercially harvested products include prawns, rock lobsters, abalone, tuna, other fin fish, scallops and oysters. Major markets include Hong Kong, Japan and the United States.

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

Reductions in total allowable catches and changes in access arrangements in response to this depletion as well as cost increases (particularly fuel) have resulted in a decline in the value of fisheries production and exports. Since 2000-01, fisheries production and exports have declined 9 and 31 per cent respectively.

Aquaculture is becoming increasingly important as an alternative to harvesting naturally occurring fish stocks. For example, between 1996-97 and 2005-06, aquaculture's share of fisheries production grew from 25 to 35 per cent.

(Continued next page)

Box 2.1 (continued)

Minerals, oil and gas

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

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

Increasing demand for world steel has driven the price of metallurgical coal and iron ore higher. Between 2003-04 and 2006-07, the export price of metallurgical coal increased 96 per cent and iron ore increased 123 per cent. Production volumes also increased over these three years — the volume of metallurgical coal exports increased 18 per cent and iron ore export volumes increased 32 per cent. These price and volume increases have been reflected in higher export values. Between 2003-04 and 2006-07, Australia's exports of metallurgical coal (\$6.5 billion in 2003-04 and \$15.1 billion in 2006-07) and iron ore and pellets (\$5.3 billion in 2003-04 and \$15.5 billion in 2006-07) more than doubled in value.

In comparison, the value of exports of other mineral commodities (other than iron ore and pellets and metallurgical coal) also increased significantly over this period. However, growth was more modest at 82 per cent (\$42.5 billion in 2003-04 and \$77.2 billion in 2006-07).

Sources: ABS Year Book 2007, catalogue no. 1301.0; ABARE Australian Fisheries Statistics 2006, www.abareconomics.com/publications_html/fisheries/fisheries_07/07_fishstats.pdf; ABARE Commodity Statistics 2006, www.abareconomics.com/interactive/acs_dec06/excel/Resources.xls and ABARE Australian Commodities September quarter 2007, http://www.abareconomics.com/publications_html/ac/ac_07/ac_07.html.

2.2 Industry performance

Gross value added and the value of exports in the primary sector trebled between 1989-90 and 2006-07. Much of this growth has occurred since 2003-04 and been driven by the mining sector.

- Gross value added in the mining sector increased from \$18 billion in 1989-90 to \$34 billion in 2003-04 and \$75 billion in 2006-07.

-
- The value of mining exports also increased significantly over these two periods — \$25 billion in 1989-90, \$54 billion in 2003-04 and \$106 billion in 2006-07 (figure 2.1).

This substantial growth has been fuelled by increasing demand for mineral resources from growing economies such as China and India. And it has mainly been the result of rising commodity prices rather than increasing export volumes. Figure 2.1 shows that when price effects are removed from the data, growth in industry value added and exports have been significantly lower. For example, between 2003-04 and 2006-07, gross value added in the mining sector increased 14 per cent and export values grew 8 per cent, in chain volume terms. This compares with an increase of 122 per cent in gross value added and 99 per cent in export values over the same three years, when the data are expressed in current prices.

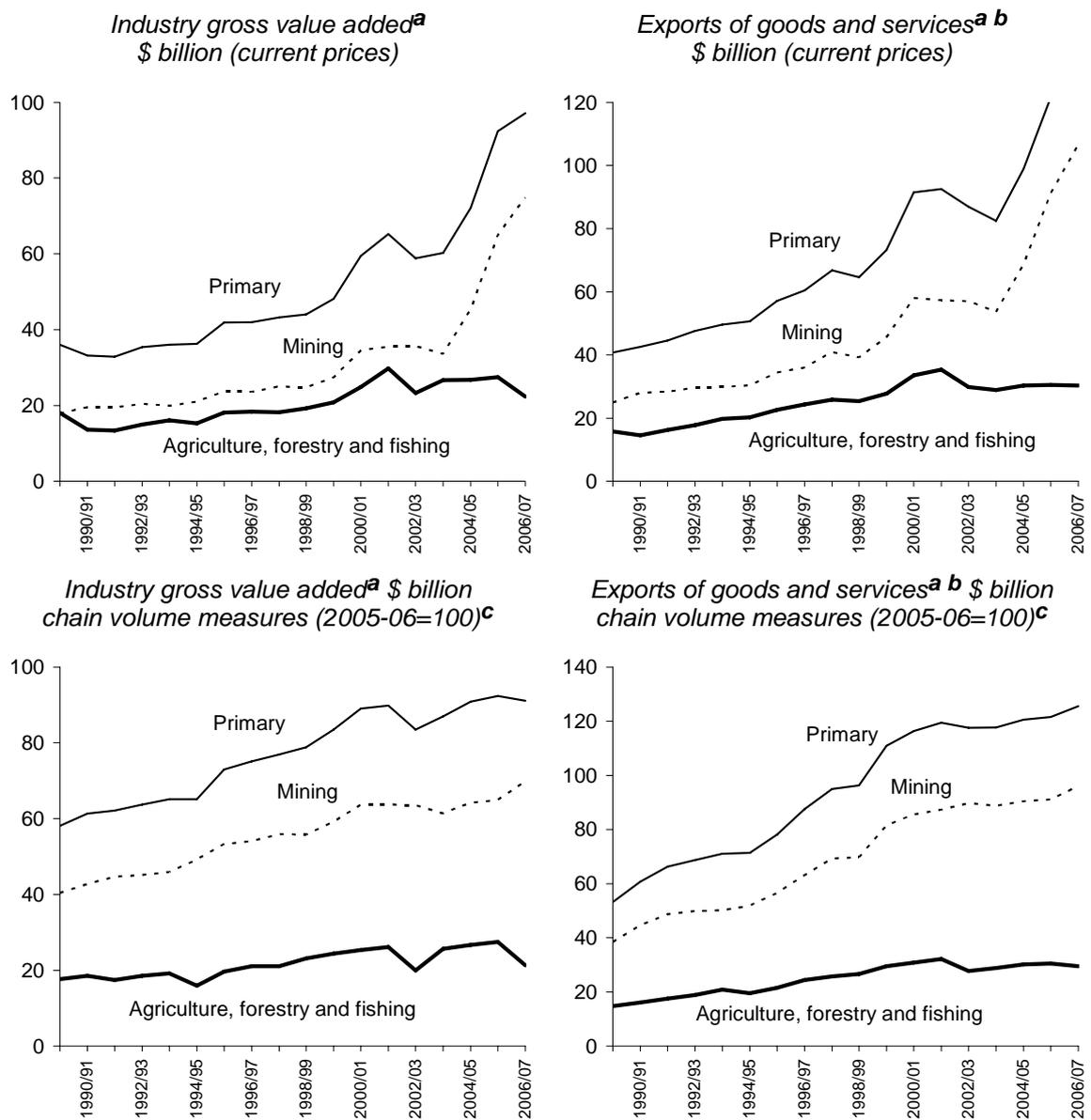
Between 1989-90 and 2001-02, the agriculture, forestry and fishing sector also achieved significant growth in gross value added and exports. Gross value added increased from \$18 billion in 1989-90 to \$30 billion in 2001-02 and exports more than doubled — from \$16 million in 1989-90 to \$35 million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

Agricultural production is characterised by volatility in output over time as a result of fluctuations in climatic conditions such as droughts. In the 2002-03 drought, gross value added fell over 20 per cent to \$23 billion and exports fell 15 per cent to \$30 billion. Although there was an upturn between 2003-04 and 2005-06, drought again affected the sector in 2006-07. Gross value added fell almost 20 per cent in 2006-07 (from \$27 billion in 2005-06 to \$22 billion in 2006-07) and exports fell marginally (figure 2.1).

Output volatility has consequences for employment. Between 1989-90 and 2001-02, employment in agriculture, forestry and fishing averaged 420 000 people. The 2002-03 drought resulted in a fall in employment of 13 per cent or 55 000 people employed. In 2006-07, employment was lower again with 344 000 people employed, 90 000 fewer people employed than in 2001-02 (figure 2.2).

This fall in employment was partly offset by employment growth in mining. Between 2001-02 and 2006-07, employment in mining increased 67 per cent, an increase of 54 000 people employed. However, for the primary sector as a whole, employment was 7 per cent lower (a decrease of 36 000 people employed) in 2006-07 than in 2001-02 (figure 2.2).

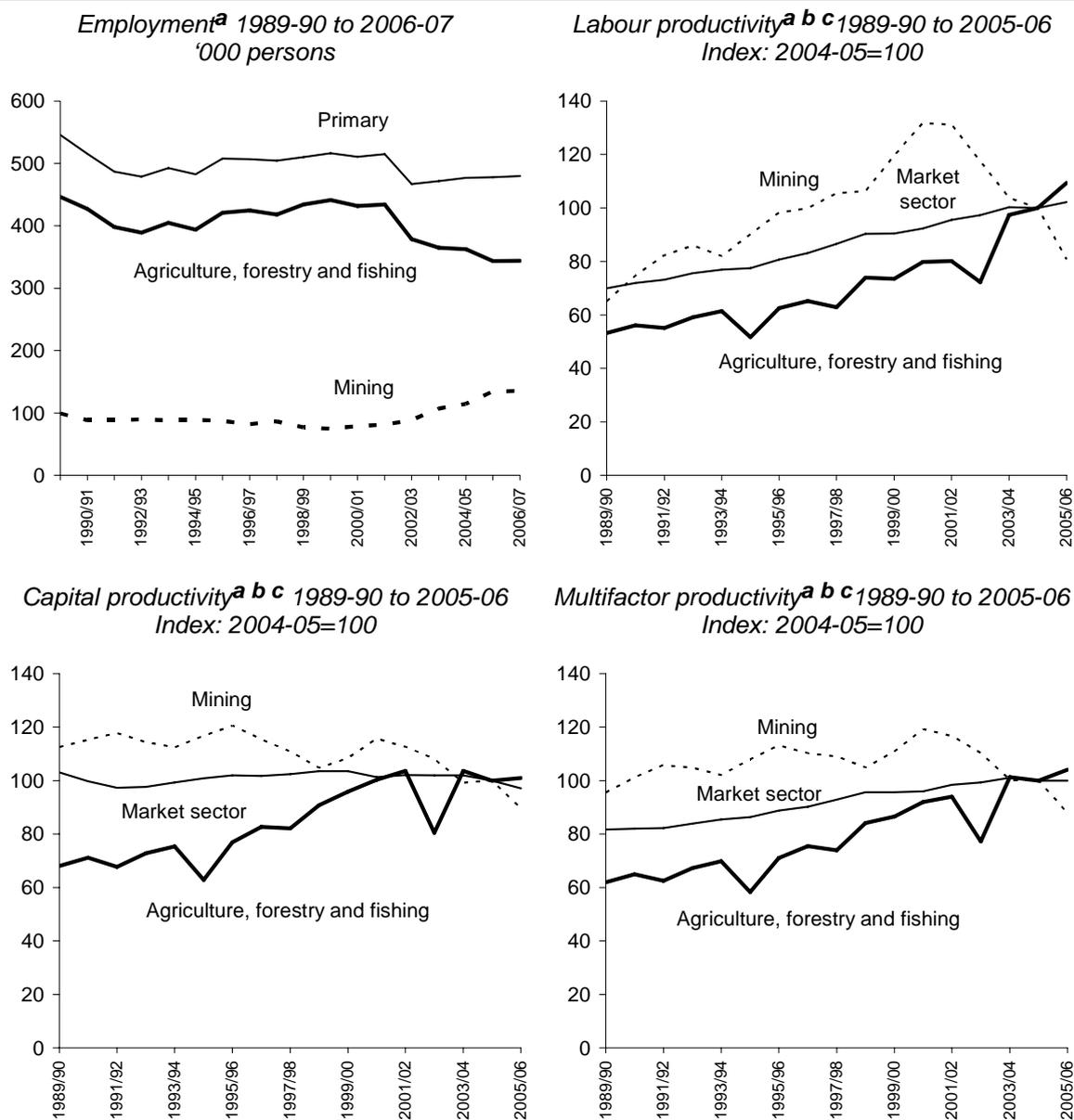
Figure 2.1 Industry performance, value added and exports
1989-90 to 2006-07



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

Sources: Gross value added data from ABS Australian National Accounts catalogue no. 5204.0. Export data from ABARE Australian Commodity Statistics 2006, http://www.abareconomics.com/interactive/acs_dec06/hm/auseco.htm#farmemployment and ABARE, Australian Commodities September quarter 2007, http://www.abareconomics.com/publications_hm_l/ac/ac_07/ac_07.html. Chain volume export data is based on pre-release data provided by ABARE.

Figure 2.2 Industry performance, employment and productivity



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

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

Trends in productivity

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

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

Multifactor productivity in the mining sector reflects not only the efficiency of use of capital and labour, but also the effects of resource quality and depletion. On the one hand, productivity in mining is enhanced by technological advances and improvements in work, management and organisational arrangements — just as in other sectors of the economy. On the other hand, as available reserves are mined and depleted, ore quality generally declines and so more capital and labour are required, on average, to produce a unit of mineral output.¹ Mining productivity has declined in the 2000s due to a combination of reserve depletion (especially in oil); a phase of investment in new mining capacity in advance of production starts; and the greater ‘effort’ required to mine more marginal deposits that have been rendered viable by higher commodity prices.

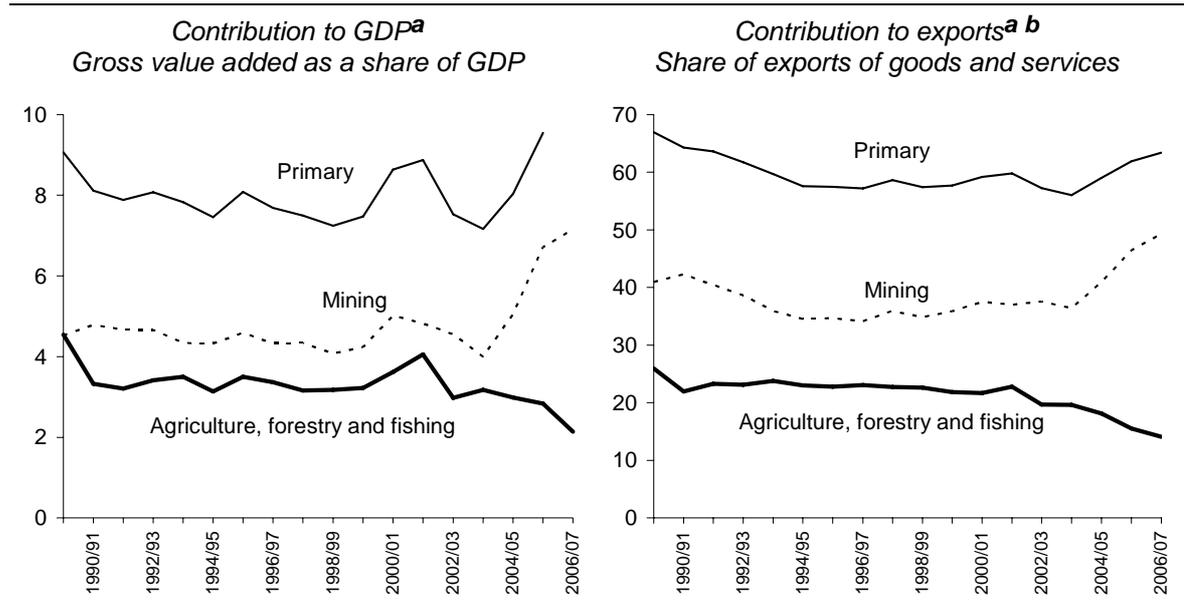
Sectoral contributions to growth

Disparities in growth rates between agriculture, forestry and fishing and mining have resulted in a change in their relative contributions to economic activity over time. For example, in 1989-90, agriculture, forestry and fishing and mining

¹ Equally, if new ‘rich’ deposits are discovered, measured productivity can increase because, even without a change in technology, less capital and labour are required to produce a unit of output.

contributed the same amount to GDP, 4.5 per cent each. By 2006-07, agriculture, forestry and fishing's share had fallen to 2.1 per cent while mining's contribution to GDP had increased to 7.1 per cent. Similarly with exports, while agriculture, forestry and fishing's share fell from 26 per cent to 14 per cent, over the same period, mining's share increased from 41 per cent to 49 per cent (figure 2.3).

Figure 2.3 Primary sector contribution to GDP and exports
1989-90 to 2006-07



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

Sources: GDP data from ABS Australian National Accounts, catalogue no. 5204.0. Export data from ABARE Australian Commodity Statistics 2006, http://www.abareconomics.com/interactive/acs_dec06/htm/auseco.htm#farmemployment;employment and ABARE, Australian Commodities September quarter 2007, http://www.abareconomics.com/publications_html/ac/ac_07/ac_07.html.

Overall, growth in mining activity (over the period 1989-90 to 2006-07) has broadly offset falls in the agriculture, forestry and fishing sector. While volatile on a yearly basis, the primary sector's contribution to GDP and exports is broadly similar in 2006-07 to that in 1989-90.

- In 1989-90, the primary sector contributed 9.1 per cent to GDP and 67 per cent to exports.
- In 2006-07, the primary sector contributed 9.3 per cent to GDP and 63 per cent to exports (figure 2.3).

3 AGRICULTURE

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3 Agriculture

3.1 Introduction

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

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

Agriculture value chain

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

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

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

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

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

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

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

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

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

Table 3.1 Agriculture value chain and the impact of regulations

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of agricultural cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • Aboriginal land rights/native title • environmental protection and biodiversity conservation 	<p>Acquisition of arable land</p> 	<ul style="list-style-type: none"> • land use and planning regulation • Aboriginal land rights/native title
<ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander cultural heritage • natural heritage, world heritage • international treaties and conventions covering natural and cultural heritage • licensing and approval of chemicals, fertilizers and pesticides • environmental protection and biodiversity conservation 	<p>Preparation of land</p> 	<ul style="list-style-type: none"> • land use and planning regulation • native vegetation legislation • water regulation • weed and vermin control regulation • laws relating to Aboriginal and Torres Strait Islander cultural heritage, archaeological and Aboriginal relics, sacred sites • use of chemicals, fertilizers and pesticides • natural heritage • environmental protection/assessment • building regulations
<ul style="list-style-type: none"> • chemicals and pesticides • access to drought support • fuel tax regulation • national pollutant inventory • biosecurity regulation • immigration regulation • water access and regulation • research and development funding and support 	<p>Farming - cropping - animal husbandry</p> 	<ul style="list-style-type: none"> • animal welfare regulation • transport regulation impacting on use of farm machinery • vehicle and machinery licensing regulation • livestock regulation and identification • access to drought support • OHS regulation • fire control regulation • weed and vermin control regulation • livestock disease control regulation • livestock movement regulation • water access and regulation
<ul style="list-style-type: none"> • export certificates • industrial relation regulations • immigration regulation • environmental regulation • industrial relations regulation • national pollutant inventory 	<p>On-farm processing</p> 	<ul style="list-style-type: none"> • building regulations • machinery operations • certification and labelling • industrial relations regulation • OHS regulation

(Continued next page)

Table 3.1 (continued)

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of agricultural cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • national land transport regulatory frameworks • shipping and maritime safety laws • international maritime codes and conventions • competition laws/access regimes • animal welfare 	Transport and logistics 	<ul style="list-style-type: none"> • transport regulations • government owned public/private transport infrastructure • access regimes
<ul style="list-style-type: none"> • marketing legislation (mandatory codes and acquisition) • food safety regulation • quarantine regulation • export controls • export incentives • WTO obligations • market access and trade agreements • taxation 	Marketing <ul style="list-style-type: none"> - boards - customers 	<ul style="list-style-type: none"> • interstate certification arrangements • taxation

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

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

Role of the Australian Government

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

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

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

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

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

Chemicals

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

National Livestock Identification System (NLIS)

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

Wheat marketing arrangements

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

(Continued next page)

Box 3.1 (continued)

Plant breeders rights

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

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

Other

Other matters raised relating to Australian Government regulation included:

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

Other matters relating to New South Wales Government regulation included:

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

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

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

3.2 Environment Protection and Biodiversity Conservation Act

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

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

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

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

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

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

Several concerns were raised by participants in the agriculture sector, but those which have an even greater impact on the mining, oil and gas sector have been dealt with in detail in chapter 4.

Overlap and duplication with state and territory processes

Concerns have been raised about ongoing overlap and duplication of the EPBC Act with state and territory environmental assessment and approval processes (for example, NFF sub. 24, p. 8 and VFF sub. 13, p. 14). For example, the NFF said that:

In addition to the Commonwealth approval process, Australian farmers must also gain environmental approval through their State accreditation processes for the same on-farm actions. Each State has a completely separate set of guidelines, rules and requirements to that outlined within the EPBC Act, adding another tier of complexity to the farmer's requirements. In many instances, the State approval process has no set timeframe under which it is required to provide certainty back to the farmer on whether they can proceed.

As a result, many farmers are reluctant to go through the process of changing their existing land practices as the regulatory steps that they must undertake are deemed to be too onerous and time consuming. Regrettably this has placed pressure on some farmers to take land use decisions into their own hands, with instances of poor judgement leading to convictions or bad environmental outcomes. (sub. 24, p. 8)

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

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

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

Inadequate risk assessment procedures for the import of exotic animals in Australia are likely to result in the import of potentially serious animal pests, which may be subject to lax keeping requirements and therefore have the potential to escape and establish natural populations. This would impose significant costs on the production sector through stock and crop losses and increased production costs, the environment and public amenity and safety. (sub. 35, p. 9)

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

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

Anyone can apply to the Minister to amend the live import list to include a new species. DEW manages applications under the EPBC Act to amend the live import list to include animals, whereas AQIS¹ manages applications in respect of live plants.

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

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

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

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- DEW reviews the draft assessment report and, if necessary, seeks revisions to the report from the applicant to address any inadequacies
 - DEW publishes the draft assessment report for public comment. At this time, the Minister seeks comment from appropriate state, territory and Australian Government ministers. Additional consultation may be undertaken by DEW including seeking expert advice.
 - DEW collates comments received on the draft assessment report and forwards them to the applicant to take into account in the draft report.
 - DEW conducts a risk assessment using computer models developed specifically for this purpose by the Bureau of Rural Sciences in DAFF.²
 - DEW may engage experts to advise on the likely risk posed by the species.
 - DEW advises the Minister and provides the final assessment report and other relevant information for consideration of a decision on whether or not to amend the live import list. The applicant is informed of the decision.
 - If the Minister approves an addition of a species to part 2 of the live import list, anyone may apply for a live import permit.

Assessment

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

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

The draft report noted that, if a risk assessment understates the real environmental risk (the likelihood of adverse consequences for the environment) of importing live animals, thus leading to a Government decision to import the live animal, an added burden is potentially imposed on affected businesses. Although errors in, and

² The models examine the potential for the species concerned to become established in Australia using variables including the extent to which the climate in the overseas range of the species matches the Australia climate, the extent to which the species has established exotic populations overseas, the taxonomy of the species, its migratory behaviour, diet and ability to live in disturbed habitat. The models have been independent peer reviewed (DEW sub. DR67, p. 1).

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

The Commission's draft response was that DEW should take a greater role in determining who undertakes the environmental risk assessment of applications to amend the live import list for animals. This could involve DEW nominating or accrediting suitable experts for this purpose. Proponents seeking to amend the live import list would still continue to bear the cost of the environmental risk assessment. This would reduce concerns about the conflict of interest associated with the risk assessment.

In its submission on the draft report, DEW questioned whether a 'perceived inadequacy' in the import of live animal risk assessment could be considered a regulatory burden on the primary sector and therefore within scope of the review (sub. DR67, p. 1).

The Commission considers that, although the risk assessments of live animal imports have an environmental focus, there could well be ramifications for those in the agriculture sector, which is why their adequacy, or lack thereof, is important. This stems from two types of decision errors due to inadequate environmental risk assessments. The following examples, although hypothetical, serve to illustrate the nature of the burden imposed on a farmer from these decisions errors.

- The first type of error is where a Government decision is taken to approve an application to allow an import when in fact the real environmental risk is higher than that estimated. This decision error imposes a burden on non-applicant farmers if the imported animal escapes and threatens their agricultural activities (for example, by consuming their crops). This type of burden is similar to that of an externality. The farmers must incur additional costs to dealing with the threat (say through better fencing) or, otherwise, experience a drop in production even though they did not apply to import the live animal.
- The second type of error is where a Government decision is taken to reject an application to allow an import where in fact the real environmental risk is lower than that estimated. If the applicant is a farmer (say), the decision error imposes a burden when it denies that applicant the opportunity to exploit a commercial opportunity or improve productivity.

DEW did not believe the current risk assessment procedures were inadequate and drew attention to elements of its process that 'largely' address conflict of interest concerns including that it conducts risk assessments (sub. DR67, p. 1).

DEW concurred that the approach of requiring applicants to prepare risk assessment reports is consistent with that generally applied in environmental protection agencies and also said:

The approach is consistent with environmental risk assessments required under other provisions of the EPBC Act. DEW considers that such reports, in combination with the Department's own international and commissioned assessments provide appropriate information on which to base decisions on amendments to the live import list. Consequently there is no significant risk of bias in the material used to make these decisions. To direct applications to have independent risk assessments prepared would impose an unreasonable financial burden on the applicant. (sub. DR67, p. 2)

The Commission notes that this aspect of the role of the DEW in the process for assessing imports of live animals is not well-publicised on its web site. It also queries whether there is now a need for DEW to require that applicants prepare the risk assessment report if the Department is in fact systematically undertaking or commissioning risk assessments in relation to live import applications. In other words, to what extent does DEW's risk assessments complement those undertaken by applicants?

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

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

Assessment

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

However, because of overlapping features in the two processes, the Australian Government has already taken various steps to coordinate them.

A memorandum of understanding between Biosecurity Australia and the predecessor of DEW was agreed on 11 October 2002, which established the Biosecurity and Environment Liaison Team. This seeks to enhance inter-agency cooperation and consultation on import risk analyses and live import environmental assessments. The Australian National Audit Office (ANAO) in its review of quarantine effectiveness in 2005 reported that the memorandum of understanding had been operating satisfactorily since it was implemented (2005, p. 50).

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

In the draft report, the Commission considered that the memorandum of understanding between Biosecurity Australia and DEW is achieving the objective of promoting coordination between the two agencies. Even so, the Commission's draft response was that DEW should assess whether there is further scope for accrediting Biosecurity Australia's risk assessment processes in relation to the importation of live animals under the EPBC Act.

Since the draft report, DEW advised the Commission that it is currently working with Biosecurity Australia to update the memorandum of understanding on import risk analyses.

The updated [memorandum of understanding] will reflect the recent (2007) amendments to the EPBC Act providing for situations where the Minister can accept [Biosecurity Australia] reports as a basis for decisions about amending the live import list. As part of the process DEW and [Biosecurity Australia] will also consider other possible improvements in cooperation on the live import process. (sub. DR67, p. 2)

The Commission supports this development and considers that both agencies should identify a timeframe for this process as well as ensure effective consultation with industry and other interested stakeholders.

RESPONSE 3.1

While acknowledging that the processes of environment and import risk assessments are different, the Department of Environment and Water Resources

and Biosecurity Australia should assess whether there is further scope for accrediting Biosecurity Australia's risk assessment process and reports in relation to the importation of live animals under the EPBC Act. Both agencies should commence this assessment as soon as practicable, including identifying a timeframe as well as consulting widely.

Lack of clarity about 'significant impact'

Concerns were raised within the agriculture sector that the lack of a definition in the Act of the term 'significant impact' has created uncertainty for businesses as to when this trigger for the Act applies (for example, VFF sub. 13, p. 14; Growcom sub. 15, p. 18). The Victorian Farmers Federation (VFF) said that:

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

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

Assessment

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

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

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

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

And further

To be ‘likely’, it is not necessary for a significant impact to have a greater than 50% chance of happening; it is sufficient if a significant impact on the environment is a real or not remote chance or possibility.

If there is scientific uncertainty about the impacts of your action and potential impacts are serious or irreversible, the precautionary principle is applicable. Accordingly, a lack of scientific certainty about the potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact on the environment. (2006c, p. 4; 2006d, p. 5)

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

- result in known or potential pest species becoming established
- modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that an adverse impact on marine ecosystem functioning or integrity in a Commonwealth marine area results or
- have a substantial adverse effect on a population of marine species or cetacean including its life cycle and spatial distribution (DEH 2006c, p. 16).

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

It is also notable that the NFF has, since 2002, had an Australian Government DEW officer seconded to it to ‘provide effective communication and information “on-the-ground” to farmers and rural stakeholders in relation to the Act’ (NFF 2007). The officer is fully funded by DEW. However, the NFF is not necessarily representative of all industries. Growcom noted, for example, that the NFF does not represent the horticulture industry or other intensive agricultural industries that come under the ‘umbrella’ of the Queensland Farmers’ Federation (QFF). It considered that DEW’s

‘worthwhile initiative should be extended to other industry organisations throughout Australia (sub. DR62, p. 2).

Effective clarification of significant impact under the EPBC Act is important if compliance is to involve minimal costs for businesses in the agriculture sector. Where there is uncertainty, business compliance may be either too little (or non-existent) — such that the environmental objectives of the Act are undermined — or too much — such that the costs of achieving those objectives outweigh the actual benefits.

The Commission considers that recent actions of DEW have been constructive in resolving uncertainty for businesses in the agriculture sector about the role of significant impact as a trigger under the EPBC Act. The Department should also explore further avenues for effective communication with businesses about this aspect of the Act.

RESPONSE 3.2

Actions by the Department of Environment and Water Resources to clarify the definition of ‘significant impact’ under the EPBC *Act for businesses in the agriculture sector have been constructive. The Department should explore more effective ways to communicate with businesses about this aspect of the Act.*

3.3 Biosecurity and quarantine

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

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

The measures may be categorised broadly as follows:

- ‘pre-border’ measures (these reduce threats and manage risk before arrival in Australia) including import risk analyses, offshore inspection and offshore certification

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- ‘border’ measures (these implement quarantine and inspection strategies at the border) including inspection by AQIS and the application of quarantine protocols and
 - ‘post border’ measures (these tackle the risk of pest and disease outbreaks within Australia) including prevention strategies, monitoring and surveillance, and emergency pest and disease response management.

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

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

Problems with import risk analysis

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

- the soundness of the science underpinning the import risk analysis
- the weight given in import risk analysis to the economic and social consequences of a pest and disease incursion
- consultation with stakeholders
- the communication of import risk analysis findings
- the role of the Eminent Scientists Group
- the independence of the appeal panel.

Many of these concerns have been reiterated in submissions to this review. For example, Growcom reported that:

- The process for IRAs can be drawn out over many years which provides uncertainty for the domestic industry;
- The industry cost in supplying information to government can be a significant burden in relation to costs and resources;
- There needs to be mechanisms that allow for ongoing engagement with stakeholders in order to undergo continued alteration and improvements to the processes and systems put in place; and

-
- Clear and transparent systems and procedures that allow for industry consultation and input prior to any alterations to import conditions that are in the final IRA. (sub. 15, p. 12).

In its submission on the draft report, Growcom further emphasised the ‘enormous cost and effort’ undertaken by industry:

... in responding to IRAs, some of which can be underway for many years, require several submissions from industry to complete policy, technical and scientific responses. This has a substantial cost, which to some degree is unfair to impose on industry. In some cases, industry groups may have a capacity to deliver a substantial industry response to government; however, in other cases, the ability to respond is fairly limited. The capacity of industry to provide a response to government could disadvantage them throughout the process. As a result, smaller industries may be vulnerable to imported pests and diseases. (sub. DR62, p. 2)

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

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

The process that Biosecurity Australia has followed in conducting an import risk analysis incorporates stakeholder consultation, the preparation and release of draft and final import risk analysis reports, and scope for appeal or independent review (DAFF 2007c, p. 30).

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

Assessment

Determining quarantine measures relating to the import of animals, plants and their products involves a delicate balancing act. Imports can involve the likelihood that pests or diseases are brought into Australia with adverse, and potentially devastating, consequences for producers. But excessive limits on imports can

reduce choice and increase prices for consumers, which include producers seeking to import (for example, pigmeat producers seeking to import grain in times of drought).

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

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

There has been several recent reviews that have commented and/or made recommendations relating to import risk analysis:

- In its review of 2005, *Managing for Quarantine Effectiveness — Follow-up*, the ANAO noted progress by Biosecurity Australia in implementing its previous review's recommendations (ANAO 2001) in relation to import risk analysis. Notwithstanding this progress, the Office made additional recommendations to which Biosecurity Australia and DAFF agreed including that:
 - Biosecurity Australia update its procedural documentation to incorporate recent enhancements that it had undertaken
 - Biosecurity Australia document in its import risk analyses the range of strategies available to manage risks
 - DAFF amend the terms of reference for the eminent scientists group to enable the group's earlier involvement in the process, where considered appropriate.
- The Regulation Taskforce in 2006 recommended that the ANAO's recommendations on biosecurity and quarantine services be implemented (2006, recommendation 4.75). In its response, the Australian Government agreed to the recommendation and with the ANAO report (2006b, p. 4).
- The Corish Report in 2006 made a number of recommendations pertaining to import risk analysis, namely that: the current process be streamlined

‘immediately’ to minimise delays and alleviate international and domestic pressures on the system; an independent institutional structure for Biosecurity Australia be established to promote confidence in the quarantine system; Australia’s quarantine and biosecurity policy settings be communicated more effectively in order to improve understanding (Agriculture and Food Policy Reference Group 2006, p. 137). In its response to the Corish Report, the Australian Government agreed with the recommendations to streamline the import risk analysis process and to improve communications (2006a, p. 23). It noted the recommendation relating to the institutional structure of Biosecurity Australia, but considered there were more effective ways of achieving confidence in the quarantine system.

In response to these and earlier reviews, several actions have been taken within the Australian Government to improve import risk analysis.

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

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

In September 2007, new arrangements to improve the import risk analysis process came into effect. Announced in October 2006, these reforms include:

- the release of the new *Import Risk Analysis Handbook 2007*, setting out in considerable detail the new regulated process for import market access requests
- regulated timeframes for the completion of import risk analyses (24 months for ‘standard’ import risks analyses and 30 months for ‘expanded’ import risk analyses) to improve timeliness of the process and predictability for stakeholders with assessments involving a review of existing policy being able to be conducted as administrative reviews
- the expansion of the role of the eminent scientists group to include assessing conflicting scientific views provided to it and reviewing the conclusion of draft import risk analysis reports to ensure they are scientifically reasonable based on the material presented
- improved consultation with stakeholders with an emphasis on early and regular engagement and directed consultation

-
- the establishment of a high level group within DAFF, the Import Market Access Advisory Group, to prioritise import proposals to assist Biosecurity Australia to develop its work program and to monitor the progress of import risk analyses (DAFF 2006b and DAFF sub. DR74, p. 4).

The Commission considers that Australian Government actions to date, including reforms to the import risk analysis process, should reduce the cost and time burden imposed on agriculture sector businesses as well as dealing with concerns about the scientific rigour of the import risk analyses. It does, however, draw the Government's attention to concerns raised by Growcom about the disproportionate burden placed on smaller industries of participating in IRA processes (sub. DR62, p. 2).

RESPONSE 3.3

Reforms to the import risk analysis process are progressing. They have the potential to reduce the cost and time burden imposed on businesses as well as deal with concerns about the scientific rigour of the import risk analyses.

Concerns about the absence of an import risk analysis for cattle embryos

The South Australian Government, while noting that Australia's biosecurity regime is 'entirely consistent with Australia's international obligations', considered that there may be 'one or two implementation issues in the working of the IRA process, which can be detrimental to business in the trade development area':

An example is the absence of an IRA in regard to importing cattle embryos from South Africa. Some significant stakeholders in the SA beef industry would welcome the chance to improve the productivity and disease resistance of their stock by importing genetic material from South Africa. In the absence of an IRA for the import of cattle embryos from South Africa, however, no cattle genetic material can be imported from there. (sub. DR50, p. 13)

Assessment

In response, DAFF advised (sub. DR74, p. 4) that, under current quarantine policy, bovine embryos can be imported from South Africa. As part of an ongoing review of scientific information and international developments, Biosecurity Australia plans to review the policy for bovine embryos, including from South Africa. This is likely to be undertaken as a non-regulated analysis of the existing policy.

DAFF also advised (sub. DR74, p. 4) that there has been a request for *improving* market access for importing bovine embryos from South Africa. The Import Market Access Advisory Group has considered the priority to be given to the request and has provided interim advice to Biosecurity Australia. Details on Biosecurity Australia's 2007-08 work program, taking into account the Advisory Group's advice, are expected to be released shortly.

DAFF further advises (sub. DR74, p. 4) that Biosecurity Australia will continue to progress the import risk analysis of ruminant semen (bovine, caprine and ovine) from South Africa. A draft report for stakeholder comment is well-advanced and is being independently peer reviewed. The import risk analysis will be incorporated into the regulated process and further advice will be provided to stakeholders at a later date.

The Commission considers that DAFF's response deals with the South Australian Government's concerns and that no additional action by Biosecurity Australia is required.

Problems with the regulation of veterinary vaccines imports

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

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

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

Assessment

In its joint response to Animal Health Alliance (Australia), AQIS/Biosecurity said that:

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

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

Overlap between AQIS/Biosecurity Australia and APVMA

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

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

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

Assessment

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

[W]hilst the APVMA generally ensure that domestically manufactured vaccines are not contaminated with extraneous disease agents, APVMA, AQIS and Biosecurity

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

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

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

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

RESPONSE 3.4

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

Lack of coordination across jurisdictions

Concerns were raised by participants about the lack of coordination of biosecurity and quarantine requirements applying to plants across jurisdictions (Western Australian Department of Agriculture and Food sub. 35, pp. 6–8; Growcom sub. 15, pp. 9–11; Virginia Horticulture Centre sub. 32, p. 16). For example, Virginia Horticulture Centre said:

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

The Australian Government's role in biosecurity and quarantine is focused on preventing pest and disease incursions across the national border. The role of the

states and territories is focused on preventing pest and disease incursions occurring within the jurisdiction including from other jurisdictions and other countries.

Assessment

The Corish Report examined the roles of the Australian Government and state and territory governments in relation to biosecurity and quarantine (Agriculture and Food Policy Reference Group 2006, pp. 134–7) and considered that:

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

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

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

The Australian Government expressed support for this recommendation and noted the development of a policy framework known as the Australian Biosecurity System for Primary Production and the Environment (AusBIOSEC) (2006a, p. 22). The policy framework aims to put in place common principles and guidelines to enable biosecurity arrangements to be applied consistently across Australia. It is anticipated that the framework will be implemented through an Intergovernmental Agreement by 2008.

DAFF advised that important elements of the AusBIOSEC process are still at a developmental stage and the intergovernmental agreement is yet to be finalised at either a whole of Australian Government level or in negotiations with the state and territories (sub. DR74, p. 3). DAFF also advised that in relation to the specific concerns raised by participants that, while there may be scope to pursue such issues in due course, the AusBIOSEC process is:

... focussing on a number of agreed key priority areas, including post-border emergency response arrangements for dealing with incursions of pests and disease that have effects on the environment and social amenity and that are not covered by existing agreements, such as for animal and plant health. (sub. DR74, p. 2)

In addition to the AusBIOSEC process, DAFF advised that the National Resource Management Standing Committee and the Primary Industries Standing Committee have agreed to the establishment of a National Biosecurity Committee, which will consolidate and coordinate the handling of biosecurity issues across the National Resources Management Ministerial Council and the Primary Industries Ministerial Council. The National Biosecurity Committee will provide strategic policy advice on key biosecurity issues, including identifying potential and emerging national biosecurity issues and threats to economic, environmental, social amenity and human health values, and recommend national policy approaches (sub. DR74, p. 3).

The Commission considers that there has been some useful progress in the development of better coordination of some biosecurity issues across jurisdictions, such as through the proposed development of AusBIOSEC and the establishment of the new National Biosecurity Committee. These new processes have the potential to address participants' concerns about inconsistencies in biosecurity and quarantine requirements applying to plants.

Problems with the Interstate Certification Assurance Scheme

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

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

Concerns were expressed by two participants about the Interstate Certification Assurance Scheme. Growcom said:

While the introduction of this system has been of great assistance to growers trading interstate, there are several major flaws in the operation of the system that must be rectified. (sub. 15, p. 12)

The QFF noted that the scheme added 'significantly to business costs' and appeared 'to be used by some states (notably Western Australia) as an impediment to trade in horticultural and production nursery products' (sub. DR57, p. 2).

Specific issues of concern to growers with the Scheme raised by Growcom and the QFF include:

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

Both participants suggested some specific solutions for improving the Interstate Certification Assurance system including that:

- on farm inspections and audits for certification should be restructured into a single cohesive set of procedures capable of being incorporated into a Farm Management System
- within this restructure, the roles and responsibilities of inspectors and auditors should be broadened to perform the full range of certifications
- inspections and audits should be performed during a single on-site visit
- entities other than the Department of Primary Industries and Fisheries should be accredited to offer this service
- those Queensland commodities without interstate certification assurance should be provided with them as appropriate
- technical thresholds of the pre-interstate certification assurance testing regime should be revisited
- a higher level of government scrutiny and performance standards should be put in place (Growcom sub. 15, p. 13; QFF sub. DR57, p. 2).

Assessment

Although the responsibility for the scheme rests with the states and territories, the Commission understands that the Certification Services Working Group — under the supervision of the Domestic Quarantine and Market Access Working Group

within the Primary Industry Ministerial Council — will be undertaking a review in which it will, among other things, develop national standards and procedures for the consistent operation of certification services (including Interstate Certification Assurance Scheme services) for domestic market access in Australia. It will also review and develop Interstate Certification Assurance protocols and procedures and oversee the implementation of the national Interstate Certification Assurance Scheme. The Commission further understands that, although a review is planned, such details as the terms of reference and public consultation have not yet been developed.

In its submission on the draft report, Growcom considered that the review must incorporate a meaningful stakeholder consultation process to ensure all the issues and concerns, including that of industry, are taken into consideration. It also considered that the review examine the overarching process and guidelines around interstate plant quarantine matters, which would include interstate certification assurance and other interstate processes. It suggested that the terms of reference include the following:

1. A national review of interstate quarantine structures and process should examine the system in terms of a) Efficiency and effectiveness; b) Protocol development and review processes; c) Consistency between jurisdictions; d) Performance standards and reporting structures; e) Transparency and accountability; f) Membership and terms of reference of committees; g) Dispute resolution processes; h) Linking with international protocols; i) Assessment of science and risk; j) Communication channels and engagement between governments and with industry.
2. Make recommendations on how to reform the system to improve interstate quarantine processes and market access. (sub. DR73, pp. 1–2)

RESPONSE 3.5

Details of a review within the Primary Industries Ministerial Council of certification services, including the Interstate Certification Assurance Scheme, should be announced as soon as practicable. These details should include terms of reference and a time frame for consultation and reporting. Consultation should be broad and transparent. In developing national standards, the benefits and costs of alternative approaches should be considered.

Uncertainties about the Emergency Plant Pest Response Deed

Growcom raised concerns about the potential for governments to undermine the documented procedures and systems' set out in plant and animal health deeds such as the Emergency Plant Pest Response Deed:

In the event of an outbreak, Government has the tendency to disperse funds outside the set procedures and systems to which they are signatories. This has many implications, including undermining the commitment of both government and industry representatives who are active participants in a number of committees who negotiate, analyse and establish the appropriate systems and procedures. Government actions and decisions made in heated political environments surrounding emergency situations can threaten the validity and meaningfulness of the deed when the associated activities and consequences fall outside the stipulated guidelines. (sub. DR62, p. 3)

The Emergency Plant Pest Response Deed is a funding agreement among the Australian Government, state and territory governments and 14 plant industry members that seeks to ensure timely and effective responses to emergency plant pests that could adversely affect Australia's plant industries. The Deed came into effect in October 2005.

Funding under the Deed is determined by categorising the most serious plant pests, which then determines the relative industry and government funding of eradication efforts, based on which sector benefits most from eradicating the pest in question.

An important element of the Deed is the reimbursement to growers of costs incurred as part of a response plan that are above and beyond growers' normal operational costs. These owner reimbursement costs include the costs of destroying infected crops. Reimbursement of these costs reduces the disincentives to growers of reporting suspected pest outbreaks and promotes more rapid responses — thus increasing the likelihood of successful eradication and lower costs for both industry and government (Plant Health Australia 2005).

Assessment

The Deed sets out a template of response for all parties affected by a plant health emergency. The way in which government parties to the Deed respond to a plant health emergency can affect industry parties. If a government party's response is inconsistent across industries, or substantially deviates from the terms of the Deed, industry parties' confidence in, and expectations about, an effective response to a plant health emergency could be severely undermined. It could later affect industry commitment to dealing with subsequent plant health emergencies to the detriment of the objectives being sought to be addressed by the Deed.

RESPONSE 3.6

In the event of a plant health emergency, government parties to the Emergency Plant Pest Response Deed should ensure that their implementation of the Deed is

consistent across all sectors and should avoid adversely affecting industry expectations and confidence in the Deed.

3.4 National Pollutant Inventory

The National Pollutant Inventory (NPI) is a database established through a National Environment Protection Measure,^{3 4} agreed to by the Australian Government and state and territory governments in 1998. The NPI is to contain information:

- about emissions and transfers of specified substances, on a geographical basis, including those of a hazardous nature or involving significant impact
- that enhances and facilitates policy formulation and decision making for environmental planning and management
- about waste minimisation and cleaner production programmes in industry, government and the community and promotes and facilitates their implementation
- that is available and accessible to the public (clause 7).

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

The Environment Protection and Heritage Council (incorporating the National Environment Protection Council) decided at its June 2007 meeting that the NPI will include transfers, will include greenhouse gas emissions pending the establishing of

³ National Environment Protection Measures are broad statutory instruments made by the National Environment and Protection Council under the Australian Government's *National Environment Protection Council Act 1994*. National Environment Protection Measures outline agreed national objectives for protecting or managing particular aspects of the environment. They are similar to environmental protection policies and may consist of any combination of goals, standards, protocols and guidelines. Under the National Environment Protection Council Act and complementary state and territory legislation, a National Environment Protection Measure becomes law in each participating jurisdiction once it is made by the Council, for which a two-thirds majority is required.

⁴ Overarching objectives are set out in the NPI National Environment Protection Measure. The 'desired environmental outcomes' of the Measure are: the maintenance and improvement of ambient air quality, and ambient marine, estuarine and fresh water quality; the minimisation of environmental impacts associated with hazardous wastes; and an improvement in the sustainable use of resources (clause 5). The 'national environmental protection goals' of the Measure are to: collect a broad base of information on emissions and transfers of substances on the reporting list; and disseminate the information collected to all sectors of the community in a useful, accessible and understandable form (clause 6).

a national purpose-built greenhouse reporting mechanisms, but will continue to exempt reporting of emissions from aquaculture (EPHC 2007a).

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

What follows is a consideration of concerns about reporting requirements applying under the NPI to intensive agricultural operations. Other concerns about the NPI are dealt with elsewhere in the report. Concerns by mining, oil and gas participants about the NPI are dealt with in chapter 4. Concerns about the inclusion of aquaculture in the NPI are dealt with in chapter 5.

Intensive agricultural operations — burden of reporting for individual farmers

Several participants raised concerns about the burdensome nature of reporting requirements for individual farmers engaged in intensive agricultural operations, including the tight time frames (for example, New South Wales Farmers’ Association sub. 27, p. 13; Red Meat Industry sub. 12B, pp. 22, 23; Australian Pork Limited sub. 44, p. 14; QFF sub. DR57, pp. 1–2). For example, the New South Wales Farmers’ Association considered that:

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

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

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

The QFF noted that, although DEW has offered some concessions on reporting by chicken meat growers relating to the role of association:

... the Department is also considering expanding the matters which need to be reported on. This is of concern, and the Commission should make it clear that the [Environment Protection and Heritage Council] needs to ensure that regulatory burdens are the minimum necessary to achieve a public policy outcome which cannot be achieved in some other more cost effective manner. The chicken meat industry has invested a great deal of time and effort into developing an industry Environmental Management System which seeks to address many of the concerns with odour issues. Governments should

seek to utilise existing industry mechanisms as much as practically possible to minimise compliance costs. (sub. DR57, p. 2)

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

Assessment

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

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

In addition, the recent variation to the NPI National Environment Protection Measure incorporates some changes that might help ease the burden for individual farmers. These are to extend the publication date by two months to enable corrections to be made by jurisdictions and industry before public release (clause 29; NEPC 2006b, p. 61 and clause 29) and to enable jurisdictions to approve alternative reporting periods to meet the reporting needs of facilities (clause 4; NEPC 2006b, p. 64).

Another measure that could be considered is for greater use to be made of industry associations that already have access to relevant data. There is no obstacle within the National Environment Protection Measure to the use of industry associations in this way. Indeed, the Commission understands that the Western Australian Broiler Growers Association, which has a complete list of meat chicken farms and chicken numbers for each farm, manages reports to the NPI on behalf of individual farmers.

The Commission considers that some actions are progressing to reduce the compliance burden on individual farmers arising from the NPI National

Environment Protection Measure. However, further consideration should be given by the Environment Protection and Heritage Council (which incorporates the National Environment Protection Council) to any cost-effective alternatives in obtaining data including giving industry associations a greater role in compiling data on behalf of individual farmers.

RESPONSE 3.7

Reforms through the Environment Protection and Heritage Council are progressing to reduce the compliance burden on individual farmers in intensive agricultural operations resulting from the reporting requirements in the NPI National Environment Protection Measure. The Council should examine cost-effective alternatives in obtaining data, including expanding the role of industry associations in meeting reporting requirements. It should consult widely and report publicly on these alternatives.

Intensive agricultural operations — inappropriate reporting threshold for ammonia

The Red Meat Industry, representing Meat & Livestock Australia, the Cattle Council of Australia, the Sheepmeat Council of Australia, the Australian Lot Feeders' Association, Livecorp and the Australian Meat Industry Council, expressed concerns on behalf of small beef feedlot operators and red meat processing plants about the NPI reporting threshold for ammonia (sub. 12B, pp. 21–3). It noted that the threshold is reached by 'a very small feedlot' (sub. 12B, p. 23).

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

Ammonia was identified by the panel as one of 90 substances for inclusion. The threshold for reporting ammonia (a category 1 substance along with many of the 90 substances) was determined at 10 tonnes or more. For beef cattle feedlots, the threshold is triggered where the feedlot has more than 143 standard cattle units⁵ (DEW 2007c, p. 5).

⁵ A standard cattle unit is equal to 600 kg. The total emission of ammonia kg in a year is equal to the number of standard cattle units multiplied by an 'ammonia emission factor', which has recently been revised upwards for beef cattle feedlots to 70 kg ammonia per standard cattle unit per year (DEW 2007c, pp. 5, 50).

Assessment

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

RESPONSE 3.8

The Environment Protection and Heritage Council should review the reporting thresholds for all NPI substances by 2009.

Intensive agricultural operations — public access to facility-based information

Several participants raised concerns about the public accessibility of farmers' contact details (for example, New South Wales Farmers' Association sub. 27, p. 13; Red Meat Industry sub. 12, p. 20 and sub. 12B, p. 23; Australian Pork Limited sub. 44, p. 15; QFF sub. DR57, p. 1). For example, the New South Wales Farmers' Association noted that the publication of contact details of farmers engaged in agricultural intensive operations who were required to report nitrogen and phosphorous pollution left them 'vulnerable to harassment by extremist groups' (sub. 27, p. 13). It recommended that farmers' contact details be not accessible on the public website (sub. 27, p. 13).

Assessment

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

Underpinning these provisions is the view that:

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- communities have a ‘right to know’ the nature and extent of emissions within their localities and
 - the publicly availability of such information creates incentives for businesses (who are concerned about their reputation, for example) to contain their emissions.

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

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

RESPONSE 3.9

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

3.5 Climate change policies

Multiplicity of greenhouse gas and energy reporting requirements

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

The Commission notes that the concerns have been superseded by the recent passage of the Australian Government’s *National Greenhouse and Energy Reporting Act 2007*. It also notes that reporting of agricultural and land-use greenhouse emissions will be excluded from the Act primarily because ‘robust methodologies’ are not yet available (DEW sub. DR67, p. 3). Energy consumption in the agricultural sector is still reportable under the Act if facility or corporate thresholds are exceeded. Further discussion of the new Act is contained in chapter 4 (section 4.8 on climate change policies).

Future design of the Australian emissions trading scheme

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

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

Further discussion of the scheme is contained in chapter 4 (section 4.8 on climate change policies).

3.6 Regulation of livestock exports

Concerns were expressed by participants, mainly the Red Meat Industry, about the cost burden and other impacts imposed by Australian Government regulation affecting the export of livestock and, in particular, about:

- requirements introduced in 2004 through the Australian Meat and Livestock Industry (Export Licensing) Regulations 1998, the Export Control (Animals) Order 2004 and the Australian Standards for the Export of Livestock (ASEL), which are administered by DAFF and AQIS — these requirements are largely intended to protect the health and welfare of livestock that are exported
- requirements under the Marine Orders Part 43, Cargo and Cargo Handling — Livestock, which are administered by the Australian Maritime Safety Authority (AMSA) — these requirements are largely intended to deal with ship safety and pollution.

The Red Meat Industry was generally concerned about the following:

- **Escalating regulation costs for live export:** complex systems, increasing charges, duplication and inefficiencies, concerns about expertise and uncertainty in administering a Canberra centralised assessment and inspection regime, undermined regional capacity.

-
- **Little or no evidence of improved outcomes** or risk management under new rules.
 - **Assessments of cost impacts, performance effects and community benefit have not been undertaken** during regulation reviews or revisions from 2004 to 2007.
 - **Directions of regulatory change are contrary to best practice principles** including co-regulation, outcomes based regulation and streamlining.
 - **Indications that regulations cut-across responsible business development** including accredited operation systems, innovation and full risk management by firms.
 - **Increasing prescription in ship certification rules** — without clear reason as Australia leads world practice. Changes to rules without critical evaluation of cost or competition effects on doing business for shippers, exporters and livestock industries. (sub. 12B, p. 25)

It recommended this regulatory area for a critical case study three year review involving all parties against principles of good regulatory process with the aims of significantly reducing red tape and centralised prescriptive regulation and improving overall outcomes for industry and the community (sub. 12B, p. 25). The review should cover the ‘full set of legislation, regulations and standards that relate to live export’ as well as ‘sub-rules, processes and the ways regulatory arrangements are implemented’ (sub. DR59, p. 10 and sub. DR77, p. 1). It noted:

‘A bottom line question for governments, this industry and stakeholders is whether ‘performance’ in terms of animal welfare outcomes and confidence in risk handling has been advanced by the new 2004 regulations for live export and shipping?’ Do outcomes reasonably offset substantial additional costs to the sector and supply chain businesses? It is vital this exercise goes beyond direct costs, to fully review performance, whether animal welfare advances are being achieved or held back by extra rules, service and interaction quality, and performance by all parties. The [Red Meat Industry] seeks regulation that works with businesses to enhance Australia’s live export delivery, for instance, by identifying measures of appropriate performance and developing a performance-based approach to regulatory intervention. (sub. DR59, p. 10)

The Red Meat Industry recommended that the Commission and DAFF jointly conduct the review by May 2008 (sub. DR59, p. 10) and that the review be progressed against best practice regulatory principles (sub. DR77, p. 1).

The regulation of export of livestock is generally relevant to the ‘transport and logistics’ and ‘marketing – boards – customers’ stages of the agriculture value chain in table 3.1.

High costs of animal health and welfare requirements

The Red Meat Industry noted that the new animal health and welfare requirements introduced in 2004 represent a shift in the regulation of the livestock exports from an industry-based quality assurance process (the Livestock Export Accreditation

Program) coupled with AQIS inspection and approvals to ‘a fully government-run process’ (sub. 12B, p. 26).

It reported a range of particular comments by businesses about the impact of the new requirements on regulatory costs and burdens as well as on performance and innovation (box 3.2).

Box 3.2 Selected industry comments on the impacts of new animal health and welfare requirements on livestock exports

Regulatory cost increases and burdens

New rules require that AQIS Canberra assesses and approves Governance and Operations Manuals (from livestock exporters), Consignment Risk Management Plans (CRMPs) for each proposed shipment, and Operations Manuals for registration of premises to hold and prepare animals for export. *There are serious concerns about the availability and capability of AQIS Canberra staff to properly assess these, and to participate in timely discussions on questions arising.* Staff turnover seems high. Continuity is an issue (especially noting ‘prior performance’ and ‘improvement’ tests).

...

Costs of compliance have risen significantly. There is ‘double the paperwork’ and of office time needed for preparation of regulatory information. As well as charges for document processing (eg. 27 hours for an average CRMP), audit and inspection frequencies have increased, as have record keeping requirements by all parties in the chain. AQIS can also require additional stockmen or a vet on some shipments.

Enterprises need higher staffing to interact quickly with AQIS Canberra requirements (part duplicating local AQIS interactions), plus trips to Canberra for briefings and discussions. 50% of management staff time is spent on compliance — a one page NOI [Notice of Intent] can now be 30–40 pages of NOI and CRMP, often repeating the same material each time. The sector overall is increasing policy and representation staffing.

Exporters can spend six months organising markets, vessels, livestock, transport, inspections and treatments, against tight and costly windows for ships, wharves etc. Previously, exporters could work with regional AQIS staff (SLEVOs) to develop action plans that suited the circumstances. Now, ‘uncertainty risk’ overlays operations and adds pressures; and ‘work around’ costs can be high.

...

A large consignment can take up to two months to organise. [CRMPs] are submitted well before the [ship] departs in fact they are required before sourcing begins but this is basically impractical as large consignment exporters usually buy animals especially sheep continually. As the dispatch date gets closer so the commercial impact of change increases. The bulk of regulatory effort occurs in the last few days where change has a commercially significant impact leaving little room for negotiation or appeal against regulator decisions which threaten to halt loading. Lack of expertise of the regulator and consequent poor decision

Continued next page

Box 3.2 (continued)

making at this juncture can add significant cost to the consignment. This is a legacy of the transfer of authority from the hands on AQIS regional vet ... to Canberra where expertise is not always sufficient.

...

Smaller vessels shipping back and forth to Australia were used for lower numbers of animals for specialised markets. These often had accommodation for a stockman, but not for a veterinarian as well. Possible on-board vet requirements reduced industry options to use these vessels. A number have relocated to work in European waters.

A vet on board can cost \$20 000 per 18 day shipment (including return business class airfares). This plus other costs has made air transport for small consignments 'viable'.

...

ASEL Standard 3 prescribes a new rule: "the location of the registered premises, used for inspection for 'leave for loading' must not be more than eight (8) hours journey time from the port of embarkation". Reasons are not given but this rule meant some exporters had to change preparation facility or port, at times at costs of \$50 000+ per shipment.

Effects on performance and innovation

While the new ASEL are similar to the former industry standards, there are now many government and non-government groups 'involved in the kitchen of the industry' including State Governments (prior role was for notifiable diseases, animal welfare) but no identifiable lift in industry delivery performance, just costs.

...

Our company had developed ISO accredited systems for operations including a 'livestock chain manual' which was ISA accredited and audited. It was outcome and result driven, with paperwork developed to provide a flow of instructions, checklists and record keeping for operators along the chain. Could implement innovations at any stage with an improvement request under the ISO system. This gave us operational and marketplace advantages especially exporting, say, to Japan. With the new government regulations we were running two processes – extra work for Manuals, NOIs, CRMPs and records. We could not use both, so dropped the ISO system and accreditation. Have discussed ISO with AQIS but seems 'too hard'.

...

Live exporting is a very variable business, involving large sums of money and investment. On one shipment, the exchange rate, livestock prices, the weather and shipping will all go well and we will make good money. On other shipments, just before sailing the exchange rate can change, or weather in Queensland will affect stock prices, and we will lose money on that shipment – but we must fill contracts, there are other suppliers – competitor countries. Our approach is to look to control costs on every aspect of the business – we must do that all the time – and the compliance and AQIS costs have jumped too much under the new system.

Source: Red Meat Industry (sub. 12B, pp. 30–3).

The South Australian Government also expressed concerns that the regulations are imposing unnecessary regulatory burdens on live sheep exporters and impeding development of the industry in South Australia:

There is no clear evidence that [changes to live export regulations] have indeed improved the welfare of sheep in the live export chain ... In so doing, unfortunately, the trade and the industry have suffered significantly. The trade has suffered to the extent that significantly fewer ships come to South Australia to pick up live sheep. Some SA sheep are exported via Portland in Victoria.

...

The most serious impost requires lambs and pastoral sheep exported in the May to October period to be kept in sheds rather than open yards for the five days of pre-shipment feedlotting. As there are no sheds in South Australia suitable for the purpose, this has effectively stopped export of the classes of sheep suitable for live export for that period. To construct sheds of an appropriate size would require a multi-million-dollar investment. (sub. DR50, p. 8)

Assessment

Regulatory changes in 2004 to the Australian Meat and Livestock Industry (Export Licensing) Regulations 1998, the Export Control (Animals) Order 2004 and the development of the ASEL reflect the Government's response to the Keniry report — a review into Australia's live export trade in 2003 (Keniry et al. 2003). That report arose out of concerns about high mortality rates on specific shipments of livestock exported to the Middle East and the impacts that this had on Australia's general livestock export trade and trading reputation.

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

The Keniry report made a number of recommendations including that:

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

DAFF noted that the Department consulted closely with major stakeholders during the development of the Government's response to the Keniry report, including on the development of the ASEL and amendments to the Regulations and on the implementation of the Keniry report recommendations (sub. 31, p. 9). DAFF also noted that a regulatory impact statement was completed in respect of amendments

to the Regulations. It further said that it continues to work with the industry to improve animal welfare regulations including through the Livestock Export Standards Advisory Committee, which comprises government, industry and community groups, and provides advice on amendments and review of the ASEL. It finally noted that industry convenes the Livestock Export Industry Consultative Committee, which considers industry concerns on regulatory and cost burdens.

DAFF also advised that the Export Control (Animals) Order 2004 has been revised twice since it was implemented to simplify regulatory processes. The first revision involved a reduction in the regulation of consignments exported by air due to the lower animal welfare risks for air transport compared with sea transport. The second revision introduced a more flexible arrangement for the regulation of cattle exports to avoid double handling just prior to export.

DAFF further advised that several reviews relating to the export of livestock regulation are planned or are in progress.

- A review to simplify licensing procedures under the Australian Meat and Livestock Industry (Export Licensing) Regulations is in progress and is expected to be completed in the early part of next year.
- Full reviews of the Regulations and the Export Control (Animals) Order are to commence in early 2008 in consultation within industry. Review processes are to be considered by the Livestock Export Industry Consultative Committee.
- A review is planned before May 2008 of the Livestock Export Standards Advisory Committee, which oversees the development of the ASEL. The review will consider the Committee's terms of reference, membership, method of operation, decision making processes, and the Technical Working Group's membership and method of operation.

RSPCA Australia 'strongly' supported the intention of the amended Regulations to ensure that livestock exporters meet minimal animal welfare standards. In addition to urging that the Standards be regularly reviewed, in the upcoming review of the Live Export Standards Advisory Committee, on which it is represented, RSPCA Australia noted that it will be requesting that the Committee's representation be broadened to include scientific as well as legal input to ensure that 'any revisions and recommendations are made in the best interests of the animals concerned. (sub. DR52, p. 1).

The Commission notes that — while not understating the significance of impacts for businesses in the export livestock industry of the regulatory changes flowing from the Keniry review — many of the impacts reported by the Red Meat Industry may well be an inevitable consequence of the bedding down of new regulations and

policy. These impacts need to be weighed against the objectives the regulatory changes are intended to address.

That said, given the nature of the reported impacts on business, the Commission considers that a follow-up independent evaluation of all new regulations flowing from the Keniry report, administered by DAFF/AQIS, would be worthwhile. The planned regulatory reviews are not likely to be sufficiently broad nor independent for this purpose. The follow-up evaluation should:

- focus on the Australian Meat and Livestock Industry (Export Licensing) Regulations 1998, the Export Control (Animals) Order 2004, ASEL, DAFF/AQIS licensing conditions and Export Advisory Notices
- be carried out by 2010, thus allowing a full five years of implementation following the Keniry report
- assess the extent to which regulatory objectives, including animal health and welfare objectives, are being achieved and at what costs to the community
- recommend cost-effective options for improvement including self-regulatory options
- be done by an independent panel and involve broad public consultation.

RESPONSE 3.10

There should be a follow-up independent evaluation of regulations arising from the Keniry Report that are administered by the Department of Agriculture, Fisheries and Forestry and the Australian Quarantine and Inspection Service by 2010. The evaluation should assess the extent to which objectives of the regulations are being achieved and at what costs to the community, and recommend cost-effective options for improvement including self-regulatory options.

This follow-up evaluation could be extended to a comprehensive review of all regulations affecting the export of livestock, which are administered by DAFF and AQIS, and the Marine Orders Part 43, which are administered by AMSA (see next). There would be merit in undertaking a more fulsome single review, to achieve consistent treatment of all regulations affecting the export of livestock and to avoid the duplication of review resources. However, the co-ordination requirements of such an omnibus review should not be at the expense of delaying any much-needed focused reviews of other areas.

High costs of the Marine Orders Part 43

The Red Meat Industry noted that ship owners and operators were concerned about Marine Orders Part 43, Cargo and Cargo Handling — Livestock and, in particular:

Increasing prescription in ship certification rules — without clear reason as Australia leads world practice. Changes to rules without critical evaluation of cost or competition effects on doing business for shippers, exporters and livestock industries. (sub. 12B, p. 25)

It also observed that since 2003, the number of livestock export ships working in Australian waters has fallen significantly, reducing competition.:

Shipping has been affected by rule changes such as on-board vets and new AMSA rules, plus fuel and exchange rate dynamics. A number of ships have “gone off the Australian run due to [an] increase in regulation end up on the South American or Chinese run supplying livestock from competitors” (sub. 12B, p. 34)

Specific areas of concern identified by the Red Meat Industry included:

- increasing severity of regulations and associated higher costs when benchmarked against world practices and ships trading as competitors in world markets
- amendments to the Marine Orders Part 43 to introduce set phase out dates for ships constructed before 1 September 1984
- requirements for more complex electrical power supply and animal effluent drainage arrangements applicable to existing ships from 2004
- the mandating of industry developed heat stress risk assessment model in the ASEL, referenced in the Marine Orders Part 43 (ASEL is covered in the previous section) (sub. 12B, p. 35).

The Red Meat Industry restated its concerns in its submission on the draft report (sub. DR59, pp. 10–11).

AMSA's response

In its general response to the Red Meat Industry submission, AMSA (sub. 49) noted that changes to the Marine Orders Part 43, including those areas of concern identified by the Red Meat Industry, were subject to consultation with its Livestock Advisory Committee and the Office of Best Practice Regulation. The Livestock Advisory Committee includes representatives from DAFF, AQIS, state departments of agriculture, livestock ship owners and operators, livestock exporters, livestock shippers and agents, Livecorp, the Cattle and Sheep Meet Councils, and the RSPCA.

As to some of the specific areas of concern identified by the Red Meat Industry, AMSA responded as follows:

- Increased redundancy of ship systems — In 2002, the Marine Orders were amended to increase ‘redundancy’ in ship systems by 1 January 2007 through ensuring that shipboard livestock services, particularly ventilation, are maintained at a level necessary for the welfare of livestock carried aboard. The change came about in response to several incidents of very high livestock mortality on certain voyages from Australia arising from the failure of ship systems to support the livestock on board. A five year implementation period was provided to allow existing livestock carriers to plan and carry out modifications to achieve compliance.
- Animal effluent drainage arrangements — In 2004, the Marine Orders were amended to implement new international environment protection standards — contained in the International Maritime Organization’s International Convention for the Prevention of Pollution from Ships (known as the MARPOL Convention) Annex IV, issued in September 2003 — in relation to livestock carriers. Ships certified to carry livestock and built or converted prior to September 2003 were given five years to comply with the new standards.
- Sunset clause for older ships — In 2006, the Marine Orders were amended to include a sunset clause for older ships, so that all livestock carriers should be required to comply by 1 January 2011 with the 1981 amendments to the International Maritime Organisation’s International Convention on the Safety of Life at Sea. The Convention’s amendments applied to vessels constructed on or after 1 September 1984. The aim of the changes were to prevent high risk, older vessels entering the Australian livestock trade in future, thereby undermining established safety and environmental standards of vessels.
- Relationship between ASEL and the Marine Orders Part 43 — AMSA supported the removal of certain animal welfare provisions from the Marine Orders Part 43 in the 2006 amendments, which are now covered by ASEL and administered by AQIS and DAFF. It noted that the ship master reporting requirement, although not required for ship safety, was retained in the Marine Orders Part 43 following representations by the Livestock Exporters Council, DAFF and the RSPCA.
- Self regulation as an alternative — As all livestock carriers loading livestock from Australian ports for overseas destinations are foreign flag vessels, AMSA considered that it would not be practical nor effective to expect them to implement and enforce self-regulatory mechanisms.

Assessment

There do not appear to have been any independent reviews that have comprehensively covered the Marine Orders Part 43. Two reviews that have touched on them have been the 2000 national competition policy (NCP) review of the *Navigation Act 1918* and the 2003 Keniry review of export livestock regulation. But these reviews have tended to concentrate on the animal health and welfare requirements in the Marine Orders Part 43; requirements flowing from such international treaties as the MARPOL Convention have not been reviewed. Although the Livestock Advisory Committee is established to review the content and operation of the Marine Orders and be consulted about all major proposed amendments, it is not fully independent as its membership includes industry stakeholders and regulators.

There is also a question as to whether regulation impact statement (RIS) requirements,⁶ administered by the Office of Best Practice Regulation and its predecessor the Office of Regulation Review, have been adequately complied with on every occasion the Marine Orders Part 43, or other related regulations, have been amended. For example, in relation to amendments in:

- 2002, that provide for greater redundancy in electrical power supply to ensure provision and maintenance of adequate services for livestock (particularly ventilation) the ORR reported non-compliance by AMSA with respect to RIS requirements at both the decision making and tabling stages
- 2004 that give effect to Annex IV⁷ of the MARPOL Convention in relation to sewage discharge by livestock carriers, the ORR reported non-compliance by the Department of Transport and Regional Services at the decision making stage but compliance at the tabling stage.

⁶ RIS requirements were first introduced by the Australian Government in 1997. The requirements made RISs mandatory for significant regulations that have the potential to affect business or restrict competition, including international treaties. They were the responsibility of agencies preparing regulation, with compliance monitored by the Office of Regulation Review. After 2006, RIS requirements were strengthened in response to the Regulation Taskforce report (2006). Key changes included: more rigorous cost-benefit and risk analysis for the assessment of the likely impacts of proposed new regulation imposed on business; improved arrangements for a whole of government approach to consultation with those likely to be affected by proposed regulation; the mandated use of the 'business cost calculator' for the systematic assessment of compliance costs; tighter gate keeping arrangements for significant regulatory proposals to ensure compliance with the new requirements (PC 2006a, p. xiv).

⁷ As this is an 'optional' Annex, and countries ratifying the Convention can choose not to accept the Annex and any amendments to it, a RIS was required. The Annex was enacted by the *Maritime Legislation Amendment (Prevention of Pollution from Ships) Act 2003* for which a RIS was prepared. A separate RIS was not required for the subsequent amendments to the Marine Orders Part 43.

Given the absence of a comprehensive independent review of the Marine Orders Part 43 and findings by the Office of Best Practice Regulation's predecessor of the inadequacy of some of the amendments to the Marine Orders, the Commission considers that there is a strong case for an independent review.

RESPONSE 3.11

There should be an independent review of the Marine Orders Part 43 and related regulations within three years. The review should assess the extent to which the objectives of the regulations are being achieved and at what costs to the community, and recommend cost-effective options for improvement including self-regulatory options.

3.7 Reef Water Quality Protection Plan

Growcom expressed concerns about the lack of delivery on a number of key actions within the Reef Water Quality Protection Plan and a lack of progress towards the Plan's goal, which is to halt and reverse the decline of water quality entering the Great Barrier Reef within ten years. It considered that 'perceived inaction will result in regulatory action by government' and that 'industry led approaches are the best mechanisms to deliver on-ground outcomes' (sub. 15, p. 21).

The Australian Government and the Queensland Government, following a Memorandum of Understanding, jointly developed the Reef Water Quality Protection Plan in 2003. Reports by the Productivity Commission (2003) and an interdepartmental committee science panel (2002) have been used as a basis for developing the Plan.

The goal of the Plan is 'halting and reversing the decline in water quality entering the Reef within ten years' (Australian Government and Queensland Government 2003, p. 6). The two specific objectives of the Plan are to:

- reduce the load of pollutants from diffuse sources in the water entering the Reef
- rehabilitate and conserve areas of the Reef catchment that have a role in removing water borne pollutants.

Strategies for achieving the Plan's goal and objectives cover self-management approaches, education and extension, economic incentives, natural resource and land use planning, regulatory frameworks, research and information sharing, partnerships, priorities and targets, and monitoring and evaluation. Specific actions with assigned responsibilities and milestones are identified for each of the strategies.

Implementation of the Plan is overseen by an interdepartmental steering committee comprising heads of government agencies (such as the Australian Government DAFF and DEW, the Great Barrier Reef Marine Park Authority, and the Queensland Government Department of Natural Resources and Mines, and the Queensland Environment Protection Agency).

Evaluation reports on the progress of the Plan are to be prepared by the steering committee to the Great Barrier Reef Ministerial Council. The first report was completed in 2005 with the second due to be completed in 2010. The reports are provided to the Prime Minister and the Queensland Premier.

The 2005 evaluation report on the Plan found that:

- ‘positive partnership arrangements’ between the Australian Government and the Queensland Government and with industry and regional national resource management bodies have been developed
- while not all actions under the Plan with 1 July 2005 milestones have been achieved (43 per cent were completed and 48 per cent were being implemented), progress is consistent with what is expected for ‘such a complex engagement-focussed initiative’
- with stakeholders generally not perceiving that the Governments are committed to implementation, there is need to providing ‘ongoing high level political support’ for the Plan (Australian Government and Queensland Government 2005, p. 4).

Among the recommendations of the report are that both Governments:

- recommit to the ten year time frame for the Plan
- improve consultation and communication with key stakeholders and the wider community about the Plan
- develop more effective partnerships with industry sectors, regional national resource management bodies and the wider community in implementing the Plan
- improve monitoring of land condition and the uptake of sustainable land use practices.

What follows is a consideration of three specific areas of concern raised by Growcom as well as DEW’s response (sub. DR76) to these concerns

No industry input or consultation on the Plan

Growcom expressed concern that there has been no industry input into the development of the Plan or revised actions and milestones, despite industry being

allocated a number of key actions and being the primary recipient of criticism about reef water quality impacts (sub. 15, p. 22). It recommended that industry be fully included in any planning process and funded to deliver water quality outcomes.

Assessment

In its response, DEW noted that, in finalising the Plan in December 2003, the Australian Government and the Queensland Government consulted with industry and that therefore, the focus of strategies in the plan are on the 'voluntary uptake by the relevant sectors of their industry's best practices (sub. DR76, p. 1),

DEW also agreed that industry does need to be 'effectively engaged' in the delivery of the Plan's actions. DEW advised that the recommendations in the evaluation report on the need to improve partnerships were accepted by the Prime Minister and the Queensland Premier and the ways this might be achieved and the proposed actions are with relevant Ministers in both governments for consideration (sub. DR76, p. 1).

The Commission considers that both the Australian Government and the Queensland Government should take immediate action to implement the recommendations of the 2005 evaluation report to:

- improve consultation and communication with key stakeholders and the wider community about the Plan and
- develop more effective partnerships with industry sectors, regional national resource management bodies and the wider community in implementing the Plan.

RESPONSE 3.12

Both the Australian Government and the Queensland Government should take immediate action to implement the recommendations of the 2005 evaluation report on the Reef Water Quality Protection Plan concerning consultation and communication, and the development of more effective partnerships.

Uncertainty about the contribution of horticulture to water quality

Growcom considered that there is a high level of uncertainty about the actual contribution of horticulture to poor water quality entering the reef (sub. 15, p. 22). It recommended that an assessment of the contribution of horticulture to poor water quality entering the reef be undertaken and that the Plan looks at all potential

contributors of diffuse pollution entering the reef catchment rather than focussing solely on agriculture.

DEW noted that the Australian Government supported this position and has been funding the development of water quality improvement plans in most of the high priority catchments discharging into the reef, with over \$20 million allocated since the Plan came into effect. The water quality improvement plans identify the contribution of all sectors, including non-agricultural industries, to declining water quality. The findings of these catchment assessments ‘continue to reinforce the findings of previous work that agriculture is a significant contributor to water quality decline’ (sub. DR76, p. 1).

DEW also noted that governments have been seeking to address point source contributions such as from sewage treatment facilities in parallel processes. Local Governments in the Great Barrier Reef catchment are required to upgrade their facilities, by removing nutrients, by 2010 under the Queensland State Coastal Management Plan (sub. DR76, p. 1).

The Commission considers that no further government action is required in relation to this concern.

Research gaps on optimum farming practices and water quality

Growcom was concerned that there are gaps about what the optimum farming practices are for many horticultural crops, particularly with respect to water quality outcomes (sub. 15, p. 22). It recommended that, as part of an integrated water quality program delivered by industry, research is conducted into the link between practices and water quality outcomes and into a benchmark of current practices to enable effective monitoring and evaluation.

DEW noted that the Australian Government has been supporting this position through the provision of significant funding to provide information in Queensland through science research programs such as the Marine and Tropical Research Facility, e-Water Cooperative Research Centre and the CSIRO’s Water for a Health Country (sub. DR76, p. 2). This information is being incorporated where applicable into the water quality improvement plans and regional natural resource management plans.

DEW also advised that the Queensland Government has a Memorandum of Understanding with the QFF through which industry sought and were given the responsibility for identifying best management practices for their primary production sectors (sub. DR76, p. 2). Governments have been providing financial assistance to industry, including to Growcom, in undertaking this work. One of the

responsibilities of industry under the Reef Plan is that they report back to government on how they are achieving this outcome.

The Commission considers that no further action is required in relation to this concern.

3.8 Security sensitive chemicals

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

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

Following the initial review, COAG in 2004 agreed to a national approach to ban access to ammonium nitrate, except for specified users. Under this approach, each jurisdiction would implement a licensing regime for the use, manufacture, storage, transport and supply of ammonium nitrate to ensure it was only accessible to those with a demonstrated and legitimate need.

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

Lack of consistency in regulation of ammonium nitrate

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

The NFF said:

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

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

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

The QFF called for a national framework to overcome the current inconsistencies:

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

Regulation has limited the use of ammonium nitrate by farmers

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

The VFF is concerned about the potential consequences for farmers and indeed the entire food production sector if the Government fails to regulate efficiently. An example is the unfortunate impact of the restrictions on Ammonium Nitrate on Horticulture. Farmers cannot access the product and alternative fertilisers are significantly more expensive and less effective.

New regulations are currently being developed for the usage of fertilisers which contain explosive related properties. The agricultural community has concerns regarding the licensing, transportation and storage of these fertilisers, especially the requirements placed upon producers who utilise them regularly. (sub. 13, p. 13)

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

DAFF (sub. DR74) noted that the availability of security sensitive chemicals had also been affected by the commercial decisions of the fertiliser industry.

Assessment

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

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

RESPONSE 3.13

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

Further regulation of security sensitive chemicals should balance risks and costs

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

Assessment

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

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

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

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

Irrespective of the regulatory framework used, it is important that there is consistency across jurisdictions in regulating these materials to avoid the problems associated with the regulation of ammonium nitrate and the need for further reviews. DAFF (sub. DR74) noted that the Australian Government's view as part of the COAG process in relation to the regulation of these chemicals was that any proposed framework should address the issue of inconsistencies across jurisdictions. Also, given the security implications surrounding the misuse of these materials and that it has been five years since COAG initially agreed to review the regulation surrounding their use, it is imperative that workable and effective regulation be put in place as soon as practicable.

RESPONSE 3.14

The regulation of other security sensitive materials is now being developed by COAG and an effective national regulatory regime needs to be put in place as soon as practicable.

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

3.9 Transport issues in agriculture

The states and territories are largely responsible for regulating road transport in such areas as road rules, vehicle standards and driver licensing. Many participants commented that, over time, the differences between these laws have increasingly become an impediment to movement between jurisdictions. Participants also considered that regulations relating to speed, mass and dimension limits on roads are overly prescriptive and that regulations relating to heavy vehicle driver fatigue are not fit for purpose for the agricultural sector.

Interjurisdictional inconsistency

A number of submissions argued that inconsistency in regulation is hindering the efficiency of transport systems, adversely affecting costs and international competitiveness. The Red Meat Advisory Council said that ‘interjurisdictional inconsistencies plague those who operate businesses dependent on cross-jurisdictional trade’ and that this is particularly the case for the transport sector, upon which the red meat and livestock industry heavily relies (sub. DR61, p. 2). The Red Meat Industry said that, despite intergovernmental promises to standardise road transport rules:

... regulatory inefficiencies continue to impact on trucking and user business costs nationally. Current (and likely widening) variation of these rules across States are major concerns. (sub. 12, p. 7)

The NFF said 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 transport/road authorities in areas such as header transportation guidelines, livestock loading, varying speed rules, multi-trailer restrictions and general permit thresholds ... which create inequities between transport in various state jurisdictions ...

There are currently 750 separate agencies across the nation responsible for controlling Australia’s 800 000 km of roads, representing a \$100 billion asset. Figures such as these are a concern for the farming community who every day are directly affected by inconsistencies in the regulatory transportation framework in which it operates. (sub. 24, p. 6)

The New South Wales Farmers’ Association supported efforts to harmonise transport regulations. However, it expressed concern that, while the National Transport Commission (NTC) has made inroads with the development of Performance Based Standards and national registration charges, there are a number of existing regulations that are not being addressed. Matters of continuing concern for primary producers include:

... inconsistencies between states on issues such as weight limits, dimension limits, treatment of agricultural machinery, volumetric loading for livestock, grain harvest management schemes, and concessional arrangements for primary producers. (sub. 27, p. 3)

Commenting on the inconsistencies in conditional registration the New South Wales Farmers' Federation said:

Conditional registration is provided by the NSW Roads and Traffic Authority for general use of headers and plough implements. These conditional registrations are subject to the machinery meeting the specified dimensions set by the Roads and traffic Authority. The dimensions set in NSW happen to be less than those of other states. This gives rise to the situation where a farmer transporting a header from Queensland to NSW during harvest becomes illegal once he crosses the border. (sub. DR69, p. 10)

The QFF added that there are also inconsistencies among states for registration categories such as seasonal versus conditional registration. 'Different states have different rules' (sub. DR57, p. 3).

Many comments on interjurisdictional inconsistency related to volumetric loading. The VFF expressed concern that, while there are volumetric livestock loading schemes in Victoria and Queensland, no equivalent scheme exists in New South Wales:

This adds an additional level of complexity and cost to interstate transport ... The VFF urges the National Transport Commission to encourage the introduction of volumetric livestock loading schemes in NSW in the interests of national uniformity. (sub. 13, p. 11)

The NFF argued that New South Wales livestock loading laws are 'holding up the reform process' and that they should 'quickly move towards the same guidelines as those used within Queensland and Victoria' (sub. DR60, p. 5).

The NTC noted that volumetric loading is not a legislated right in Victoria and Queensland, but occurs through bureaucratic discretion (gazettal) where the regulatory authority has assessed that this does not pose an unacceptable risk to safety or infrastructure. It suggested that:

... the assessment of the NSW regulatory authority may be that it is not able to grant the privilege of volumetric loading on the basis that to do so would pose an unacceptable risk to safety or infrastructure. The NTC is not seeking to defend the NSW decision to not grant the privilege/concession to the livestock industry in the same way that Victoria and Queensland (and others) have but simply tries to make the point that the use of the bureaucratic discretion by regulatory authorities is a risk management exercise, and the risks do change between jurisdictions, parts of the road networks, etc (e.g. due to stock of weaker bridges, traffic conditions, pavement types,

etc) meaning that the vehicle access outcomes between jurisdictions will be justifiably different. (sub. DR55, p. 1)

Exemptions from prescriptive mass limits allow primary producers to load livestock to the capacity of a vehicle. However, under current road pricing rules, there would be no additional charge for any additional mass that might result, and mass charges are linked to road wear, which may vary by type of road. Further, the NTC observed:

... due to differences in the risk environment the concessions afforded to the agricultural sector in respect of weight limits may need to differ between jurisdictions and between different parts of the road network. (sub. DR55, p. 3)

Whereas jurisdictions may make different judgments as to what is permitted, the Commission considers that the presumption should be for a single set of rules unless there are significant relevant circumstantial differences.

Prescriptive regulation

A number of participants expressed concern that prescriptive regulations on the speed, mass and dimension of vehicles are limiting the primary sector's capacity for the use of safer and more productive heavy vehicles.

The New South Wales Farmers' Federation stated:

Farmers are concerned that regulation in some areas has become very prescriptive with a focus on enforcement rather than achieving the underlying objective of the regulation. The Association is aware of situations where farmers have been fined for minor infringements where the actual safety or operation of the vehicle is not compromised. Regulations need to be outcomes focused. (sub. DR69, p. 10)

The VFF said that weight, height and length limits on regional roads are 'a major issue' for Victorian agricultural and horticultural producers:

Current regulations can, in some areas make it effectively illegal to transport produce or move machinery from one farm to another using these roads due to the setting of extremely low limits. These limits must be reviewed. (sub. 13, p. 9)

The Red Meat Industry said that a key issue 'is regulated weight limits on vehicles designed and loaded for ... livestock or grain carriage' (sub. 12, p. 7).

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

Regulations on Higher Mass Limit roads allowing for B-Double and Road train (and potentially B-Triple) access can have serious financial implications for regional businesses. In many cases, new truck technologies have demonstrated to actually have

a reduced impact on roads from larger vehicles which can deliver significant productivity efficiencies to the agricultural supply chain. (sub. 24, p. 7)

Vehicles with a gross vehicle mass (GVM) of up to around 45 tonnes are allowed general access to the road network. Vehicles above this limit are restricted to the parts of the network to which they are suited through individual permits or gazette notices. Road trains are provided restricted access in states in which their operation is permitted, except in the Northern Territory where they have general access.

Generally, there is no variation in speed rules between jurisdictions. Heavy vehicles (above 12 tonnes GVM) are speed limited to 100 kph, although road trains are speed limited to 90 kph in New South Wales, Queensland and South Australia, but not in the Northern Territory or Western Australia. A related issue is that road trains originating in jurisdictions with a 90 kph speed limit have their speed limiters set to 90 kph. Hence, if these vehicles cross into the Northern Territory or Western Australia they are unable to take advantage of the higher limit.

In the case of road vehicles and loads which fall outside regulated mass and dimension limits, a permit may be sought from a state road agency. This can result in some local differences. An evaluation of national regulations on over-size and over-mass vehicles was completed in 2006. The NTC is working with state and territory road agencies to resolve issues that were identified and to ensure that the regulations reflect current needs.

More specifically, the NTC's Performance Based Standards (PBS) reform program is seeking to develop a regulatory regime based on performance standards. On 10 October 2007, the NTC announced that PBS has been approved by all transport ministers, giving the road freight industry more flexibility to building safer and more productive PBS-consistent heavy vehicles (NTC website).

While road freight has been traditionally regulated by prescriptive vehicle mass and dimension rules, these are considered to be close to the limits of their usefulness. The PBS program focuses on how a vehicle behaves on the road, rather than its dimensions, through a set of safety and infrastructure protection performance standards. These provide the opportunity for innovative and higher productivity vehicles to be granted access to road networks based on performance rather than dimensions.

Under the national PBS reform, an operator can apply for access to the road network based on the vehicle's ability to stop, turn and travel safely without damaging roads or bridges. Applications will be considered by a national PBS Review Panel, comprising of representatives from each state and territory and the

Commonwealth. The NTC will undertake a further review of the scheme in 2008 to ensure the reform reaches its full productivity potential.

Fatigue and chain of responsibility regulations

Participants argued that fatigue regulations are prescriptive, burdensome and inappropriate for the agricultural sector. For example, the QFF said regulations covering heavy vehicle driver fatigue, particularly those that relate to work and rest limits and unplanned rest periods ‘... place a burden on the agriculture sector, are complicated, and fail to focus on the quality and type of rest’ (sub. 19, p. 12). It noted that the new national laws to manage heavy vehicle driver fatigue have changed the focus of policy from regulating hours to managing fatigue (sub. 19, p. 10). But it sees the fatigue management regulations as unrealistic for agriculture.

Safety on roads and farms is a priority for agriculture, however there are some characteristics of agriculture that mean that road-based regulation is not always appropriate. (sub. 19, p. 12)

The new national heavy vehicle driver fatigue laws were recently approved by the Australian Transport Council and are expected to be implemented in 2008. The regulations include:

- a general duty in road transport law to manage fatigue, consistent with current OHS laws
- chain of responsibility provisions extending to parties in the supply chain whose actions, inactions or demands influence conduct on the road including drivers, operators, employers, directors, loaders, schedulers, consignors and consignees as well as agents to any of these parties
- a much greater emphasis on opportunities for sleep and rest
- strengthened record-keeping provisions, including replacement of log books with a new driver work diary
- risk-based categorisation of offences and a revised range of sanctions
- enhanced enforcement powers
- three fatigue-management options providing alternative drive, work and rest hour requirements with variable levels of flexibility in return for increased fatigue management and compliance responsibilities on operators and drivers. (NTC website)

The QFF considers that the NTC may be underestimating the number of agricultural vehicles which mainly operate off-road but are subject to the same road regulations, including fatigue management and registration, for all truck and long distance travel

on roads. It sought a more flexible accreditation scheme for fatigue management. (sub. DR57, p. 3)

Further, the Tasmanian Forest Contractors Association cautioned that what is deemed to be good policy for New South Wales may not suit the Tasmanian road transport environment, and pointed to fatigue management provisions ‘which may be too complex for small businesses to effectively implement’ (sub. DR53, p. 1).

Regarding the Chain of Responsibility regulations the QFF commented:

These are useful in theory, to ensure that all parties in the supply chain take adequate responsibility for safety such as fatigue management. However the practical experience is that Chain of Responsibility has not delivered enough incentive for all players in the supply chain to take and demonstrate appropriate responsibility. (sub. 19, p. 13)

The VFF also said:

The chain of responsibility requirements have shifted some of the burden of compliance to rural producers. 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 business. (sub. 13, p. 9)

The NTC said that the national compliance and enforcement legislation was passed in October 2007 and is expected to be implemented in 2008. The experience to date in Queensland is based on local legislation which may not be as effective as the impending national legislation. Further, the NTC considers that the experience to date in New South Wales with Chain of Responsibility has been promising.

In response to comments in submissions about the new fatigue management policy, the NTC stated that:

... fatigue is an issue that affects all human beings regardless of the industry they work in. The new regulations are designed to address agricultural issues such as intensive (high risk) driving around harvest / market times, but low risk operations at other times. This was achieved by introducing flexibility to the prescribed hours provided the operator could demonstrate adequate risk management. Providing some form of ‘exemption’ for agriculture is potentially unsafe and is not endorsed by key agricultural advocacy groups such as livestock transporters. The complexity of the fatigue reform escalates with potential risk. In a low risk environment, the rules are very simple. Where extensive night work is involved, or drivers wish to work for very long periods, the rules are more comprehensive and small business may view them as more complex. The regulations are designed around *risk*, the *size* of a business is not relevant. (pers. comm., 26 October 2007)

Other matters

The Tasmanian Forest Contractors Association suggested that the balance between education and compliance in the transport sector is skewed heavily towards compliance, thus significantly increasing cost and resource burdens on businesses generally. It also noted that the interplay between the Regional Forest Agreements, the Tasmanian Community Forest Agreement, 29 municipal councils and their associated planning schemes, as well as various state legislative instruments and policies, can sometimes result in ‘varied, confusing and even conflicting messages that in turn create unnecessary and excessive burdens for forestry businesses’ (sub. DR53, p. 1).

Another concern raised by participants related to heavy vehicle accreditation in Western Australia. The Western Australia Farmers Federation commented:

The current Heavy Vehicle Accreditation business rules for WA rope in primary producers to comply with accreditation, fatigue and roadworthiness requirements, and audit requirements that is a high cost in time and dollars but with less than 15 000 road kilometres in any one year on average ...

Rewrite the business rules for the heavy vehicle accreditation system in WA to encompass an annual roadworthiness check for low annual kilometre use heavy vehicles and a time log book for driver fatigue management when over a 100 km radius from licensed address base. (sub. 17)

The Western Australian Heavy Vehicle scheme is unique to that state and thus is beyond the scope of this review. The national approach is to link accreditation to regulatory concessions, where appropriate, rather than to mandate accreditation. The national approach is currently under review, although there is little support for mandatory accreditation.

Assessment

Participants’ concerns regarding road transport regulation which are of relevance to this study include interjurisdictional inconsistency, the over-prescriptiveness of regulation, regulation that is not fit for purpose and too great a focus on compliance rather than on education. In broad terms, these issues hinge on whether there are adequate arrangements in place to work towards greater consistency and to reduce regulatory burden without compromising other objectives such as road safety and the efficient utilisation of infrastructure.

Australian governments have ongoing processes to develop and implement consistent road transport regulation. The National Road Transport Commission (NRTC) was established in 1991 to develop uniform arrangements for vehicle

regulation and operation, and consistent charging principles for vehicle registration. In 1995, road reform was absorbed into NCP.

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

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

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

While reform is ongoing, the NTC identified four sources of inconsistency between jurisdictions, namely:

- those that arise where legislation, regulations, rules and procedures have not been harmonised as part of national reform processes
- those due to jurisdictions not implementing, or selectively implementing, reforms agreed by the Australian Transport Council as an outcome of NTC reform projects. (For example, compliance and enforcement legislation was approved by the ATC in 2003 but at the time of writing, the legislation had been implemented in only three states. Also, Victorian legislation differs from the national model in providing 'a reasonable steps' defence for Chain of Responsibility provisions.)
- those that arise in situations where the risk environment is the same, but where there are differing judgments about what can and should be permitted
- those that reflect differences in the risk environment between jurisdictions (sub. DR55, p. 2).

The NTC said it seeks to address the first three of these. In respect of the last, it accepts that differences in the risk environment can result in different levels of access being provided by bureaucratic discretion, and seeks to focus on standardised risk management approaches that could be applied by jurisdictions.

In practice, the NTC considers there is mix of ‘justified’ and ‘unjustified’ differences between jurisdictions in respect to what they allow using their bureaucratic discretion.

Such differences that are clearly unjustified are typically most apparent at the borders between states – the risks are same either side of the border (at least within the local vicinity) but the rules are different. (sub. DR55, p. 2)

It is generally in the interests of industry to seek national uniformity in regulatory requirements at the point which allows the greatest degree of industry flexibility and then to seek additional concessions on a jurisdiction by jurisdiction basis. As pointed out by the NTC, alignment of concessions across jurisdictions is not always a preferred outcome as it may not reflect differences in risks.

The NTC is promoting better risk management practices through elements of its PBS reform program and through compliance and enforcement reform (for example, provision of registered industry compliance codes to assist in establishing a ‘reasonable steps’ defence). It views harmonisation of the process by which decisions are made and of the criteria applied by regulatory authorities as the best approach to eliminating or minimising unjustified differences that occur within jurisdictions due to decentralised decision-making about the granting of permits. It added that ‘the jurisdictions are more than aware of this’ (sub. DR55, p. 2).

Despite the progress that has been made, reform in certain areas remains slow. The NTC said that lack of timely implementation of agreed reforms remains a significant issue on the national reform agenda, adding that:

There are presently few financial or other incentives for jurisdictions to expedite agreed national reforms. The PC could consider making a statement about the importance of identifying incentives for implementing ‘agreed reforms’ to ensure that the desired outcomes are achieved and to ensure that the resources spent in developing national reforms do not go to waste.

RESPONSE 3.15

Although there are intergovernmental arrangements in place to address interjurisdictional inconsistencies in road transport, lack of implementation and inconsistent implementation remain significant problems.

However, the application of a rational risk-based approach to transport regulation may lead to some warranted differentiation in regulatory requirements between regions.

Matters of particular concern to participants include:

- *differences in volumetric loading rules among jurisdictions — some of these may reflect differences in the carrying capacity of road infrastructure*
- *the regulatory processes for road vehicles and loads that fall outside mass and dimension limits — these are matters for state road agencies*
- *overly prescriptive mass and dimension regulations — these have been addressed with the Performance Based Standards developed by the National Transport Commission and approved by all transport ministers in 2007*
- *the costs imposed on businesses by the chain of responsibility and fatigue management rules in relation to heavy vehicles — these appear to be unavoidable if health and safety objectives are to be served.*

3.10 Wheat marketing

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

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

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

Costs imposed by the single desk

The Red Meat Industry (sub. 12), representing the Australian Lot Feeders Association, were opposed to the single desk arrangements. It pointed out that these arrangements had a muffling effect on grain prices and the removal of the single

desk would increase competition and investment and improve the responsiveness of the grains industry to its domestic customers.

Australian Pork Limited (sub. 44) said that with grain costs representing 55 to 65 per cent of production costs, the single desk had damaging effects on the competitiveness of the pork industry. To compete, domestic users required access to feed grain at the same relative price as their competitors and, based on a report prepared by ACIL–Tasman (2007a), removing the single desk would produce savings of about \$15 per tonne in marketing costs.

Also, the Commission was told during consultations that the single desk resulted in higher management costs than in other grains. There was similarly a claim the arrangements resulted in Western Australian growers cross-subsidising other growers and, according to an earlier ACIL–Tasman (2005) report, removing such cross subsidies could improve returns for Western Australian wheat growers by up to \$11.70 per tonne.

Assessment

There has been a series of reviews of the *Wheat Marketing Act 1989*. However, as noted by the Regulation Task Force (2006) and the Productivity Commission's *Review of the National Competition Policy Reforms* (2005a), only the 2000 review examined the costs and benefits of the single desk arrangements in an independent and transparent process in accordance with NCP principles under the legislative review process.

The 2000 review (Irving et al. 2000) was conducted as part of the NCP legislative review process and found that the introduction of competition in the future would more likely deliver net benefits to growers and the wider community, but recommended that the single desk be maintained until a further inquiry was held in 2004. As it transpired, the 2004 Wheat Marketing Review (Williams et al. 2004) differed from a traditional NCP review in that it provided a confidential report to the Minister for Agriculture, Fisheries and Forestry and a highly summarised public report. Moreover, its terms of reference explicitly excluded analysis of whether the single desk arrangements should be retained, instead focusing on improving the existing arrangements.

The guiding principle of a NCP review should be that legislation should not restrict competition unless it can be demonstrated that the:

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

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

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

In response to the draft report, the New South Wales Farmers' Association (sub. DR69) called for the review to be conducted as scheduled in 2010 to allow some of the uncertainties to be resolved before taking any further action.

Although a further review under the NCP legislative review process is not scheduled until 2010, the Commission again endorses the need for such a review to be brought forward, particularly were the single desk arrangements to continue past March 2008.

RESPONSE 3.16

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

3.11 Animal welfare

The Australian Government takes the view that 'all animals have intrinsic value':

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

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

Progress in implementing rule harmonisation

Several submissions commented in general terms on the regulatory costs of animal welfare regimes. However, the Red Meat Industry identified it as a priority area for reducing regulatory burdens.

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

It added that it has major concerns with the way the regulatory framework for animal health and welfare has developed, and with differences in how rules are implemented between states stating that at an ‘operational level, there are significant variations across States in interpretation of animal welfare needs and circumstances’ (sub. 12B, p. 4). Moreover, it said that ‘even with multiple costly national forums, differences endure across Australia in implementation of rules’ (sub. 12B, p. 4). It said that Australia cannot afford rule harmonisation processes that ‘take ten years, and then don’t work’ (sub. 12B, p. 4). It sought action to achieve ‘a functioning, viable national animal welfare rule system by 2009’.

The Australian Animal Welfare Strategy

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

DAFF said that the goals of the AAWS are to achieve:

- an enhanced national approach and commitment to ensure high standards of animal welfare based on a concise outline of current processes
- sustainable improvements in animal welfare based on national and international benchmarks, scientific evaluation and research, taking into account changes in whole of community standards
- effective communication, education and training across the whole community to promote an improved understanding of animal welfare (sub. DR74, p. 5)

It added that the AAWS itself ‘has no direct regulatory impact’:

There are no regulatory bodies, regulations, procedures or rules directly associated with the AAWS; it is simply a strategy to assist government, industry and the community to achieve the three goals identified above. (sub. DR74, p. 6)

An implementation plan is now in place and six working groups (one of which covers livestock and production animals) have drafted separate action plans. It is here that the regulatory impacts are felt.

AAWS working group stocktakes

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

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

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

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

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

Proposed new animal welfare standards and guidelines

Animal Health Australia is managing the conversion of the Codes into new national welfare standards and industry ‘best practice’ guidelines, in consultation with industry and other stakeholders including state and territory governments. DAFF said that the new approach will help provide ‘clear, contemporary, adequate and consistent’ legislation and codes of practice across all jurisdictions (sub. 31, p. 10).

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

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

It added that:

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

Australian Pork Limited also expressed concern about delays in implementing agreed Codes across jurisdictions. It said that, while the Primary Industries Ministerial Council approved the new *Model Code of Practice for the Welfare of Animals – Pigs* in April 2007, little progress has been made to implement the Code at state level. It noted that the Code took three years to develop, but ‘[w]ith the current requirement that Codes be reviewed every five years, the actual implementation of the Code will only just be completed when the next review is due’ (sub. 44, p. 11).

It added that the development of the Code ‘has been an especially difficult process to complete’:

It was completed on a partial template of a newly designed process which was agreed to by all key stakeholders for consistency. The theory of consistent implementation in each state has been problematic as the Pig Code is effectively a “Clayton’s code”, being the last Code written under the previous method of code development but also embodying aspects of the new code development template. The PIMC agreed to the establishment of an Implementation Working Group (IWG) from all jurisdictions to ensure consistent implementation in each state, but progress has been slow due to different state approaches to animal welfare regulation and individual interpretation of agreed outcomes. (sub. DR66, pp. 11–12)

It said that the delays have affected the industry’s competitiveness and its investment environment. It added that efficient mechanisms must be in place to

allow timely implementation and ‘it is imperative that legislation can be implemented consistently and harmonised across states’ (sub. 44, p. 11).

DAFF responded that industry is represented on the Pig Code Implementation Working Group

... and agreed to the timing to implement those standards identified by jurisdictions as requiring regulation by 20 April 2009. The [Implementation Working Group] also agreed to ‘give effect to the Code through current regulatory mechanisms for use in the same fashion as existing Codes by 1 March 2008’. (sub. DR74, p. 6)

RSPCA Australia said that, despite the AAWS process having made ‘a slow start’, it has managed to bring together a wide range of stakeholders who discuss animal welfare issues in an open and frank manner on a regular basis. It acknowledged that the nature of the livestock transport Codes currently under review is such that they cover a wide range of species and thus have been especially difficult to progress. It said that:

RSPCA Australia will be urging the Australian Government to ensure that the livestock transport standards (currently under review) are incorporated into nationally consistent legislation within two years of the endorsement of the Standards. (sub. DR52, p. 1)

However, it expressed concern about the process by which the standards are being developed, noting that:

... there has been significant deviation from the agreed terms of reference resulting in the intended facilitator of the process (Animal Health Australia) now having sole responsibility for the drafting of the document rather than the original, and more independent, Writing Group. (sub. DR52, pp. 1–2)

Australian Pork Limited said that ‘there has been a lack of consultation with the livestock industry members in relation to changes made unilaterally by the Standard Writing Group’. While the regulatory reform and process was agreed to in principle, Australian Pork Limited ‘believes that the agreed process has not been consistently followed through’ (sub. DR66, p. 11).

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

DAFF advised that the AAWS was endorsed by the Primary Industries Ministerial Council in 2004 as ‘the first national blueprint for harmonised improvements in animal welfare practices’ (sub. DR74, p. 6). It noted that the AAWS National

Implementation Plan ‘has prioritised the order in which activities should be completed’, but extensive consultation with stakeholders has meant that ‘the process has taken longer than originally expected’. It said that the Land Transport Standards are the first to be converted and ‘will be a guide for future code conversions’. DAFF added that, while it is expected that subsequent standards will be developed more rapidly, ‘there is a limit on how quickly the process can be completed. It is intended that the standards development should be completed by the end of 2010’ (sub. DR74, p. 6).

Assessment

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

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

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

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

It is not clear why future industry-specific Codes could not be developed and implemented in each jurisdiction within shorter timeframes, depending on such factors as industry cooperation and the need for new scientific information. This view was supported by RSPCA Australia, which expressed optimism that future Code reviews ‘will be more streamlined and that the problems occurring with the

current review of livestock land transport Codes will have been significantly reduced' (sub. DR52, p. 2).

Australian Pork also agreed that there is scope to implement the AAWS in a more timely manner:

This process has been hampered by the fact that the states and territories have primary responsibility for animal welfare. One major issue is the need for harmonisation of the regulatory framework. (sub. DR66, p. 11)

In response to the draft report, the Red Meat Industry reiterated that there needs to be a full overhaul of the AAWS process, working from good regulatory principles:

This should include: scoping the problem/s; analysing current and planned responses; and for each option (such as levels of prescription) examining benefits/costs, impacts on stakeholders, fit with industry initiatives and research, and addressing questions such as funds for auditing of enterprises and households if proposed. Outputs of an overhaul should include a new process, plus a public timetable reported against by all parties with reasons ... (sub. DR59, p. 6)

RESPONSE 3.17

There appears to be scope to more quickly develop and implement animal welfare standards under the Australian Animal Welfare Strategy.

3.12 Drought support

Australian governments provide a range of drought assistance under the exceptional circumstances (EC) arrangements — these are rare and severe events outside those a farmer could normally be expected to manage using responsible farm management strategies.⁸ Those farmers operating in EC declared areas are eligible for EC relief payments and EC interest rate subsidies. Small business operators that derive 70 per cent or more of their gross business income from supplying goods and services to EC declared areas are also eligible for EC assistance. Professional advice and grants are also available for drought management and recovery for farms in these areas.

Problems in applying for drought support

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

⁸ The EC declaration is made by the Minister for Agriculture, Fisheries and Forestry based on recommendations from the National Rural Advisory Council made up of Australian and state governments and farmer representatives.

interest rate subsidies. These included:

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

The VFF recognised that while there was a certain level of rigour required in providing government support it should not dissuade those that are vulnerable and in need of the support from applying. It went on to note that the solution to the above problems was in government departments adopting service charters, including measures to improve services such as 1800 numbers and guaranteeing that calls are answered in three minutes (sub. 13).

In response to the draft report, there were further calls from participants to remove duplication in the administration of drought support. For example, the VFF (sub. DR68) called for the removal of duplication in applying for drought assistance as a matter of urgency.

The QFF (sub. DR57) commented that the current differences in eligibility criteria and administrative arrangements between the EC relief payments and EC interest rate subsidies gave rise to added stress and frustration for farm families and the broader rural community. It added that ‘it is more than just the avoidance of duplicated applications that is needed. Applicants need to be presented with only one set of eligibility criteria as well’ (sub. DR57, p. 5).

Australian Pork Limited (sub. DR66) called for the identification of opportunities for harmonisation and consistency in drought assistance measures across jurisdictions to ensure that no one industry is unfairly disadvantaged.

On the broader drought support policy issues, DAFF (sub. DR74) advised that the Primary Industries Ministerial Council was currently reviewing the uptake of all drought support measures provided by the Australian, state and territory governments.

Assessment

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

DAFF considered the current eligibility criteria to be appropriate.

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

In responding to the draft report, DAFF (sub. DR74) said that it was continually working towards reducing the administrative complexity of drought support programs where possible. However, drought programs addressed a range of target groups and required different expertise and experience to administer. As this expertise was often spread across several agencies, the result was that different agencies administered different programs on behalf of the Australian Government.

The separate eligibility criteria and administration of the EC relief payments and the EC interest rate subsidies are a result of their different objectives. EC relief payments are to provide income support and are administered by Centrelink which has the responsibility for administering and assessing eligibility for the majority of the Australian Government’s income support measures. EC interest rate subsidies are to provide business support to farms that are viable in the long term, but are in financial difficulties due to an EC event. The state rural adjustment authorities administer and assess eligibility for the EC interest rate subsidies as they have the more appropriate skills and knowledge of the agricultural industry to assess the long term viability of a farming enterprise.

However, there may be scope to streamline support through adjustments to administrative arrangements. For example, the state and territory rural adjustment authorities and Centrelink could provide application forms for both EC relief payments and EC interest rate subsidies. DAFF (sub. DR74) agreed that this was possible, but noted that the application forms and the client base for EC relief payments and EC interest rates subsidies varied.

To the extent possible the duplication of information required from those applying for Centrelink services should be avoided. For example, when simultaneously applying for EC income support and professional development support, common information requirements could be shared, taking into account privacy issues, rather than have to be repeated in each application.

Also, to particularly assist those with properties that straddle state borders, state governments could consider adopting a single application form for the EC interest rate subsidies. DAFF (sub. DR74) commented that a single application could potentially be adopted by the rural adjustment authorities, but noted that owners of properties straddling state borders are only eligible to lodge the one application to avoid 'double dipping'. In assessing an application for the EC interest rate subsidy, the state rural adjustment authority takes into account all parts of the property regardless of the location.

As to improving service, Centrelink has a customer service charter in place and is actively seeking to improve its service levels, particularly for those in rural and regional areas. For example, it has recently introduced specialist rural service officers to assist applicants through the EC application process and established a branch to improve communication with customers and business by improving access and reducing red tape (DR. 63). Centrelink and most rural adjustment agencies and authorities provide toll free 1800 phone numbers and Centrelink call centres have a target to answer 70 per cent of calls within 2.5 minutes. In 2005-06, 57 per cent of calls were answered within this period which increased to 72 per cent in the following year (Centrelink call centre performance, web site).

RESPONSE 3.18

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

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

3.13 Occupational health and safety

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

Complex and inconsistent regulation across jurisdictions

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

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

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

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

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

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

And the QFF said:

The State Government is currently in the process of progressively removing all rural industry exemptions for OHS laws at the behest of the union movement in line with national agreements on OHS. This will increase costs for farmers. For example, the proposal to remove the exemption from prescribed occupations would require farmers to obtain licences to drive all load shifting equipment on farms, such as forklifts, backhoes etc. ...

The increasing complexity of Workplace Health and Safety legislation makes it more difficult for small business to be compliant. (sub. 19, pp. 3, 6)

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

The refusal of the NSW Government to prioritise harmonisation of its OHS legislation with that of other States threatens the process of providing greater regulatory efficiency in OHS across Australia.

The replacement of the absolute duties of care with duties limited to that which is “reasonably practicable” would bring NSW OHS law in line with most Australian jurisdictions and repair confidence of the law within the rural sector. (sub. 27, p.18)

While, the QFF stated:

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

The NFF submitted:

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

Similarly, the VFF commented:

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

Assessment

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

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

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

Subsequently, COAG placed OHS on a list of cross-jurisdictional regulatory hot spots and the National OHS Strategy 2002–2012 was agreed to by the Australian Government, state and territory governments, the Australian Chamber of Commerce and Industry and the Australian Council of Trade Unions. A timeline for the development of national OHS standards is in table 3.2.

Table 3.2 Timeline for the development of national OHS standards

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

Source: COAG (2007a).

States and territories use the Strategy as a key component of their business plans, and as a basis for conducting nationally coordinated compliance campaigns in

targeted industries. The Strategy sets clear and measurable targets to reduce the incidence of work-related fatalities by at least 20 per cent and workplace injury by at least 40 per cent, by 30 June 2012. A nationally consistent regulatory framework is identified as an area that will contribute to achieving the targets of the strategy.

RESPONSE 3.19

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

3.14 Food regulation

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

Australia's current food regulation system was established following the Blair Review (1998) which found that the regulatory framework surrounding food was complex and fragmented. In response, a reform package was developed which included an intergovernmental agreement to regulate food standards signed by COAG and New Zealand subsequently joined the system via a treaty. The Australia and New Zealand Food Regulation Ministerial Council was established, responsible for developing food policy and Food Standards Australia New Zealand (FSANZ) was established with the responsibility for developing food standards. The food regulation system is a cooperative arrangement between the states, territories and the New Zealand and Australian Governments. However, in Australia, the enforcement of food standards is the responsibility of the states and territories. The Australian Government has no constitutional power to regulate domestic food supply.

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

Inconsistency and timeliness

In relation to inconsistency, Virginia Horticulture Centre said that '[f]ood standards regulation should be implemented uniformly and enforced consistently across all levels of government' (sub. 32, p. 14).

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

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

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

Past experiences have demonstrated that adoption and enforcement of food regulatory standards at state and territory levels is very inconsistent, resulting in confusion between states and negative impacts on the industry. Growcom believes there should be a national framework that reduces confusion, duplication of effort and the wast of resources. (sub. 15, p. 36)

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

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

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

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

The VFF supports the harmonisation of these regulations providing there is sufficient flexibility to accommodate geographical differences, and to avoid additional red tape.

An example of this can be drawn from the egg industry, where regulations in Queensland stipulate that it is necessary to keep eggs at a different level of humidity from what is required in Victoria. Maintaining sufficiently flexible Primary Production Standards will ensure good food safety practices in each State. (sub. 13, p. 20)

In contrast, Coles Group (sub. 9) pointed to instances where certain products such as egg and egg production standards had been subject to overly prescriptive and

state based regulation which could introduce added complexity for national retailers and increase costs for consumers.

Assessment

Australia's food regulation has been subject to considerable scrutiny in the past decade. The Blair Review (1998) recommended creating an integrated and coordinated regulatory regime with nationally consistent laws. In response an intergovernmental food agreement was developed in 2001 to develop nationally and trans-Tasman consistent food regulation. The Food Regulation Agreement defines the provisions of the Model Food Act which should be adopted uniformly by all jurisdictions and which are optional. The intention of COAG has been to promote consistency across jurisdictions rather than uniformity.

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

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

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

concerning inconsistency, governance arrangements and enforcement of food regulation (Australian Government 2006a).

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

The issues raised with the Commission by participants are currently being examined by the Bethwaite Review. However, a number of participants attending a roundtable to comment on the draft report expressed concern at the delay in releasing the final report given their understanding that the report was to be finalised and released earlier in 2007. The NFF said:

... [it] lodged a submission for the Bethwaite Review in February 2007, however we are still yet to receive any form of feedback on its status. (sub. DR60, p. 4)

The VFF in discussing the lack of feedback on the NFF submission made to the Bethwaite Review said that '[i]t is vital that industry is provided with updates on the status of reviews' (sub. DR68, p. 1).

At this stage, the Commission considers that the Bethwaite Review is the most appropriate means by which to examine these issues and make policy recommendations. However, given previous experience in food regulation, it is important that there is a post-review monitoring process to ensure that those recommendations accepted by Government are implemented in a timely manner.

RESPONSE 3.20

Food regulation concerns are currently being examined by the Bethwaite Review. Its current status and timelines should be made publicly available and widely circulated through industry.

Inconsistencies between domestic and imported food

The consistent treatment of domestic and imported food was also an issue and a number of participants called for imported food to be subject to the same regulations and standards as domestically produced food. Virginia Horticulture Centre said that 'first and foremost imported produce being traded within Australia should meet the same or more stringent regulations and standards as domestic produce' (sub. 32, p. 16). The VFF commented that 'food imported from other countries must be subject to the same food safety standards which apply to Australian produced food' (sub. 13, p. 22).

Australian Pork Limited were of the view, ‘that meat imports still do not undergo the same treatment for domestic food’ and called for a strengthening of import protocols to ensure that Australian food safety standards applied equally to Australian and imported food. (sub. DR66, p. 17). It commented that the PESTICID screening process used on imported meat to detect pesticides and antibiotics was not as stringent as the National Residue Survey — Pig Monitoring Scheme which is applied to domestically produced pig meat. A further issue for Australian Pork Limited was that there was a lack of industry consultation into the rationales for decisions made for changing food import testing requirements (sub. DR66).

In response, AQIS noted that imported food is subject to the same standards as domestically produced food and said:

This is because all food sold in Australia, whether produced domestically or imported, must comply with the standards in the Australia New Zealand Food Standards Code. (sub. DR79, p. 1)

In regard to imported pigmeat, it commented that:

The testing that occurs for imported pigmeat is a chemical screen applied to consignments referred to AQIS at a rate of 5 %. No comparable regulatory inspection and testing regime occurs domestically. The NRS program is not regulatory testing but is a residue monitoring program designed to facilitate market access.

Much of the testing done under the NRS program would not be valid on imported pigmeat, as it is generally done on offals which are not imported into Australia. (sub. DR79, p. 1)

Assessment

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

If imported food was subject to lesser standards than domestically manufactured food it could pose a health risk to Australian consumers and place domestic producers at a competitive disadvantage. In contrast, subjecting imported food to more stringent standards would provide domestic producers with a competitive advantage, disadvantage consumers and impact on Australia’s international trade obligations.

There appears to be misconceptions surrounding the testing of food imported into Australia. DAFF and the Department of Health and Ageing should make clear that imported food is subject to the same standards as food manufactured in Australia.

There are misconceptions as to the standards applied to imported food. The Department of Agriculture, Fisheries and Forestry and the Department of Health and Ageing should take steps to ensure that the industry is fully aware that imported food and food manufactured in Australia are subject to the same standards.

Inconsistencies in regulation between FSANZ and APVMA

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

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

Assessment

There are clearly inconsistencies between FSANZ and APVMA regarding maximum residue levels in fresh food and produce. However, recent amendments to the *Food Standards Australia New Zealand Act 1991* are intended remove unnecessary duplication by allowing the APVMA to refer applications regarding residue limits directly to FSANZ.

Recent amendments to the Food Standards Australia New Zealand Act 1991 are intended to overcome inconsistencies between food standards and chemicals regulation in regard to maximum residue levels in fresh food and produce. These issues are being examined by the separate Commission study of chemicals and plastics.

3.15 National Livestock Identification System

The NLIS is Australia's system for identifying and tracing livestock by way of electronic ear tags. It is a permanent whole-of-life identification system that enables

animals to be tracked from property of birth to slaughter. The scheme is state-based, but underpinned by nationally-agreed performance standards, including a *National Code for the Operation of the NLIS* (July 2005). It is now operational for beef cattle and is being progressively implemented for sheep and farmed goats.

The Primary Industries Ministerial Council said that the agreement to establish a national framework for livestock identification and tracing was driven by food safety considerations, the need to identify and trace cattle movements to control a disease outbreak and to maintain access to key overseas markets and to stay ahead of competitors (PIMC 2003, p. 22). Queensland estimated the cost of implementation in that state to be of the order of \$32.5 million per year, but saw this as more than justified by the resultant benefits. The costs are largely borne by industry, although some initial government subsidies were provided.

Industry dispute over the need for NLIS in its current form

The Australian Beef Association sees the NLIS as a flawed and costly system. In its view, reverting to the older tail-tagging method would allow the scheme's objectives to be more cheaply and effectively achieved (sub. 3). A New South Wales farmer, Mr David Parfett, said that the NLIS legislation is poorly designed, complex and unworkable. In his view, 'some further analysis of the costs of this system would be warranted' (sub. DR64, p. 5).

Others argue there are public and private benefits accruing from the NLIS. A submission by the Red Meat Industry said that studies of the NLIS 'showed potential for significant producer, industry and public benefits' (sub. 12, p. 11).

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

RSPCA Australia said it supports the NLIS as it enables cattle movements to be traced in the event of a disease outbreak, thereby ensuring an effective response and minimising the impact on animal welfare. For that reason, it also supports the expansion of the scheme to include all commercial livestock being transported off their property of origin (sub. DR52, p. 2).

The VFF viewed the NLIS as one of the schemes that have ‘formed the backbone of the food safety in the red meat industry’ (sub. 13, p. 20), while the NFF pointed out that the industry ‘led the push’ for such a scheme:

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

It added that, while the livestock industry acknowledged that complying with the NLIS involved costs for farmers, they recognised the need for such regulation. Nevertheless, the NFF argued that industry should work to simplify the NLIS (sub. 24, p. 4).

The Red Meat Advisory Council said that ‘an overwhelming majority of industry operators and governments in Australia recognise the NLIS as the next generation’ of minimum requirements for access to many of our industry’s markets.

For 30 years the tail-tagging system served its purpose well ... [the NLIS] is a far more advanced and efficient means of animal identification and tracking than the tail-tagging system ever was or could ever be. It costs more money ... but these costs will pale against the benefits of the NLIS should there be future threats to our market access. (sub. DR61, pp. 2–3)

The Red Meat Industry said it is conscious of:

... cost and red tape issues raised at times by some primary producers, industry associated businesses and organisations, and recognises the need to routinely review regulations, especially as circumstances change. (sub. DR59, p. 12)

The Department of Primary Industries (Victoria) said that ‘while the NLIS imposes a burden ... the system provides a clear net benefit’, adding that it ‘will take active steps to review both the effectiveness and the burden imposed by its regulatory scheme’ (sub. DR75, p. 2).

Recent reviews and government decisions

In December 2006, PricewaterhouseCoopers (PWC) noted the importance to Australia’s exports of its disease-free status and said that an outbreak of a serious disease, such as bovine spongiform encephalitis or foot and mouth disease, would likely result in exclusion of Australian beef from major export markets for some time. It cited evidence from Victoria’s Department of Primary Industries that there is a major disease outbreak in Australia roughly every four years (PWC 2006, p. 6) and, after reviewing some cases from the 1990s, concluded that ‘... Australia would have lost access to a number of significant international markets (principally the EU

and Japan) had it not implemented a more effective livestock tracing system' (PWC 2006, p. 7).

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

The Government pointed to the scheme's 'enormous benefit' in record keeping and tracking of livestock movements during the outbreak of bovine johnes' disease in Western Australia in 2006 (McGauran 2006). It acknowledged that there had been earlier complaints about the NLIS, but added that the PWC audit was undertaken 'to get to the bottom of these claims':

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

Nevertheless, it said that the NLIS will continue to be monitored (McGauran 2006). Indeed, DAFF advised that the states and territories provide quarterly monitoring reports on all aspects of the system — such as tag readability and saleyard uploads — to the Department.

Recent 'Cowcatcher' trials indicate that the NLIS has improved livestock traceability against PIMC-endorsed performance standards. However, the Australian Beef Association and Mr Parfett strongly disputed the value of these trials (ABA 2007; sub. DR64, p. 3). The Department plans to hold regular exercises similar to Cowcatcher.

Assessment

The merits of the NLIS were heavily debated when initially proposed and the implementation has progressed considerably since then. Aspects of the scheme have been reviewed on several occasions and government monitoring is ongoing. Australian governments and the industry generally have indicated their support for the scheme. There appears to be general recognition of the benefits it provides.

RESPONSE 3.23

The Primary Industries Ministerial Council should continue to monitor the National Livestock Identification System to assess its efficiency and effectiveness in meeting the needs of industry and the community.

3.16 Temporary labour

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

Assessing the working eligibility of overseas visitors

Growcom (sub. 15), the NTHA (sub. 25), and the QFF (sub. 19) commented that assessing the eligibility of backpackers and other overseas visitors to work in Australia was time consuming and is a problem when a farmer or grower employs a large number of workers for a short period of time on a seasonal basis.

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

Assessment

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

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

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

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

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

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

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

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

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

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

RESPONSE 3.24

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

The costs of administering compulsory superannuation requirements for overseas visitors engaged in casual and seasonal work

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

In light of these concerns, participants suggested a number of policy changes. Growcom called for seasonal and casual workers on working holiday maker visas to be exempt from the superannuation guarantee system (sub. 15). The NTHA supported this, on the grounds that administering the superannuation requirements for working holiday makers was excessively cumbersome and costly and it was unlikely that these workers would receive any benefit from the superannuation guarantee as their employment in Australia was sporadic and short term (sub. 25).

Assessment

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

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

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

Another way to reduce the compliance costs associated with the superannuation guarantee is via the threshold. At present, employers do not have to make superannuation contributions for employees who earn less than \$450 a month. The earning threshold of \$450 was introduced in 1992 as part of the arrangements to reduce administration costs. To reduce compliance costs for employers and for

funds administrators, the Regulation Taskforce (2006) recommended increasing this threshold to around \$800 a month — this represented approximate indexation to average weekly ordinary time earnings since the introduction of compulsory superannuation in 1992 — and subjecting it to periodic review. In its response, the Government did not agree to the recommendation as it would have a negative impact on the retirement savings of low income employees.

In responding to the draft report, the NFF (sub. DR60) commented that indexation of the threshold would allow the legislation to deliver on its original policy intent.

The Commission acknowledges that increasing the superannuation guarantee exemption threshold would reduce superannuation guarantee coverage and may disadvantage some long-term casual and part-time workers. However, increasing the threshold and further periodic review is warranted as the compliance costs in these instances may be disproportionate to the benefit received by the employees. This would mitigate the effects of inflation on the exemption and reduce the regulatory creep associated with arrangements. Determining the appropriate increase to the threshold will require a process that balances the need to protect the retirement savings of low income employees with the compliance costs associated with the arrangements.

RESPONSE 3.25

To reduce the administration costs and regulatory creep associated with the superannuation guarantee requirements, the monthly earnings threshold should be increased through an appropriate process and subject to periodic review established by Treasury.

The taxation treatment of non-residents versus residents

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

In a similar vein, the NFF (sub. DR60) commented that aligning the taxation rates of residents and non-residents would enhance compliance, lower administration costs, assist in attracting casual labour into agricultural industries and provide working holiday makers with more income to spend in Australia.

Assessment

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

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

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

RESPONSE 3.26

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

Complaints concerning the skill requirements to access the 457 visa program

The horticultural industry expressed concerns about their difficulties in accessing Australia's temporary overseas employee program. In particular, the skills required by the industry were not reflected in the ASCO (Australian Standard Classification of Occupation) codes used to specify minimum skill levels. Growcom said that the 'types of specialisations and roles of skilled workers within this industry do not usually fall within the classifications set out in the ASCO codes' (sub. 15, p. 15). It went on to note that the types of skills and qualifications required by those working in the horticultural industry could fall within many fields ranging from biology, botany, chemistry and natural resource management to finance, business and workplace planning (sub. 15).

To enable greater access to the 457 visa program, which enables employers to sponsor overseas workers to work in Australia on a temporary basis, Growcom called for the ASCO codes to be changed:

Changes to the ASCO codes to accurately reflect occupations and associated skill requirements in the horticulture industry would significantly increase horticulture employers' ability to access the 457 visa program. (sub. 15, p. 15)

Assessment

To sponsor an overseas worker in Australia under a 457 visa, employers are required to meet a number of requirements relating to their business and employment activities. In addition, the position to be filled has to meet a number of requirements including a minimum skills threshold. This is based on the ASCO major groups 1 to 4 which include managers and administrators, professionals, associate professionals and tradespersons and related workers. In effect, to be eligible for the 457 visa the employer sponsored overseas worker would at a minimum require some type of formal qualification. Deletions and additions can also be made to the ASCO 1 to 4 occupations under immigration regulations.

In regional areas, the skill requirements are set at a lower level. Employees at ASCO skill levels 5 to 7 — advanced and intermediate clerical and service workers and intermediate production and transport workers — are eligible for sponsorship. Regional areas for the purpose of the 457 visa have been defined very broadly and in effect are any area outside the major capital and regional cities (Parliamentary Library 2007).

The ASCO codes were developed jointly by the ABS and the Department of Employment and Workplace Relations, and its predecessors, as the basis for the standard collection, analysis and dissemination of occupational statistics. These codes have been updated to reflect changes in the labour market and the emergence and decline of certain occupations. The first edition was produced in 1987 and updated in 1997. This second edition was updated and replaced by the ANZCO codes in 2006 to include New Zealand occupations. The Commission understands that these codes will be used in relation to determining minimum skill thresholds applying to the 457 visas. There are also provisions to update specific occupation descriptions where there are significant user requirements to warrant making a change between major updates.

Also, those occupations containing small numbers are unlikely to be included in the codes. To operate as an effective statistical classification tool there needs to be around 300 individuals who identify as being in that occupation to be classified as an occupation for the code.

There is a degree of flexibility in the use of the ASCO codes and the minimum skill requirements surrounding the 457 visa to enable employers, particularly those in

regional areas, to sponsor overseas workers. The extent to which employers are unable to access the 457 visa program due to the classification of skills under the ASCO codes or require access to lower skilled workers through the program is matter for immigration policy and consultation between the Department of Immigration and Citizenship and the relevant employers. There are also opportunities to access lower skilled labour via the working holiday maker program.

Any matters arising from this process which have a material bearing on the ANZCO codes should be forwarded to the ABS and the Department of Employment and Workplace Relations.

RESPONSE 3.27

Establishing minimum skill requirements to enable access to overseas workers through the 457 visa program is a matter for consultation between the Department of Immigration and Citizenship and the horticultural industry and other relevant employers.

Other related concerns

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

Growcom called for certain areas of Queensland, such as the Sunshine Coast where horticulture is undertaken, to be included as ‘regional Australia’ to enable workers on working holiday maker visas to apply for a second visa if having worked in these areas for three months (sub. 15).

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

Assessment

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

Centrelink reporting requirements

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

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

Assessment

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

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

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

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

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

It is also currently exploring introducing a system to enable employers to electronically transfer information to Centrelink and concept trials are being carried out (sub. 47). Following the draft report, Centrelink commented that it was developing the capability to better cater for the needs of employers to meet reporting requirements including a portal mail box that will enable employers of all sizes to respond to requests electronically (sub. DR63).

RESPONSE 3.28

Centrelink has taken steps to address employer concerns surrounding reporting requirements. In addition, it is developing electronic information transfer systems and has indicated that these will be available to all employers regardless of size, capability and volume of reporting.

3.17 Biodiesel

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

Testing of on farm-produced biodiesel

A number of participants during consultations with the Commission pointed to the regulatory impediments facing those involved in the on-farm production of biodiesel and its on-farm use. These concerns centred on the requirement to test biodiesel, and the cost of that testing, to meet the environmental standards even where the fuel was produced on-farm exclusively for on-farm use. The New South Wales Farmers' Association (sub. DR69) were of the view that these requirements dissuaded farmers from producing biodiesel on farm for their own use.

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

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

Biodiesel became subject to excise duty in 2003 as part of the Government's commitment to implement a homogeneous excise system for all liquid fuels following an independent inquiry into the structure of fuel taxation in Australia

(Fuel Taxation Inquiry Committee 2002). However, in line with its policy to support the use of cleaner fuels such as biodiesel, the Government subsequently implemented the Cleaner Fuel Grants Scheme, which provides a rebate equivalent to the amount of duty paid by importers and manufacturers of biodiesel, thus offsetting the excise paid and providing an effective zero excise rate for biodiesel. To claim the grant, the manufacturer or importer is required to register with the ATO and provide proof that the fuel meets the standards.

Assessment

There appears to be some misconception surrounding the requirement to test on-farm produced biodiesel. There is no legislative requirement under the *Fuel Quality Standards Act 2000* to test biodiesel to meet the standards unless it is supplied on a commercial basis. On farm produced biodiesel used on-farm and not sold is not required to be tested, but *all* biodiesel is subject to excise under the *Excise Tariff Act 1921*. In order to claim the rebate for the excise paid, testing is required to provide proof that it meets the prescribed fuel standards and the producer is required to be registered with the ATO.

In essence, farmers are able to use on-farm produced biodiesel that has not been tested, but they are still required to pay excise and will not receive the rebate. There is also the risk that on-farm produced biodiesel that was not tested could be environmentally harmful and could damage the machinery in which the fuel was used. The ATO (2007) notes that hobbyists manufacturing biodiesel for personal use and businesses, who do not use commercial grade production equipment, may find it difficult to produce biodiesel that meets the standard.

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

RESPONSE 3.29

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

Blending of biodiesel and diesel

In responding to the draft report, the NFF (sub. DR60) and the VFF (sub. DR68) raised concerns about the requirement to hold an excise manufacturer's licence to undertake the blending of biodiesel with diesel. The NFF said:

Under current regulations, blending diesel and biodiesel is considered to be manufacture of an excisable product and an excise license is required, even if it is simply adding newly purchased biodiesel to on-farm storage tanks containing standard diesel. The *Excise Act 1901* allows for heavy penalties to be imposed on unlicensed activities. This regulation, if left unamended, could act as a serious deterrent for the purchase of biodiesel blends by the farm sector. (sub. DR60, pp. 6-7)

Assessment

The regulation surrounding the blending of biodiesel is fairly complex. The excise legislation requires those manufacturing and storing excisable goods to be licensed. The excise manufacturer's licence enables the holder to manufacture and store excisable biodiesel for personal or commercial use in diesel engines. This licence is also required for the blending of biodiesel with other fuels as blending is considered to be manufacturing. Detailed records are required to be kept in regard to the components used in the manufacture of the biodiesel, the quantity produced and/or blended, its storage and the sale or disposal of the biodiesel or blends. In applying for the licence the applicant is required to provide information on the premises involved, the products and quantities to be produced, the number and capacity of storage tanks, the calibration of plant and equipment and the recording systems to be used (ATO 2006a).

In 2006 amendments were made to the *Excise Tariff Act 1921* and the *Excise Act 1901* to streamline and simplify the administration of excise. The rationale for including blends as excisable items was to counter the blending of substitute products into excisable fuel and reduce the opportunities for excise evasion. The blending of two or more fuels on which excise has already been paid is not considered fuel manufacture and a licence is not required.

However, where a component of the blend is biodiesel or fuel ethanol a manufacturer's licence is required even where revenue has been paid on the components. Licensing extends to the blending of biodiesel and the other component/s that have been tested to the required fuel quality standards, the rationale being that the blending may alter the properties of the fuel resulting in a blend that did not meet the required standards.

The licensing requirements surrounding biodiesel are in place to enable the traceability and identification of the biodiesel in blended fuels as part of the

Government's cleaner fuels policy. This includes the cleaner fuel grants scheme under which only the biodiesel component of a blend is eligible for the cleaner fuels grant (Costello 2006).

Certain blending operations have been excluded from the licensing regime through determinations issued by the Commissioner for Taxation under the *Excise Act 1901*. These include blending oil and petrol for use as two stroke fuel, where duty has been paid on the oil and petrol, and where an incidental blend occurs when fuel is placed in a tank containing remnants of eligible goods or other products (ATO 2006b).

One possible approach to lowering the burden associated with the use of biodiesel and diesel blends on farms would be to provide a volume threshold below which the blending of biodiesel with diesel for non-commercial use was excluded from the licensing regime. For revenue protection reasons the biodiesel and diesel used would be required to have had the excise paid which in turn would provide that the components, if not the blended product, were subject to the required quality standards. Such a threshold exemption would need to be of a sufficient scale to make blending operations viable for the farming entity or other fuel user and not undermine the integrity of the Government's cleaner fuels agenda.

RESPONSE 3.30

The Australian Taxation Office and the Department of Environment and Water Resources should examine having a threshold exemption from the excise licensing regime for the non-commercial blending of biodiesel and diesel, on which excise has been paid.

3.18 Agricultural chemicals and veterinary medicines

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

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

The *Agricultural and Veterinary Chemicals Code Act 1994* and the Schedule to that Act — which contains the Agricultural and Veterinary Chemicals Code — lists the

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

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

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

The Regulation Taskforce review

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

- the need to streamline regulation
- duplication and inconsistency between Australian Government and state/territory regulatory regimes
- insufficient timeliness and cost effectiveness
- greater recognition of international standards and processes (2006, pp. 62–8).

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

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

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

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

Submissions to the current review

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

- Growcom, representing fruit and vegetable growers in Queensland, said that chemical use legislation should be streamlined and coordinated to remove existing duplicated, confusing and complex legislation. It pointed out, for example, that efforts to control chemicals of security concern can have long term and unintended consequences on the viability of industry.
- The VFF said that control of chemicals is 'beset by over-regulation', the cost and time involved in registering and developing agricultural chemicals is 'prohibitive', and no concerted effort has been made to harmonise regulatory processes or requirements (sub. 13, p. 14).
- Croplife, representing the plant science industry, drew attention to insufficient harmonisation and enforcement by the states of control of use regulation. It said that a multiplicity of legislation, further complicated by other state and federal legislation:
... has led to inconsistency, complexity, duplication and contradiction, causing confusion and unnecessary regulatory burdens on agricultural chemical manufacturers and users of their products. (sub. 14, p. 7)
- The Animal Health Alliance (Australia), which represents registrants, manufacturers and formulators of animal health products, drew attention to inefficiencies and inconsistencies in the dealings of APVMA and AQIS with the industry's products (sub. 7, p. 1 and attach. B).

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- The VMDA, representing manufacturers and distributors of veterinary medicines and animal health products, pointed to the delays caused by complex Australian, state and territory government institutional structures, the lack of fast-track arrangements for products requiring a lower level of registration, and differences between states' rules governing control of use of agvet chemicals (sub. 28, p. 2).
 - The Australasian Compliance Institute, the peak body for the practice of compliance in Australia, expressed concern about the time and financial costs of obtaining and maintaining registration of agvet chemicals, differences among the states in controls on use, supply and storage, and differences in registration requirements between Australia and its trading partners (sub. 20).

Response from APVMA

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

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

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

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

Some specific concerns raised in submissions

Overlap and duplication of regulation

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

- Victoria's Department of Primary Industry oversees the use and purchase of products in that state, but its regulations overlap with those of the Department of Health
- OHS officers 'often interpret chemical storage and records regulations differently' from staff in those departments
- maximum residue levels are set by FSANZ and also by APVMA

- in addition, these tests are conducted by government through the Victorian Produce Monitoring Program and the National Residue Survey (sub. 13, pp. 15–16).

It added that '[r]eform through the harmonisation of regulatory processes and requirements is overdue, and the VFF urges that duplication in testing regimes be avoided' (sub. 13, p. 16). To demonstrate areas of overlap, the VFF provided a table of regulations covering agricultural and veterinary chemicals (table 3.3).

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

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

ACCORD Australasia, representing manufacturers and marketers of formulated products, drew attention to possible future duplication of regulation of the labelling of hazardous substances and agvet chemicals. It said that, while the current *National Code of Practice for the Labelling of Workplace Hazardous Chemicals* recognises other labelling systems, including those of the APVMA, the revised draft Code of December 2006 does not. If implemented, the draft Code would require agvet manufacturers to add significant amounts of hazard-based information to product labels, at considerable cost to manufacturers and confusion to users.

Table 3.3 Regulations covering agricultural and veterinary chemicals

<i>Regulation covering ...</i>	<i>Responsible regulator</i>
Labelling and registration	APVMA
Maximum residue limits	APVMA and FSANZ. There are also residue requirements and withholding periods required which are monitored by markets — eg dairy companies, grain handling companies, stock agents.
Use of product on farm	State authority as set by control of use legislation, WorkCover, Environmental Protection Authority, Department of Health, industry quality assurance programs.
Storage of chemicals	State control of use authority, WorkCover, Environmental Protection Authority, quality assurance/environmental management programs.
Record keeping	Storage reconciliation and material safety data sheets required under WorkCover, but also under environmental management programs. Quality assurance programs, records of use of products required by vendor declarations, state authority and local council as part of planning permit conditions.

Source: VFF (sub. 13, pp. 22–3).

ACCORD noted that the Code (developed by the Australian Safety and Compensation Council and APVMA) have different approaches to regulation:

- The Hazardous Substances regulatory approach is based on hazard classification and hazard communication which is appropriate for substances which may have diverse uses. ...
- The Agricultural and Veterinary Chemical Products regulatory approach provides a higher, and appropriate, level of regulatory intervention whereby the risk-assessment for these defined-use products is part of the registration and approval process. (sub. 8, p. 2)

It argued that labels that meet the APVMA's requirements should be recognised as appropriate for meeting the requirements of the Code. The Plastics and Chemicals Industries Association also expressed this view (sub. 29, p. 2).

ACCORD has put its views to the Australian Safety and Compensation Council, which invited public comment on the draft Code but said there 'is yet no indication from ASCC as to how this matter has been considered' (sub. 8, p. 3).

Timeliness and complexity of national chemical registration procedures

Several participants expressed concern about APVMA's rules and procedures and the timeliness of registration processes. For example, the VFF said that the cost and time involved in registering and developing agricultural chemicals is 'prohibitive' and is slowing chemical innovations:

... while some efforts are being made to harmonise the *objectives* of regulations between different States, no concerted effort has been made to harmonise regulatory *processes* or *requirements*. This is seen as a high priority issue. (sub. 13, p. 14)

The Animal Health Alliance (Australia) said APVMA imposes 'unnecessarily burdensome requirements'. It drew attention to its requirement for local efficacy studies for all products intended for use in food producing animals:

APVMA will not accept efficacy data generated overseas, even where the disease, the genetics of the animals and the environmental conditions are no different to those overseas. This results in increased costs and timelines, greater use of animals in studies, increased burden on companies wishing to bring new products to the market and issues with state ethics committees. It is also becoming less attractive for companies to register new products in Australia.

In response, APVMA said that, while Australian efficacy studies are required for products containing new active constituents and which are designed as herd or flock medications for food-producing animals:

[it] will consider scientific argument that Australian efficacy data not be provided, on a case-by-case basis. This is particularly relevant to the pig and poultry industries, where

the genetics, housing, feeding and husbandry are largely standardised the world over. The APVMA has registered a number of products on the basis of overseas efficacy data only and has directly informed the pig industry that it is prepared to register products for pigs on the basis of overseas efficacy data. (sub. 42, p. 4)

The Animal Health Alliance (Australia) also said APVMA imposes a requirement that studies be conducted in several states or locations, even if there is no scientific reason for this (eg for poultry housed in temperature and humidity controlled housing). APVMA responded by saying that if Australian efficacy data are required, it requires sufficient trials to be conducted in a sufficient range of environments to prove efficacy of the product in relation to the product's proposed label claims. But it added that it 'only requires that studies be conducted where there is a valid scientific reason'.

The Animal Health Alliance (Australia) also drew attention to 'inefficiencies and inconsistencies' in the dealings of the key regulators with its members' products. It referred to a December 2006 report on APVMA by the ANAO and added that 'the recent outcomes of the ANAO audit of APVMA ... have confirmed most of the shortfalls industry has identified' (sub. 7, p. 1 and attach. C).

It also noted that a recent international benchmarking survey had identified concerns with:

- the time, cost and risk involved in bringing new products to market
- incentives on companies to introduce fewer breakthrough products; to reduce product availability; to focus on older technologies; and to avoid certain product technologies
- inadequacies in APVMA's 'regulatory quality'; (sub. 7, pp. 1–2 and attach. D).

Growcom also saw the timeliness of chemical registrations as a critical issue for the industry as:

The uncertainty around the outcomes of a chemical review process can mean that an industry could be required to invest a substantial amount of money prior to knowing the final outcomes ... (sub. 15, p. 5)

In its view, APVMA is under-resourced for the task of issuing permits and is unable to meet its target time frame of three months (sub. 15, p. 30). It argued for a streamlined and coordinated approach to chemical control of use legislation that removes the existing 'duplicated, confusing and complex' legislation (sub. 15, p. 35).

The VMDA commented on:

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- the need for greater use of risk management by APVMA, particularly during product registration assessment, as recommended by the ANAO (2006)
 - inconsistent application by APVMA staff and its outsourced advisors of guidelines and regulations (for example, in respect of interpretation of guidelines, reviewing of trial protocols or responding within statutory timeframes) (sub. 28, pp. 5–6).

APVMA responded to some of these concerns (sub. 42). It agreed, for example, that the delay between registration by APVMA and incorporation into the Food Standards Code was a problem that should be addressed, and advised that:

For a number of years the APVMA has been involved in discussions with FSANZ and the Food Regulation Standing Committee ... to harmonise the [maximum residue limits] setting process. Recent amendments to the Agvet Code and a revised MOU with FSANZ are expected to reduce the lag between product registration and entry of the relevant [maximum residue limits] into the Food Standards Code. (sub. 42, attach. 1, p. 11)

In respect of timeliness, APVMA noted that 74 per cent of pesticide and 76 per cent of veterinary medicine applications made to it contain errors, and that it had been criticised by the ANAO for repeatedly giving applicants additional time to correct deficiencies, leading to a prolonged elapsed time for applications. The reasons for such high error rates are not clear, and the ANAO also criticised APVMA for not having systematic processes for analysing the type and cause of these problems (ANAO 2006, p. 16) Nevertheless, 98 per cent of applications received after 1 July 2005 were finalised within the statutory timeframe.

In response to the VMDA's comment on the need for greater use of risk management, APVMA acknowledged that its framework for risk assessment is not well understood.

To rectify this and improve transparency the APVMA is in the advanced stages of finalising a document that describes the APVMA's framework of risk assessment. ... The Agvet Code does not provide for risk/benefit analysis. The APVMA must be satisfied that products are safe and effective before they are registered. (sub. 42, attach. 1, p. 22)

Differences among the states in rules for use of chemicals

DAFF said that a particular concern for the Australian Government and industry:

... is the inconsistency between jurisdictions in regulating the use of chemicals and enforcing those regulations — while the Australian Government has responsibility for registering agricultural and veterinary chemicals, states and territories have responsibility for enforcement of regulations controlling chemical use. (sub. 31, p. 3)

The Virginia Horticulture Centre also drew attention to inconsistencies between jurisdictions in regulations that control the purchase, transport, storage and/or use of chemicals:

Industry would support national benchmarks for use of chemicals. ... A national system for chemical use would decrease cost, administration paperwork and time. (sub. 32, p. 21)

The VFF noted that ‘cross-border variations in agricultural and veterinary chemical regulations greatly increase the compliance burden on farming businesses’ (sub. 13, p. 14).

Croplife pointed to:

- differences whereby some states allow chemical products to be used in crops and situations for which they are not approved by APVMA
- complexity arising from lack of harmonisation — for example, there are seven different regimes for the regulation of security sensitive ammonium nitrate, notwithstanding initial national agreement to a uniform system (sub. 14, p. 8)
- duplication of, for example, regulations for aerial application of pesticides, which impose unnecessary costs on aerial applicators and largely prevent application by helicopters (sub. 14, attach. 4)
- different state restrictions on use of certain herbicides, giving rise to possible litigation, loss of markets due to residues in crops, and environmental damage.

Croplife argued for:

- action to implement best practice regulation
- harmonised legislation and regulation of control of use across all states
- greater compliance with mandatory label instructions through state monitoring and enforcement
- rationalisation and harmonisation of rules covering chemical handling, transport, storage, environment and food in all jurisdictions, and their integration with control of use legislation (sub. 14, p. 10).

CropLife said that after years of ‘regulation reviews and buck-passing’, agvet manufacturers and users of their products:

... are suffering not only unnecessary regulatory burdens (and associated costs), but also ‘review fatigue’ with little progress to be shown for the reviews to date. The burden of contributing to those reviews diverts resources from core business and reduces profitability and competitiveness. (sub. 14, p. 7)

It recommended improved coordination between government agencies to avoid duplication and overlap of reviews of agricultural chemicals, together with a whole of government plan and timetable for future reviews.

Growcom expressed concern that Queensland's review to investigate consolidating the *Agricultural Chemicals Distribution Control Act 1966* and the *Chemicals Usage (Agricultural and Veterinary) Control Act 1988* has been underway for more than eight years. In its view, this is far too long and results in the wasting of resources for both government and industry. It supported consolidation of existing regulation into a single Act, to help reduce unnecessary duplication and remove confusion and complexity from the current legislative arrangements. It added that:

Nationally consistent AgVet legislation, with consideration for each state and territory's particular conditions will eliminate confusion regarding what particular actions are allowed in each state and benefit industries operating across state borders (sub. 15, p. 31).

The VMDA also expressed concern that control of use issues differ from state to state:

Differences are generally related to specific diseases and are often confined to crop chemicals because of the diversity of what is grown in different geographical/climatic areas. Such differences rarely occur with vetchems except where there are specific pests which may affect say, cattle in Queensland and which are not a problem in non-tropical areas. VMDA would however comment that differing instructions for application rates, uses etc. based upon pests which may behave differently in some climatic regions may well be a justified position. (sub. 28, p. 4)

Minor use permits

National registration arrangements allow the APVMA to issue permits for 'minor use', defined as:

... a use of the product or constituent that would not produce sufficient economic return to an applicant for registration of the product to meet cost of registration of the product, or the cost of registration of the product for that use, as the case requires (including, in particular, the cost of providing the data required for that purpose). (APVMA website)

Minor use can include use on a minor crop, animal or non-crop situation, or limited use on a major crop, animal or non-crop situation.

In relation to Aquavet chemical registration, the National Aquaculture Association/Council said it is concerned over the time taken to evaluate applications for minor use permits:

The industry appreciates the need for rigorous process but believes the Government should work with industry in shortening the process and in particular providing

exemptions with very harmless products that are considered to have little or no risk or in the context of food contamination (eg salt). Various agencies are involved in evaluating applications and the timeframe for approval is very long. This needs to be shortened particularly given the small quantities of chemicals in use. (sub. 18, p. 1)

Tasmanian Salmonid Growers Association endorsed this view, adding that it is pursuing minor use permit registration of a small number of chemicals specifically for use in aquaculture:

A feature of the Australian aquaculture industry is that being relatively new, relatively 'green', and quite small by world's standards, there is very little incentive for suppliers of aquavet chemicals to incur the effort and cost of registration of their product under the Australian system. ... [APVMA] could speed up the evaluation of applications and generally improve the evaluation process by:

- adopting a more lenient approach to chemicals used in relatively small quantities, and
- accepting more readily the published scientific literature and/or approvals granted by reputable authorities in other countries such as UK, Canada, US, and Norway. (sub. 16, p. 2)

The Association argued that 'this is a regulatory burden which could be alleviated without undue risk' (sub. 16, p. 2).

CropLife also argued for streamlining of the regulatory system to allow minor uses of agricultural chemicals, 'particularly by addressing issues of registration, labelling, permits, liability and data protection'.

The NTHA argued that the application processes are 'excessively cumbersome for industry to manage'. Moreover:

Growers are increasingly trapped in a situation where they face severe losses from diseases, pests and weeds if they do nothing to protect their crops, or face penalties if they use a product that is not registered or available via a permit. (sub. 25, p. 5)

While the crops are valuable, they are too small individually for agrochemical companies to bear the high cost of registering pesticides for use on them. This has led to 'reliance on single broad spectrum chemicals, rather [than] "softer" targeted chemicals, that may be used in an integrated pest management strategy' (sub. 25, p. 5).

The Virginia Horticulture Centre said that 'minor use permits are costly and timely to acquire' (sub. 32, p. 24).

The ANAO report and APVMA's response

In December 2006, the ANAO released a report critical of some aspects of APVMA's performance. It found that:

The APVMA is also not meeting its obligation to finalise all applications within statutory timeframes. This increases the cost of regulation, for both the APVMA and applicants, and impacts on users' access to pesticides and veterinary medicines. (ANAO 2006, p. 10)

It noted that almost half of all efficacy and safety assessments finalised in 2004-05 by state government departments or private consultants exceeded the timeframe specified by the APVMA.

In response, APVMA said it had commenced addressing the recommendations (November 2006) and would:

- better manage and report on timeliness of processing registration applications and more systematically communicate to the chemical industry the types of deficiencies in their applications
- review current arrangements for procuring external scientific advice
- strengthen the operation of the Manufacturers' Licensing Scheme
- assess current approaches to chemical review and disseminate more comprehensive information on reviews to stakeholders.

Assessment

Agvet chemical regulation was an issue in many submissions to this review, generally raising matters that the industry argues have been on the table for some time. Indeed, Croplife drew attention to the 'many overlapping reviews of regulation' in these areas since 2000, including, in addition to this regulatory stocktake:

- the Agriculture and Food Policy Reference Group (2005)
- the Review of Australian Dangerous Goods Code (2006)
- the Regulation Taskforce (2006)
- the COAG Ministerial Taskforce on chemicals regulation (2006)
- the ANAO review of the APVMA (2006)
- the Bethwaite review of the food regulation system (2007)
- ASCC review of the *National Code of Practice for the Labelling of Workplace Hazardous Chemicals* (2007)

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- national training and accrediting for higher risk agvet chemicals (ongoing)
 - reviews of minimum residue limits by APVMA and FSANZ (ongoing)
 - reviews of state control of use (periodical)
 - reviews of state OHS legislation (periodical)
 - reviews of state poisons schedules (periodical).

Croplife said that the chemicals industry has continued to identify the need for regulatory reform since working with the Government on the Chemicals and Plastics Industry Action Agenda in 2000. However, this multiplicity of reviews has imposed a considerable resource burden on the industry.

A full public review of agvet chemicals is now underway

The Commission acknowledges the importance of the issues raised. The differences of understanding and interpretation — and views about appropriate policy direction — between some participants and the APVMA need to be examined.

DAFF advised that:

Regulation of the chemicals and plastics sector was considered in detail in the Banks Report. In its response to the Banks Report, the Government announced that a PC study into chemicals and plastics regulation would commence during 2007. ... The PC study will address industry's major concerns about chemicals regulation.

In addition, COAG has established a ministerial taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation. The PC study will inform the ministerial taskforce's considerations. (sub. 31, p. 3)

As the Regulation Taskforce report concluded, and the government agreed, there is a clear need for a full public review. While industry has been waiting for this for some time, it was announced on 26 July 2007 and is to run for 12 months. Its terms of reference are sufficiently broad to pick up a wide range of matters relating to industry regulation, whether state, territory or Commonwealth. It will:

- identify duplication and inconsistency of regulations within and across all levels of government in Australia and with international practice
- examine the effect of these regulations on economic, public health and safety, occupational health and safety, and environmental outcomes
- examine the efficiency of existing arrangements for security-sensitive ammonium nitrate (Costello and Macfarlane 2007).

It has become clear during this review that many of these issues need to be scrutinised and that a detailed public study is timely. Submissions made to this current review, such as those referred to in this section, will be drawn to the attention of that study.

RESPONSE 3.31

There are many regulatory issues concerning agricultural chemicals and veterinary medicines that require detailed examination. These issues are being examined by the separate Commission study of chemicals and plastics.

3.19 Horticulture Code of Conduct

The Horticulture Code of Conduct is a mandatory code introduced to regulate the wholesaling of horticulture produce. It is administered by the ACCC. The Code was established to encourage greater clarity and commercial transparency in transactions between growers and wholesale traders through published terms of trade and produce agreements. It also provides for dispute resolution procedures between growers and traders as an alternative to litigation.

Omissions from the Code

The NTHA supported the implementation of the Code. However, it was concerned that there were a number of omissions from the Code. These included:

- the exclusion of retailers, exporters and food processors from the Code as the NTHA were of the view that the Code should encompass any transaction between the grower and the first point of sale and not just wholesalers and their agents
- a lack of coverage of grower-owned packing houses under the Code
- the pooling of grower's fruit being permitted, although price averaging is not
- the exclusion of buyers' agents from the Code (sub. 25).

Assessment

The Australian Government targeted the Code at the wholesale sector as the major supermarket chains were already signatories to a voluntary code and contractual disputes in this area did not generally involve contractual clarity. As Growcom noted, the major chains operated by purchasing a set quantity at a set price and paid for it on agreed terms (Growcom 2007).

The Code does not contain any specific reference to packing houses and the application of the Code to the transactions involving packing houses will be determined according to the circumstances of each case (ACCC 2007a). The ACCC (2007a) also indicated that price averaging for produce sold in a pooled arrangement is not permissible under the Code as a grower must receive the price that their produce was actually sold for (less agreed deductions).

Other grower organisations such as Growcom (sub. 15) supported the introduction of the Code. It was of the view that the improved business practices, transparency and confidence arising from the Code would increase investment and innovation in the sector. However, Growcom also noted that there would be a transition period for the industry following the introduction of the Code:

Growcom is aware that there is much debate around the implementation of the mandatory code. The Code will bring about a change in the horticulture wholesaler sector, and it is only natural for there to be a transition period and some reluctance to change business practices. (sub. 15, p. 40)

The Code only commenced in May 2007 and as such it is too early to determine what, if any, problems will arise from the operation of the Code in its current format. The Commission considers it would be more appropriate that the Code be subject to an independent and transparent review after having been in operation for a suitable period of time to enable any transitional issues to be addressed and for an adequate 'case history' of its operations to emerge. A review is scheduled for 2009 and this is appropriate.

RESPONSE 3.32

The Horticulture Code of Conduct has only recently commenced and should be given time to be fully implemented. It is scheduled to be reviewed in 2009.

3.20 Farm surveys

Time involved in completing farm surveys

During consultations, some participants engaged in farming in Queensland commented on the time involved in 'filling out' farm surveys from the Australian Bureau of Agricultural and Resource Economics (ABARE) and their duplications with the surveys conducted by various state government rural agencies.

Assessment

The time involved in completing such surveys is an issue for many rural producers and becomes frustrating when there is an element of overlap between the ABARE farm surveys and those conducted by state government agencies. The ABARE farm surveys are voluntary and are used to compile detailed financial, physical and socioeconomic information for the broadacre and dairy sectors. As such, they provide important data for the agricultural sector. Those volunteering to complete the ABARE farm survey, while aware of the costs and time incurred in doing so, also recognise the wider value of the information these surveys provide. Australian Pork Limited (sub. DR66) commented on the value of the farm surveys to the wider community.

In contrast, there is an element of compulsion with ABS surveys. The ABS will seek cooperation, although if the information is not provided the *Census and Statistics Act 1905* provides for the Australian Statistician to direct the information be provided. This direction only applies to ‘official data’ such a census data and data collected as directed by the Minister and not for client initiated data.

It is not clear that this is a widespread concern or that those completing ABARE farm surveys are unaware that these surveys are voluntary. ABARE was of the view that there was no duplication in the survey data collected at the Australian Government level as it worked closely with the ABS to avoid duplication and reduce the time spent collecting information (sub. DR74).

That said, there could be an issue for improved coordination between ABARE and other agencies, particularly state government agencies, involved in collecting data from rural producers. Australian Pork Limited (sub. DR66) agreed that there was a degree of overlap between the ABARE farm surveys and those conducted by state government agencies and supported improved coordination between ABARE and other government agencies.

RESPONSE 3.33

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

3.21 Genetically modified crops

Australia’s national scheme for the regulation of genetically modified (GM) organisms is underpinned by the Australian Government’s *Gene Technology Act*

2000, which came into force in June 2001. It was developed in consultation with all Australian jurisdictions and is supported by an intergovernmental agreement and corresponding legislation in each state and territory. The national scheme regulates all dealings (such as research, manufacture, production, commercial release and import) with live viable organisms that have been modified by techniques of gene technology. The regulatory objective, agreed to by all governments, is:

... to protect the health and safety of people, and the environment, by identifying risks posed by or as a result of gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms. (Office of the Gene Technology Regulator website)

Broadly, all dealings with a GM organism are prohibited unless approved by the national Gene Technology Regulator (GTR). Its work is overseen by a Gene Technology Ministerial Council, which includes representatives from all jurisdictions. Other regulatory agencies have primary responsibility for the regulation of the *use* of GM products. For example, the Therapeutic Goods Administration regulates the sale and use of GM pharmaceuticals, and Food Standards Australia New Zealand regulates GM foods. GM products not covered by an existing national regulation scheme, such as stock feed derived from a GM crop such as cotton, are regulated by the GTR.

While the GTR is authorised to make decisions based on the health and safety risks posed by gene technology, the states may make separate GM laws on other grounds, such as trade. Most have moratoria on GM food crops. Under Victoria's *Control of Genetically Modified Crops Act 2004*, for example:

... part or all of the State of Victoria may be declared as an area where specified activities, or dealings, involving some or all GM crops or related material may be controlled or prohibited. ... the Government has the power to deal with any aspect of the utilisation of GM crops that may negatively impact on the market competitiveness of any product. (Department of Primary Industries Victoria website)

However, exemptions can and have been made to enable small scale, non-commercial, research and development trials to take place.

Since 2002, the GTR has approved the unrestricted commercial scale release of certain herbicide-tolerant and insect-resistant types of cotton and canola, and carnations modified for colour. GM cotton has been introduced and now comprises about 90 per cent of production. However, the commercial release of GM canola is prevented by state legislation. For example, Victoria placed a four-year moratorium on GM canola in 2004 due to 'divisions and uncertainty within industry, the farming sector and regional communities about the impact of GM canola on markets' (Department of Primary Industries Victoria website).

The VFF argued that a state moratorium on a GM product already approved by the GTR means there is, in practice, no nationally consistent scheme for the regulation of gene technology in Australia. It argued that the Victorian Government should abandon the GM canola moratorium, which effectively prevents both commercial release and commercial scale coexistence trials for any GM crop variety. In its view, ‘the imposition of state-based moratoria has severely obstructed the intent of the Federal Act’ (sub. 13, p. 7).

The VFF noted that other countries such as Canada, America and Argentina allow the growing of many varieties of GM crops, including canola. (Canada is the world’s largest GM canola producer.) Moreover, it said that ‘[i]mportant export markets for Australian grain such as Japan, the EU and China also allow a number of GM crops to be imported’ (sub. 13, p. 7).

It added that the moratorium prevents producers from being able to access and utilise new farm production technologies, and also reduces the commercial incentives for others to invest in research in these areas. In its view, the moratorium ‘is stifling Australian agri-biotechnology research and development’ (sub. 13, p. 7).

Some states are now reviewing their moratoria on GM crops. In May 2007, Victoria established an independent panel to review its moratorium on the commercial planting of GM canola, while a public review of South Australia’s moratorium on GM crops commenced in June 2007. New South Wales also announced a review in July 2007.

Recently, ABARE examined the evidence on market acceptance and pricing of some GM and non-GM crops. These studies found that:

- GM canola is finding ready acceptance in international markets at prices very similar to those received for conventional canola.
- In the traditional import markets for canola — Japan, Mexico, China, Pakistan and Bangladesh — GM canola is generally accepted as readily as conventional canola and is priced at very similar levels.
- Despite perceptions of resistance to GM grains in world markets, countries that produce GM varieties of soybeans, corn, cotton and canola dominate the world export trade in these grains. For example, virtually all of Canada’s export canola is considered to be GM, but its exports have reached record levels in 2006, more than doubling since GM canola was introduced in Canada in the mid 1990s. Canada accounted for more than 70 per cent of world canola seed trade in the three years to 2006.
- There is already widespread use of products from GM crops in the domestic market, particularly with locally-produced GM cottonseed and imported GM

soybean products. ABARE suggested that GM canola will generally be accepted by food manufacturers and consumers in Australia's domestic market (Foster and French 2007).

- Commercialisation of GM canola would have negligible impacts on organic canola, livestock and honey production because Australia's organic standards are more stringent than those in our export markets (Apted and Mazur 2007).

ABARE also noted that GM canola production involves higher yields and lower input costs for farmers. Some of these gains, such as reduced usage of pesticides, also provide environmental benefits.

Regulatory arrangements have been recently reviewed

As required by the legislation, the *Gene Technology Act 2000* and the Intergovernmental *Gene Technology Agreement 2001* were reviewed in 2005-06 by an independent panel. The review was informed by some 300 submissions and national consultations. It found that regulatory arrangements had worked well in the five years following introduction, and that no major changes were required.

While the focus of the Act is on the health and safety of people and the environment, non-government organisations and farmers opposed to the introduction of GM crops argued that the scope of the Act should be broadened to include economic, social and marketing impacts so that the impact on farmers who choose not to grow GM crops would be considered under the Act. The review concluded that the existing scope of the Act should be maintained. However, it suggested a number of minor changes.

Recommended changes were agreed in the joint government *Response to the Recommendations of the Statutory Review of the Gene Technology Act 2000 and the Gene Technology Agreement 2001*. These were implemented by the *Gene Technology Amendment Bill 2007*, approved by the Gene Technology Ministerial Council in March 2007. This became law on 1 July 2007 and state and territory governments have undertaken to enact corresponding legislation by the end of 2007.

Assessment

While the broader public debate is about gene technology generally, state moratoria are preventing the commercial release of GM crops that have been assessed under the national regulatory framework and approved for release in Australia.

The national framework assesses gene technologies on the basis of their implications for the health and safety of people and the environment. The framework has only recently been reviewed and reaffirmed by all governments. Some minor amendments to legislation are now being implemented. The Commission did not receive any complaints about the national GTR assessment framework and sees no case for proposing changes to it.

The moratoria are matters for the states, and the Commission's review does not focus on state regulation. However, it notes that some jurisdictions are now reviewing their stance on GM crops and seeking better evidence on the impact of GM canola on producers and exporters. States could consider requiring a more thorough impact analysis and risk assessment before making a decision on GM crops already approved by the GTR, but there is little action to be taken by the Australian Government.

RESPONSE 3.34

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

3.22 Water issues

While the availability and cost of water are crucial issues for businesses in the primary sector, few submissions raised water as a regulatory issue requiring attention in this review. In part, this likely reflects that this review focuses on Australian Government regulations, while many specific water regulations faced by primary sector businesses are set by state regulatory agencies, notwithstanding that they may arise from an intergovernmental agreement on water use. Indeed, COAG has long had a role as a key policy forum on water and related issues.

But it may also reflect a view that water-related policy issues are being comprehensively worked through in all jurisdictions, and that time is needed for the effects of various policy developments to become apparent.

Inconsistencies across jurisdictions

The Australian Property Institute (New South Wales Division) and the Australian Spatial Information Business Association (API/ASIBA) said that inconsistencies in water regulations across jurisdictions results in unnecessarily high regulatory

burdens on businesses in the primary sector. In their view, state-based water management regimes are ‘burdensome, jurisdictionally complex, and result in compliance costs for water access which are unnecessarily burdensome and costly’ (sub. 34, p. 1).

Uncertainties regarding water ownership and trade

API/ASIBA also argued the need for appropriate water titling regimes, along the lines of the Torrens titling system used for land, to provide greater security for titles:

The nature of how those water entitlements are registered, their security, ease of transfer, cost of administration, and public accessibility of information on trades and pricing, will be fundamental to establishing public confidence in the operation of the entire water industry. (sub. 34, p. 2)

In their view, such changes would underpin the sustainable management of Australia’s water resources and the long term productivity of irrigated agriculture. One benefit would be greater surety for the financial sector in its dealings with landowners, in view of the separation of land ownership and water access entitlements and the ability to trade either or both.

Insufficient progress in establishing property rights and trading regimes

The Minerals Council of Australia said that, while much has been achieved, water reform has been hampered by difficulties in:

... establishing the nature and extent of existing property rights, establishing the legal and market processes for trading those rights, and of ensuring demands for non-commercial uses (such as ensuring ecological flows) are accounted for. (sub. 37, p. 25)

It argued for full implementation of the NWI and for continued efforts by the National Water Commission (NWC) to drive water reform. In its view, efficient and cost-effective access to water supplies for all competing uses can be achieved if decisions are based on sound science, priority is given to environmental flows, heritage values are factored into the water market, and trading rules allow water to be allocated to its highest-value uses. Water pricing should be based on user-pays principles and be set regardless of end use, with appropriate allowance for environmental externalities (sub. 37, pp. 25–6).⁹ The Council added that, once set,

⁹ There are specific provisions concerning the minerals industry in the NWI, reflecting that projects can involve isolation, relatively short duration, particular water quality issues (including

allocations should not be changed by governments other than in exceptional circumstances, and the risks associated with any such changes should be shared between government and industry.

The QFF expressed concern that implementation of water reforms in Queensland is taking some time because of data limitations and the need to address significant differences between catchments, particularly if reforms ‘apply planning frameworks that are not suited to addressing Darling Basin and Queensland catchment conditions’. It added that it has concerns:

... that the functioning of water trading markets in [Queensland] will be very constrained for some time until confidence and understanding of reforms is achieved. In the meantime the burden of the implementation of water reforms is expected to increase as a result of reforms to water prices and charges and an inability to adjust for cuts in allocations in some areas as result of underground water plans. (sub. DR57, pp. 6–7)

It noted the burdens placed on irrigators and dependent communities in particular and saw ongoing monitoring and evaluation of the progress of reforms as essential (sub. DR57, p. 7).

Uncertainties surrounding water allocations

For the Red Meat Industry, security of water supply, rather than cost or trading arrangements, is the key issue. About 34 per cent of beef production comes from feedlots, which many producers use for drought management, productivity improvement and to obtain a more uniform product. While acknowledging that dry seasons lead to supply variability, the Red Meat Industry said that feedlots need secure entitlements for drinking water for cattle and to meet environmental rules on dilution of effluent and its distribution on pastures and crops (sub. 12, p. 7). It added that classification of feedlots as ‘industrial users’ is vital, as is compensation for production losses from losing water entitlements upon which business decisions were based. It cited the following examples of feedlots in New South Wales that had had water allocations reduced or removed, and in some cases had to purchase additional water from other sources.

- Feedlot A had an industrial licence which was rescinded through NSW policy with a loss of 67% of water entitlement. The feedlot was forced to purchase additional land with a water entitlement, at a cost of \$1.5 million. Compensation received was \$230,000, taxable.

the capacity to use waste water that would be unacceptable to other uses) and an obligation to remedy or offset impacts.

-
- Feedlot B lost half of its water allocation entitlements for 2007 and has been required to spend \$842,000 for additional allocation water on a temporary transfer for a two year period.
 - Feedlot C is in a private irrigation district scheme now 45 years old. The NSW Government is advocating closure without rights being recognised. This has stalled growing of crops to feed stock or to meet requirements for the feedlot and environmental management. (sub. 12A, p. 16)

However, the Industry cautioned that ‘the best pathways for action on this are not clear, as these are drought-induced policy decisions that may become regulatory’ (sub. 12A, p. 16).

Inadequate scientific evidence and unequal treatment of industries

The National Association of Forest Industries was concerned that large-scale plantation forestry had been singled out in the NWI (para. 55) as an activity with the potential ‘to intercept significant volumes of surface and/or groundwater’ in the absence of any adequate scientific definition or quantification of this potential water use’ (sub. 11, p. 7). It also expressed concern that the development of water policy in state jurisdictions could result in ‘perverse policy outcomes’, threatening the broader benefits of plantation forestry such as carbon sequestration, enhanced biodiversity and reduced salinity and water inundation. It supported a greater role for the Australian Government:

... to ensure that policy development ... is applied equitably and transparently across all land uses and is consistent with national policy objectives. Failure for this to occur could lead to the forest industry being dealt with in a manner which does not adhere to a number of the over-arching requirements of the NWI. (sub. 11, pp. 7–8 and appendix 4)

Expensive, prolonged and difficult negotiations for land and water plans

Growcom, representing fruit and vegetable growers in Queensland, expressed concern about the implementation of Queensland’s land and water management plans (LWMPs), noting that growers find the process difficult and expensive. It referred to the ‘excessive and invasive’ level of information required, inconsistencies in the treatment of different regions and doubts about the practical on-farm applicability of some of the requirements. It also contrasted the ease of the approvals process in the Burnett Mary region with that of the Fitzroy Basin, pointing to the competitive advantage that this gave to growers in the first region. It cited a LWMP developed in the Fitzroy region that cost a grower more than \$8000

before it was considered to meet the requirements set for the region. It also expressed concern ‘that the guidelines for LWMPs are more closely aligned to the cotton industry and furrow irrigation and do not align with horticultural industry needs’ (sub. 15, p. 21).

Growcom said it supported a Queensland initiative to introduce a system whereby only one plan would be needed to comply with different state legislation and associated requirements. However, it said the process is taking too long and is utilising too many resources (sub. 15, p. 21).

Policy background

In 1994, COAG first announced its water reform agenda. In 2004, it followed this with the National Water Initiative (NWI 2004), agreed to by all governments to increase the productivity and efficiency of water use and to ensure the health of river and groundwater systems. Governments are now working to a ten-year timeline set down for the implementation of key actions under the NWI (NWI 2004, schedule A).

In July 2006, COAG reaffirmed its commitment to the water reform agenda and agreed on six fundamental elements of reform, namely:

- conversion of existing water rights into secure and tradable water access entitlements
- completion of water plans that are consistent with the NWI through transparent processes and using best available science
- implementation of these plans to achieve sustainable levels of surface and ground water extraction in practice
- establishment of open and low cost water trading arrangements
- improvement of water pricing to support the wider water reform agenda
- implementation of national water accounting and measurement standards, and adequate systems for measuring, metering, monitoring and reporting on water resources (COAG 2006b).

Each state and territory has developed its own implementation plan, in conjunction with the NWC, which was established to help implement water reform and advise COAG on national water issues generally. The NWC also monitors progress in the implementation of those plans, which can be viewed on its website. However, implementation across jurisdictions appears to be variable.

As required by the intergovernmental agreement (NWI 2004, para. 106), the NWC has undertaken the first biennial assessment of the progress of governments in implementing the NWI. Its assessment was informed by over 100 public submissions and was released in October 2007. The third biennial assessment, scheduled for 2010-11, is to involve a comprehensive review of the intergovernmental agreement (NWI 2004, para. 106(b)).

Over recent years, considerable work has been undertaken in all jurisdictions on the many economic, technical and scientific issues involved. Reports have been prepared into supply augmentation options for urban and rural water supplies, measures to improve water use efficiency, water trading arrangements and so on. Research is also shedding light on areas where information has been incomplete, such as the relationship between surface and ground water, to help avoid over-allocation of total water resources (Evans 2007). Private sector bodies such as the Business Council of Australia have also prepared policy reports on some of these matters. A Senate inquiry reported in December 2006 on Water Policy Initiatives.

During 2007, negotiations between the Australian Government and relevant states and the ACT continued over the future of water use in the Murray–Darling Basin. In August 2007, Parliament passed legislation permitting the Australian Government to take control of the Murray–Darling Basin, with an intergovernmental agreement to be negotiated with relevant states and the ACT. The Australian Government said it will now commence funding a range of water efficiency projects under its National Plan for Water Security (Howard 2007).

Assessment

From the viewpoint of this regulatory review, water policy is a field in which considerable changes are occurring across all jurisdictions. Water reform is very much work-in-progress, with governments working on an extensive policy agenda to an agreed ten-year timeline (2004 to 2014). Many interrelated policies are being introduced incrementally, and the pace of policy change is different among jurisdictions. It will take time for the practical consequences of these policy developments to be absorbed. Meanwhile, knowledge about some aspects of the water cycle, such as the relationship between surface and ground water, is improving and may influence future policy choices.

Nevertheless, there is national agreement about the need for: secure and well-defined property rights in water; removal of institutional barriers to trade in water; arrangements to ensure that water systems are not over-allocated; and the reservation of sufficient water for environmental needs. Governments separately have made public commitments to meet their responsibilities under the NWI.

There is also an agreed process by which governments report regularly (and publicly) on progress in implementing these commitments, including by discussions within COAG. In addition, the Natural Resource Management Ministerial Council¹⁰ is required to provide annual reports to COAG on progress by jurisdictions in implementing the NWI (para. 104), and as noted, the NWC is undertaking biennial reviews.

Regulatory regimes, however, need to be developed in accordance with best practice principles to ensure that current fragmentation and complexity is overcome and that new regulation does not impose unnecessary burdens or overlaps. Importantly, pricing and trading regimes should facilitate market transactions and prices should reflect scarcities and encourage allocation of water to its highest value uses. The greater the number of exemptions, the harder it will be to achieve environmental and economic goals. It is essential that the regulatory framework be established in a timely manner and provide greater certainty over ownership/entitlements and trading rules.

RESPONSE 3.35

All relevant agencies should apply best practice policy design in developing the national framework for property rights and trading in water in order to avoid unnecessary burdens. In particular, the new national framework for water should facilitate market transactions so that scarce resources go to their highest value uses and any exemptions from the framework should be fully justified. Ongoing monitoring and evaluation of progress will be important.

3.23 Incorporation of farms

Incorporation of farms and accessing Australian Government industrial relations arrangements

Only those farms that are incorporated, along with farms in Victoria which referred its industrial relations to the Australian Government in 1996, the Northern Territory and the ACT are able to access the Australian Government's industrial relations arrangements. However, were they to become incorporated, these farming entities would be ineligible for a number of tax benefits and income support programs. The New South Wales Farmers' Association (sub. 27) said:

¹⁰ The record and resolutions of the Natural Resource Management Ministerial Council meeting of 24 November 2006 can be seen at http://www.mincos.gov.au/pdf/nrmmc_res_11.pdf. The discussion of water issues arising from the NWI are at pages 104–60.

If a farming business is unincorporated then the farmer needs to consider whether they should incorporate to access WorkChoices. The most significant question is whether a restructure can be undertaken to access WorkChoices that does not necessarily impede the existing tax and other benefits of not being incorporated. (sub. 27, p. 23)

The NFF (sub. 24) noted that over 90 per cent of farming entities in Australia operate as partnerships, trusts or sole traders and these operating arrangements reflect the family owned and operated nature of farming and the importance of being able to pass the farm on to the next generation.

Assessment

There are a number of benefits available to farming entities operating as partnerships, trusts or sole traders. In addition to facilitating generational transfers, the NFF (sub. 24) also cited a number of tax issues which influenced the current structure of farming entities:

- tax losses incurred by companies are quarantined to the company, unlike a farm where losses can be offset against other income
- companies are taxed at a flat rate of 30 per cent and there is no tax free threshold or low income tax rates and rebates
- the capital gains tax discount for individuals and trusts which enables capital gains tax to be reduced by 50 per cent for assets held for a specified period of time does not apply when the capital gain is made by a company.

There are also non-tax benefits available to farmers by remaining unincorporated. These arise from:

- the ineligibility of companies to use the Farm Management Deposit Scheme, which is restricted to individuals, partnerships and beneficiaries in a trust
- the loss of primary producer status and access to drought assistance and other relief assistance by becoming an incorporated entity
- the costs involved in becoming incorporated such as stamp duty and professional advice.

The NFF (sub. 24) concluded that when all these factors were taken into account it was difficult to envisage why a farming business would choose to incorporate.

There is clearly a number of advantages available to farming businesses by remaining unincorporated. Farmers, like all businesses, are free to decide the type of business structure under which to operate. While becoming incorporated may provide certain benefits, such as being able to access the Australian Government's

industrial relations arrangements, there is overwhelming evidence that farming businesses prefer the benefits of operating as a sole trader, partnership or trust (sub. 24).

There appears to be tension between rural support and labour policy objectives, largely because the industrial relations provisions of Work Choices are based on the Commonwealth's corporations power under the Constitution. In the absence of changes to the Australian Government's taxation legislation and income support arrangements to treat corporations in the same manner as a sole trader, partnerships or trusts, there appears to be no straightforward way to resolve this issue.

The overwhelming majority of farming enterprises have decided to remain unincorporated. As farming enterprises operating as a sole trader, partnership or trust they receive taxation-related benefits and possibly income support arrangements. As a consequence, they are unable to access these Australian Government's industrial relations arrangements in jurisdictions where these arrangements do not apply.

3.24 Other concerns

A number of other concerns were raised, either in submissions or in discussions with participants:

- The requirement that most farm insurance policies require compliance with Australian Standards for all farm equipment as a general condition of policy and non-compliance gives the insurer the ability to refuse a claim (sub. 1). Australian Standards Australia have approached insurers through the Insurance Council of Australia to clarify this issue. From the view point of this review, these concerns related to the commercial operations of insurance companies and their relations with policyholders rather than government regulation.
- The complexity of completing the business activity statement was said to be deterring farmers from claiming fuel tax credits, although the NFF was encouraged by the efforts of the ATO to streamline its systems and reduce reporting burdens for businesses (sub. 24).
- The New South Wales Farmers' Association (sub. DR69) was concerned with the confusion and increased administrative burden placed on farmers from the contract and collection methods used by plant breeding companies and called for a nationally coordinated and regulated end point royalties collection system for the intellectual property attached to new seed and plant varieties. (End point royalties are a common contractual arrangement used by growers and plant breeders through which the owner of the plant breeder's right obtains a royalty

on the harvested product rather than the propagating material.) However, these concerns relate to private contractual arrangements and are outside the scope of this review. The plant breeders legislation only provides that the grower cannot grow a protected variety without the permission of the owner — all other terms between the grower and the owner of the plant breeder’s rights are contractual. The enforcement issues surrounding plant breeders rights are currently being reviewed by the Australian Council on Intellectual Property.

- RSPCA Australia (sub. DR78) called for the Commission to inquire into the labelling of animal products and provide recommendations on the development of nationally recognised definitions of animal welfare-orientated production methods. However, these are policy matters to be addressed by government and beyond the scope of this review.

4 MINING, OIL AND GAS

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4 Mining, oil and gas

4.1 Introduction

The Mining Division of the *Australian and New Zealand Standard Industrial Classification* (ANZSIC) covers business units involved in exploration and extraction of naturally occurring mineral *solids*, such as coal and ores; and also *liquid* minerals, such as crude petroleum; and *gases*, such as natural gas. It also includes beneficiation activities (that is, preparing, including crushing, screening, washing and flotation) and other preparation work customarily performed at the mine site, or as a part of mining activity.

However, the minerals sector's value, or wealth creation, chain goes well beyond exploration and extraction and includes mineral processing (for example, smelting and refining) and commodity transport. The Minerals Council of Australia (MCA) estimates that 'around a third of minerals sector direct activity is outside "mining", as defined for this inquiry' (sub. 37, p. 2).

Any unnecessarily burdensome regulations affecting these downstream activities can have a critical impact on investment decisions and the profitability of the whole sector. In light of this, table 4.1 sets out an indicative 'value chain' for the minerals sector. An equivalent value chain specifically for the petroleum sector is provided in table 4.2. The key areas of Australian Government and state and territory government regulatory involvement which affect each stage of these value chains are also identified.

Some areas of regulation affecting the mining, oil and gas sector (for example, general taxation measures, corporations and workplace/industrial relations laws, foreign investment guidelines, financial regulation) are not specifically noted in the tables because they impact broadly throughout the value chain. Although in some cases these areas of regulation are potentially a major source of burden for the sector, the Commission has taken the view that they do not have a particular or discriminatory impact on the sector that would justify a detailed consideration in this year's review.

Table 4.1 Minerals sector value chain and the impact of regulations

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of mining and mineral cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • allocation of exploitation and production rights offshore under Australian Government jurisdiction in waters beyond the three nautical mile limit (jointly administered by the Australian and state/territory governments) • Atomic Energy Act and NT Self Government Act determine Commonwealth’s ownership of uranium in the NT 	<p>Ownership of minerals</p> 	<ul style="list-style-type: none"> • allocation of exploitation and production rights onshore and in coastal waters to three nautical miles (except NT in respect of uranium — NT Self Government Act) • Aboriginal land rights (NT) native title (elsewhere)
<ul style="list-style-type: none"> • access for exploration purposes offshore beyond three nautical miles (jointly administered by the Australian and state/territory governments) • native title • Aboriginal land rights (Australian Government responsibility in NT only) • Aboriginal and Torres Strait Islander cultural heritage • non-indigenous cultural heritage • natural heritage, world heritage • international treaties and conventions covering natural and cultural heritage • pre-competitive geoscience programs — generating and disseminating geoscientific information • mineral property rights/allocation system under <i>Offshore Mineral Act 1994</i> (jointly administered by the Australian and state/territory governments) • environmental protection and biodiversity conservation (EPBC Act) • national frameworks for OHS, including National Mine Safety Framework 	<p>Exploration</p> 	<ul style="list-style-type: none"> • access to land for exploration purposes onshore and in “coastal waters” • Aboriginal and Torres Strait Islander cultural heritage, archaeological & Aboriginal relics, sacred sites • natural heritage • native title • Aboriginal land rights in NT • mineral property rights/allocation system (onshore and “coastal waters”) • pre-competitive geoscience programs — generating and disseminating geoscientific information • environmental protection/assessment and link to EPBC Act • planning approval • landowner compensation arrangements • occupational health and safety requirements

(Continued next page)

Table 4.1 (continued)

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of mining and mineral cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • uranium mining permits (NT only and through EPBC Act for all new uranium mining) • native title • Aboriginal land rights in NT • cultural heritage • environmental assessments for matters of national environmental significance (EPBC Act) • national frameworks for OHS, including National Mine Safety Framework 	<p>Mine approval</p> 	<ul style="list-style-type: none"> • environmental assessments, including native vegetation • planning approval, land use planning, retention/works licenses • approvals required under state agreements for specific large projects • Aboriginal land rights in NT • cultural heritage • access to land • landowner compensation arrangements • OHS requirements • offsetting requirements
<ul style="list-style-type: none"> • native title • Aboriginal land rights in NT • national frameworks for OHS, including National Mine Safety Framework • access to capital, including tariff concessions and project by-laws • links through APEC and bilateral investment promotion and protection agreements • EPBC Act (for project expansions/extensions) 	<p>Mine development and construction</p> 	<ul style="list-style-type: none"> • mining/retention licences for the full recovery of minerals from the licence area and for associated works outside the area of the principle licence • infrastructure — transport facilities (railways, ports, landing strips, pipelines, large conveyor systems and roads), townships and supporting services (electricity, water and sewerage) • environmental, planning, safety and other regulations • building regulations • OHS requirements • native title • Aboriginal land rights in NT
<ul style="list-style-type: none"> • national frameworks for OHS, including National Mine Safety Framework • National Water Initiative • emissions/greenhouse policies • other environmental requirements (EPBC Act) and National Environmental Protection Measures • heritage • research and development incentives • royalties (offshore – shared with relevant state) • royalties (onshore – uranium in the NT only) 	<p>Mining, primary processing and ongoing mine-site rehabilitation</p> 	<ul style="list-style-type: none"> • OHS requirements • water access and discharge • energy regulation • royalties • rehabilitation bonds/financial surety • local Government rates and charges • environmental and social regulations • transport regulation • quarantine • contaminated sites legislation

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Table 4.1 (continued)

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of mining and mineral cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • national land transport regulatory frameworks • quarantine • research and development incentives • National Environment Protection Measures 	<p style="text-align: center;">Secondary processing where required</p> <div style="text-align: center;"> <pre> graph TD A[Secondary processing where required] --> B[smelting/refining] A --> C[other] </pre> </div>	<ul style="list-style-type: none"> • environmental requirements/approval procedures • transport regulation, including coastal shipping • energy regulation • quarantine • contaminated sites legislation • water access and discharge • OHS requirements
<ul style="list-style-type: none"> • national land transport regulatory frameworks • shipping and maritime safety and environmental laws • international maritime codes and conventions • competition laws/access regimes • export controls (uranium) • quarantine • export incentives 	<p style="text-align: center;">Transport to final consumers — shipping and logistics; sales/customer management</p> <div style="text-align: center;"> <pre> graph TD A[Transport to final consumers — shipping and logistics; sales/customer management] --> B[] </pre> </div>	<ul style="list-style-type: none"> • transport regulation, including coastal shipping • government owned public/private transport infrastructure • competition laws/access regimes • OHS requirements • environment regulation
<ul style="list-style-type: none"> • environmental requirements relating to rehabilitation of site (matters of national environmental significance triggering EPBC Act) • national frameworks for OHS, including National Mine Safety Framework 	<p style="text-align: center;">Mine closure and site rehabilitation</p> <div style="text-align: center;"> <pre> graph TD A[Mine closure and site rehabilitation] --> B[] </pre> </div>	<ul style="list-style-type: none"> • environmental requirements relating to rehabilitation of site • closure requirements • contaminated sites legislation • OHS
<ul style="list-style-type: none"> • environmental requirements relating to rehabilitation of site under EPBC Act 	<p style="text-align: center;">Tenement relinquishment to Crown</p>	<ul style="list-style-type: none"> • environmental requirements relating to rehabilitation of site • bonds/financial surety relinquishment • sign off on closure for relinquishment

Sources: Various, including MCA sub. 37, p. 2., offshore exploration and mining legislation.

Table 4.2 Petroleum sector value chain and the impact of regulations

<i>Key Australian Government regulation/policy area</i>	<i>Key stages of petroleum cycle</i>	<i>Key state/territory government involvement/regulation (responsible for onshore and coastal waters)</i>
<ul style="list-style-type: none"> • allocation of exploitation and production rights offshore under Australian Government jurisdiction in waters beyond the three nautical mile limit (administration delegated to states and territories for joint administration) 	<p>Ownership of resource</p> 	<ul style="list-style-type: none"> • allocation of exploitation and production rights onshore and in coastal waters to three nautical miles
<ul style="list-style-type: none"> • exploration permit (jointly administrated with states and the NT) • Aboriginal land rights (Aust Govt responsibility in NT only) • native title • Aboriginal and Torres Strait Islander cultural heritage • natural heritage, world heritage • international treaties and conventions covering natural and cultural heritage • geoscience programs — generating and disseminating geoscientific information • petroleum property right/allocation system under Petroleum (Submerged Lands) Act (PSL Act) (jointly administered with states and the NT) • environmental protection and biodiversity conservation • national occupational health and safety (OHS) framework regulated by National Offshore Petroleum Safety Authority (NOPSA) for drilling activities. • Offshore Petroleum (Safety Levies) Regulations (NOPSA) • survey and drilling approvals 	<p>Exploration (surveys and drilling etc)</p> 	<ul style="list-style-type: none"> • exploration permit • native title • State PSL legislation in coastal waters • laws relating to Aboriginal and Torres Strait Islander cultural heritage, archaeological & Aboriginal relics, sacred sites • natural heritage • mineral property right/allocation system • geoscience programs — generating and disseminating geoscientific information • environmental protection/assessment • state OHS legislation and onshore acts • survey and drilling approvals
<ul style="list-style-type: none"> • PSL Act regulations — Management of Environment, Well Operations, Data Management, Management of Safety on Offshore Facilities, diving safety, OHS; Schedule of Specific Directions • NOPSA safety levies • field development plans • production licence • infrastructure licence • drilling approvals • native title • cultural heritage • environmental assessments, including Environment Protection and Biodiversity Conservation (EPBC) Act 	<p>Development (drilling wells/platform design and construction)</p> 	<ul style="list-style-type: none"> • field development plans • production licence • drilling approvals • environmental assessments, including native vegetation • planning approval, land use planning • approvals required under state agreements for specific large projects • native title • cultural heritage • state OHS legislation, state PSL Act and onshore acts

(Continued next page)

Table 4.2 (continued)

Key Australian Government regulation/policy area	Key stages of petroleum cycle	Key state/territory government involvement/regulation (responsible for onshore and coastal waters)
<ul style="list-style-type: none"> • PSL Act Management of Environment, Well Operations, Data Management, Datum, Pipeline, Diving Safety, OHS and Management of Safety Regulations • EPBC Act • pipeline licence • pipeline management plan • consent to construct • validation of pipeline proposal • construction environment plan • offshore occupational health and safety (NOPSA) • NOPSA safety levies • Navigation Act • Fisheries Act • quarantine • Radiocommunications Act • various environment protection legislation/regulations eg Sea Dumping, Prevention of Pollution, Prescribed Waste • radiation safety • offshore facilities security • Links through APEC and bilateral investment promotion and protection agreements 	<p>Pipeline design and construction</p> 	<ul style="list-style-type: none"> • pipeline licence • pipeline management plan • consent to construct • validation of pipeline proposal • construction environment plan • infrastructure — transport facilities (railways, ports and roads), townships and supporting services (electricity, water and sewerage) • environment protection Acts • building regulations • state OHS legislation, state PSL Act and onshore acts
<ul style="list-style-type: none"> • Aboriginal land rights (Aust Govt responsibility in NT only) • PSL Act Management of Environment, Pipelines, OHS, Well Operations, Data Management, Management of Safety on Offshore Facilities, Pipelines, Diving Safety and OHS Regulations • pipeline management plan • consent to operate • offshore OHS — NOPSA • NOPSA safety levies • Navigation Act • offshore facilities security • quarantine • emissions/greenhouse policies • other environmental requirements • heritage • research and development incentives • petroleum resource rent taxation (offshore) • crude oil and LPG excise • petroleum royalties (North West Shelf) • resource rent royalty (Barrow Island – administered by WA) 	<p>Production/ pipeline operation</p> 	<ul style="list-style-type: none"> • pipeline management plan • consent to operate • occupational health and safety requirements • energy regulation • royalties • local government rates and charges

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Table 4.2 (continued)

<i>Key Australian Government regulation/policy area</i>	<i>Key stages of petroleum cycle</i>	<i>Key state/territory government involvement/regulation (responsible for onshore and coastal waters)</i>
<ul style="list-style-type: none"> • national gas pipelines access law and code • national land transport regulatory frameworks • shipping and maritime safety laws • research and development incentives 	<p>Transportation to terminal/sale of crude oil/gas</p> <p>↓</p>	<ul style="list-style-type: none"> • environmental requirements/approval procedures • transportation regulation • energy regulation
<ul style="list-style-type: none"> • petroleum product excise tax • fuel tax credits • Fuel Quality Standards Act (to address air quality, health, and operability requirements) 	<p>Refining — conversion of raw primary gas/oil into petrol, diesel etc</p> <p>↓</p>	
<ul style="list-style-type: none"> • Mandatory Oil Code under Trade Practices Act • Liquid Fuel Emergency Act • international maritime codes and conventions • competition laws/access regimes • export incentives 	<p>Sales/customer management</p> <p>Fuel distribution and retailing</p> <p>↓</p>	<ul style="list-style-type: none"> • transport regulation • government owned public/private transport infrastructure • access regimes • Queensland fuel subsidy scheme • consumer protection
<ul style="list-style-type: none"> • environmental requirements relating to rehabilitation of site — eg PSL Act Management of Environment, Pipeline, and Well Operations Regulations and EPBC Act • offshore OHS — NOPSA • NOPSA safety levies • Sea Dumping Act • PSL Act 	<p>Decommissioning phase</p>	<ul style="list-style-type: none"> • environmental requirements relating to rehabilitation of site • state OHS legislation, state PSL legislation in coastal waters and onshore Acts

Sources: Various, including APPEA sub. 40.

There are also risks inherent in recommending reforms in some areas of regulation (for example, taxation) without a careful consideration of the impact on the whole economy and the possible distortions that might be created by piecemeal changes.

Government policies and regulation relating to occupational health and safety (OHS) as well as education and trade skills development could also fit into this category. Both these areas of regulation have impacts on businesses across the

economy and there is an argument for covering them in year 5 with other generic areas of regulation. However, evidence presented to this review suggests that particular aspects of these issues are among the highest priority areas of concern for businesses in the minerals sector.

Another major concern for the sector is transport bottlenecks. Regulation is just one of many factors contributing to these problems. Transport regulation affects other businesses in the primary sector (agriculture, fisheries, forestry and aquaculture) as well as in other sectors, especially those in manufacturing, wholesale and distributive trades, which the Commission has been asked to study in year 2. And of course the direct burden of transport regulation in the first instance falls on businesses engaged in providing transport services — the relevant ANZSIC subdivision covering transport will be reviewed in year 3. However, there are particular elements of the transport infrastructure that are exclusively or largely used by businesses in the primary sector and in some cases the minerals sector only (certain rail and port infrastructure). There are also regulations relating to shipping and the transport of radioactive materials which impact on the system.

Accordingly, given their importance to the mining, oil and gas sector this chapter does include some analysis of concerns raised in relation to: OHS; transport infrastructure; and labour skills and mobility. However, in each of these areas a full analysis of reform options is best deferred to a subsequent year or a separate review.

More generally, the focus of this chapter, and those dealing with agriculture (chapter 3) and forestry, fishing and aquaculture (chapter 5), has been driven by the concerns raised by participants. In contrast to agricultural submissions, the mining, oil and gas submissions raised very few detailed and specific complaints about existing regulation. Rather, a greater emphasis was placed on broad principles for general regulatory frameworks for the future. Where possible, the Commission has treated the underlying shortcomings of existing regulation implied by any suggested new frameworks as concerns.

Role of the Australian Government

Broadly, government regulation specifically covering mining, oil and gas activities has the following objectives:

- managing the natural resource — providing an appropriate return to the community from the granting of exploitation rights
- ensuring the safety of workers
- protecting the environment.

The Australian Government is responsible for mineral and petroleum resources in Australia's *offshore* areas beyond three nautical miles¹ and for uranium in the Northern Territory. In all other cases, resources located on land or in 'coastal' waters — areas in the zone within three nautical miles of the coast — are the responsibility of the relevant state or territory government. Mining of offshore minerals (including petroleum) is carried out under common offshore regimes, with complementary Australian Government and state/Northern Territory offshore legislation in place for exploration and development.

Although the Australian Government regulates offshore mining (other than petroleum) activity through the *Offshore Minerals Act 1994*,² historically there has been very little exploration and no production of minerals in offshore waters.³ Thus, in practice the regulatory framework has, to date, not had a significant impact. In contrast, more than 90 per cent of Australia's oil and gas resources are found in Commonwealth (offshore) waters (APPEA 2007, p. 6). Accordingly, Australian Government regulation of the petroleum sector (section 4.3) has a major impact on business operations.

However, even where the Australian Government has jurisdictional involvement through ownership of the resources, day-to-day administration is typically carried out by state or territory governments through a system of designated and joint authorities.

Tables 4.1 and 4.2 highlight the relative roles of the Australian Government and state and territory governments. Most of the regulation affecting the onshore operations of businesses in the minerals and petroleum sector is imposed by state/territory governments.

The relative importance of state regulation was clearly evident from consultations, including a mine visit used as a case study for the review (box 4.1). Members of the review team visited Cadia Valley Operations in Orange, New South Wales (a gold and copper mining operation) with a view to getting a more detailed insight into the particular regulations affecting the different stages of the operation. While recognising their experience and the information gathered is not representative of different types of mining operations, or indeed similar operations in different

¹ In accordance with the United Nations Convention on the Law of the Sea, Australia has a 200 nautical mile Exclusive Economic Zone around continental Australia and its territories.

² In addition, six associated Acts provide for the payment of royalties, fees for registration, exploration, retention, mining and works licences.

³ In recent years there has been growing interest in offshore minerals *exploration* in Australian waters as developments in processing have enabled areas previously thought to be impossible to mine to be considered.

jurisdictions, it nevertheless provided useful background for the analysis elsewhere in this chapter, and in particular to an understanding of the sector's 'value chain'.

Box 4.1 Case study — key regulatory burdens affecting a metal ore mining operation

In addition to a number of concerns relating to general taxation measures (including aspects of GST and FBT compliance) and industrial relations laws, which are not being examined by the Commission in this first year of the review program, Cadia Valley Operations raised specific concerns in the following areas, the most significant of which stem from state government legislation.

Occupational Health and Safety

A large number of regulatory requirements in this area generate direct costs and create obstacles to the free movement of people across jurisdictions. Even within jurisdictions, the discretion given to regulators under broadly specified requirements leads to inconsistent interpretations. Issues include:

- Explosives handling licences — for Cadia this leads to licence fees of around \$30 000 and the equivalent of 60 person days organising licences for staff, training, establishing competencies etc.
- Non-recognition of interstate qualifications — in some cases this is due to regulatory differences, but on occasions for hazardous occupations, it can be a company policy response to managing a 'duty of care' that is not well defined.

Other differences in regulation across states

- A vehicle fitted out as an ambulance and approved for use at the Company's mining operation in WA was off the road for 7 weeks because the NSW Roads and Traffic Authority would not accept the WA compliance plate.
- Human resource laws — for example, around recognition of accrued long service leave entitlements.

Royalties

The ad valorem royalty scheme in NSW necessitates complex calculations and separate accounting for depreciation (because it is inconsistent with tax and accounting depreciation guidelines). Cadia was required to invest in new tailored software and government auditors also incur unnecessary costs. Alignment with the simple percentage of revenue method used in most other states would reduce costs.

Environmental issues

Cadia estimates that its operations are subject to some 700 licences, permits and consents imposing environmental requirements relating to emissions, waste, noise, dust, flora, fauna, site rehabilitation etc.

(Continued next page)

Box 4.1 (continued)

The intersection of the Commonwealth EPBC Act requirements and NSW legislative requirements are generally considered to be working well under the bilateral agreement on assessments, although under-resourcing of the Australian Government Department of Environment and Water Resources still leads to some delays.

Ongoing certainty of access to water is crucial and Cadia emphasised the importance of a clear and consistent regulatory regime and the need to address the multitude of agencies across different levels of government with a role in determining water allocations and usage. Better coordination across governments was also required in the area of greenhouse policies, with a large number of different strategies and schemes leading to inconsistencies and confusion.

Transportation

Driver fatigue legislation and other requirements that nominate mining companies as part of the 'chain of responsibility' place an unreasonable burden on the industry. Firms are being asked to accept liability for actions they can have little practical influence over.

Other issues

Other matters raised that specifically related to Australian Government regulation included:

- Diesel fuel excise rebate — the cost of compliance resulting from complex record keeping leads to some legitimate fuel expenses not being claimed, that is, the cost of monitoring usage and record keeping for vehicles that are used both on site (off road) and on road are judged to outweigh the benefit of the rebate.
- ABS statistical collections — the burden associated with compiling and submitting information is exacerbated because of the requirement to sort and present the data in a specific manner that is inconsistent with normal company practice and accounting standards.
- Research and development assistance — the paper work burden is considered too onerous and requires the engagement of external consultants.

Source: Interviews with management and staff at Cadia Valley Operations, Orange.

As concerns about *general* mining regulation relate mainly to the regulations governing *onshore* activities, which fall within the jurisdiction of the states and territories, they are outlined only briefly below.

An audit of onshore minerals regulations commissioned by the MCA (URS 2006) found that regulations for exploration, mining project and environmental approvals are complex, inconsistent and poorly administered. For mining companies which

operate across states and territories, having to deal with several different regulatory regimes can impose a major cost burden.

In its submission to this study, MCA made the following observations based on the audit findings:

[the audit] confirmed the significant burden on business caused by inefficient and ineffective project approval procedures:

- problems tend to arise in the design of relatively new areas of regulation, such as environmental management, cultural heritage and access to land; and
- poor administration and implementation of regulation imposes unnecessary burdens on business.

Regulatory project approvals in the latter two areas impacting exploration and mining licences are cumbersome, complex and inconsistent undermining smooth and speedy project approvals.

... the different approaches across Australia all add to the time and cost of dealing with multiple regulators and different reporting formats and requirements. (sub. 37, p. 20)

With respect to the administration of regulation by the states and territories, several participants expressed concerns about under-resourcing of regulatory agencies. The Queensland Resources Council (QRC) submitted:

Poorly administered or under-resourced regulation imposes substantial costs on the Queensland resources and energy sectors — which causes uncertainty, delays and cost increases. While legislative regulatory regimes may provide an excellent framework, this good work is effectively lost if the implementation and operational aspects are not afforded the appropriate level of resourcing or bureaucratic priority. QRC remains concerned that this is a key issue in many jurisdictions, including Queensland. (sub. DR71, p. 2)

These problems are linked to the skills shortage and the competition for agency staff from mining firms offering substantially higher salaries, but are also a consequence of the multiplicity of regulatory agencies across the states and territories, a fact that strengthens the case for a more collaborative and national approach to the regulation of mining activity.

Given the scope of its terms of reference, it is not appropriate for the Commission to make an assessment about the relative efficiency of the different regimes. It does note, however, that in relation to environmental approvals, COAG has recognised the need for nationally consistent, efficient, effective, timely and cost effective approval procedures as a key area for reform across all jurisdictions (section 4.5).

The Australian Government impacts on the mining and oil and gas sector at the whole of economy level, such as through fiscal policy and its taxation regime.

It also affects the sector more specifically through:

- its constitutional power over international trade (customs and issuing of export permits for some commodities, for example, uranium)
- Australian Government environmental legislation — although the states are the main authorities for environmental management within their respective jurisdictions, the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) requires the Australian Government to take an active role in matters of National Environmental Significance
- National Water Initiatives — this is more of a prospective impact than one based on current regulatory involvement (chapter 3)
- Native Title (national framework) legislation governing Indigenous land use
- uranium in the Northern Territory
- transport regulations, including the *Navigation Act 1912*
- fisheries legislation
- quarantine
- generating and disseminating geoscientific information.

The rest of this chapter is organised as follows:

- uranium-specific regulation (section 4.2)
- petroleum-specific regulation (section 4.3)
- access to land, including Indigenous and heritage issues (section 4.4)
- Environmental Protection and Biodiversity Conservation Act (section 4.5)
- National Pollutant Inventory (section 4.6)
- assessment of site contamination (section 4.7)
- climate change policies (section 4.8)
- labour skills and mobility (section 4.9)
- transport infrastructure (section 4.10)
- safety and health (section 4.11).

4.2 Uranium-specific regulation

Australia is a significant exporter in the global market for uranium, with exports worth \$546 million in 2005-06 and \$660 million in 2006-07 (ABARE 2007). Given

the potential risks involved with nuclear materials and the role of uranium as a fuel in the nuclear power process, it is subject to a wide range of regulation.

Complexity of uranium regulations

As with other onshore resources, day-to-day regulation of uranium mining rests with the states and the Northern territory. Currently uranium mining is permitted in South Australia, Tasmania and the Northern Territory (the Australian Government owns the uranium resources within the Northern Territory). There are no mines currently operating in Tasmania.

Uranium exports are destined for use in nuclear power generation in countries with which Australia has nuclear safeguards agreements. Therefore, beyond the standard regulation of minerals (see above), the Australian Government also has a significant role in the regulation of uranium in terms of:⁴

- environmental approvals for new or expanded mines – uranium is a trigger under the EPBC Act
- legislation specific to the Northern Territory (such as the *Environment Protection (Alligator Rivers Region) Act 1978*)
- export approval for radioactive materials
- implementation of international agreements providing for safeguards on nuclear material and associated items, and for the physical security of nuclear material and facilities
- the protection of human health and the environment from radiation hazards, including the safe transport of radioactive materials
- current Australian Government legislation (including the EPBC Act) which also prohibits any fuel fabrication, enrichment or nuclear power plants in Australia.

Assessment

The uranium industry, and its regulation, have been the subject of three recent reviews. The *Report of the Uranium Industry Framework Steering Group* (the UIF) — involving both government and industry — was released in November 2006. It focused on rationalising environmental approvals, developing a national reporting regime for uranium mines and removing impediments to the transport of uranium. The UIF has recently (23 January 2007) formed an implementation group to progress the reforms.

⁴ For more details, see UIC (2006).

A House of Representatives standing committee report, tabled in December 2006, *Australia's Uranium – Greenhouse Friendly Fuel for an Energy Hungry World* (HRSCIR 2006, known as the Prosser Report) looked at, among other things, minimum effective regulation for uranium mining across Australia and streamlining land access approvals.

The Prime Minister's Taskforce — *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?* (the Switkowski Report) — found, in relation to regulation, that:

Australia's three uranium mines all operate under different regulatory regimes, for historical and jurisdictional reasons. Extensive and at times duplicative regulatory requirements apply to uranium mining. Adding to this complexity, across states and territories the regulatory responsibility for health and safety, and environmental standards, is housed in different agencies, and in some cases across agencies. There are significant advantages in rationalising and harmonising regulatory regimes for uranium mining across jurisdictions. (PMC 2006, pp. 123–4)

The Taskforce report noted that one option to streamline regulatory arrangements would be to channel mining proposals and operations (including environmental assessments and approvals) through a single regulator for mine compliance. In the broader context of its consideration of the establishment of nuclear fuel cycle activities in Australia the Taskforce concluded that:

A single national regulator for radiation safety, nuclear safety, security, safeguards, and related impacts on the environment would be desirable to cover all nuclear fuel cycle activities. (PMC 2006, p. 117)

Some participants were not in favour of the establishment of a national regulator for the industry. The South Australian Government, for example, considers that 'consistency of regulatory processes between jurisdictions is a more appropriate method of dealing with the regulation of this sector' although it is 'not averse to the establishment of a national regulatory regime for the transport of uranium' (sub. DR50, p. 6).

In light of the above reviews, the Australian Uranium Association (AUA) commented that it is:

... satisfied that the regulatory regime applied to the industry has been well studied, and ... will support the current reform processes in the endeavour to produce a fit-for-purpose regulatory arrangement which reconciles the roles of the Commonwealth and the States and Territories. (sub. 33, p. 1)

In its submission in response to the Commission's draft report, the South Australian Government expressed its confidence in the UIF implementation committee process and the successful implementation of the UIF recommendations and its expectation

that this will lead to a more efficient regulatory regime for uranium mining and transport within Australia. It expressed the view that ‘genuine progress is being made’ and noted that implementation of the UIF recommendations would also address the issues raised in the Switkowski and Prosser Reports (sub. DR50, pp. 5–6).

Given three recent reviews, progress in implementing reforms and the industry’s support for the current processes, the Commission considers that a further general examination of uranium-specific regulation is not warranted at this stage.

Uranium under the EPBC Act

Despite general satisfaction with the recent reviews, the AUA believes that there are two outstanding matters which were not dealt with under the previous reviews. The first relates to the status of uranium mining as a trigger under the EPBC Act. Mining or milling of uranium ore are considered under the Act to be ‘nuclear actions’, and therefore matters of national environmental significance. Under the Act, a person who proposes to take an action that will have, or is likely to have, a significant impact on a matter of national environmental significance, must refer that action to the Minister for a decision on whether assessment and approval is required.

The AUA noted that:

The other matters of national environmental significance specified in the EPBC Act — world and national heritage areas, wetlands, threatened and migratory species, marine environment — all possess inherent characteristics that make them valuable per se from a national environmental perspective. (sub. 33, p. 2)

And as such, they believed that this implied that:

... uranium mining is included in the definition of ‘nuclear actions’ on the basis of the assumed environmental impact of the physical properties of uranium ore per se. (sub. 33, p. 2)

The AUA sought clarity for the basis of this treatment, submitting that:

... the physical properties of uranium ore that account for its treatment under national environmental legislation need to be identified in a review so as to provide an informed, clear and public basis for that treatment. We submit also that such a study could usefully extend to an examination of the implications of the physical properties of uranium for employee and public health and safety. (sub. 33, p. 2)

It recommended that this study, examining the environmental, health and safety risks inherent in the physical properties of uranium, be conducted by authorities

such as the Chief Scientist of Australia and the Chief Medical Officer. (sub. 33, pp. 2–3).

The Department of Industry, Tourism and Resources (DITR) considered it is not clear why the nuclear trigger (which was an amendment added in the final stages of Parliamentary approval) is needed ‘since any new uranium mines would most likely trigger the Act on one or more of the other matters of National Environmental Significance’ (sub. DR58, p. 2).

The Department of Environment and Water Resources (DEW) made the following observations in response to the Commission’s draft report:

In the Council of Australian Governments (COAG) Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment all States and Territories agreed that the Commonwealth has a responsibility and an interest in relation to the assessment and approval of mining, milling, storage and transport of uranium.

The current offences in the EPBC Act for nuclear activities which have a significant impact on the environment reflect this responsibility. Any changes to the Commonwealth’s responsibility for nuclear activities would require consultation with COAG. (sub. DR67, p. 4)

The Commission supports a science-based assessment of the current treatment of the mining of uranium to ensure that it is based on a proper evaluation of the up-to-date scientific evidence of the inherent properties of uranium and any environmental, health and safety implications. In this respect, DITR (sub. DR58) drew attention to the important role of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) — responsible for protecting the health and safety of people, and the environment, from the harmful effects of radiation. The Commission considers that ARPANSA should be consulted in the proposed assessment to be conducted by the Chief Scientist.

RESPONSE 4.1

The case for the continued treatment of uranium mining as a matter of national environmental significance — and therefore as a potential trigger for environmental assessments under the EPBC Act — should be reviewed. This review should be informed by a science-based assessment of the most up-to-date evidence on the inherent properties of uranium and any environmental, health and safety implications. The Chief Scientist of Australia should conduct this assessment, with the involvement of the Chief Medical Officer.

Duplication in environmental assessment requirements

Secondly, the AUA raised an issue of potential duplication in regard to environmental assessments associated with uranium export permits. The AUA questioned:

...whether the continued inclusion of mining and environment-related conditions in export permits is necessary. It would seem more appropriate for environmental conditions to be imposed under an environmental protection Act, and uranium security conditions to be imposed under safeguards-related regulation. This would be clearer and guard against duplication. (sub. 33, p. 3)

Assessment

Export permits for uranium are issued under the *Customs (Prohibited Exports) Regulations 1958*. Before an export permit can be issued, safeguards requirements must be met. The Minister responsible for Resources can also specify environmental conditions within the permit. Permits are issued by DITR, in consultation with the Australian Safeguards and Non-proliferation Office (ASNO).

Safeguards clearances (which monitor the possession and movement of uranium) must be obtained from ASNO before a shipment can be approved by DITR. The ASNO, located within the Foreign Affairs and Trade portfolio, is responsible for:

... nuclear safeguards and physical protection. ASNO ensures that **nuclear materials** — uranium, thorium and plutonium — and **nuclear items** — facilities, equipment, technology and nuclear-related materials — are used only for authorised purposes, are properly accounted for, and are protected against unauthorised use. An important part of this responsibility is ensuring that Australia's treaty commitments are met, particularly that nuclear activities are conducted for exclusively peaceful purposes. (ASNO 2006, p. 31)

The specific safeguards functions of the Director General ASNO, include 'operating Australia's bilateral safeguards agreements and monitoring compliance with the provisions of these agreements' (ASNO 2006, p. 32).

Safeguards clearance as a condition of export is just one element of Australia's safeguard requirements. These requirements aim to ensure that uranium exports are only used for peaceful purposes. Australia requires its trading partners to be party to an agreement with the International Atomic Energy Agency for the application of safeguards as well as requiring other conditions set out in bilateral safeguards agreements between the destination country and Australia. Given the international characteristics of safeguards arrangements, it is appropriate that safeguards-related information and conditions are required at the point of export, to assist in the effective tracking of the movement and use of uranium. Additionally, it is

appropriate that this function is conducted by ASNO as they are responsible for monitoring compliance with relevant international treaty obligations.

With respect to environmental requirements, all existing uranium mines in Australia were subject to environmental impact assessment under the now repealed *Environmental Protection (Impact of Proposals) Act 1974* (the EPIP Act). After assessment, the Minister with responsibility for the environment made recommendations which the Minister responsible for resources was then required to take into account. While proposals were assessed under the EPIP Act they were not subject to approval under that Act:

Under the EPIP Act, the only way the Commonwealth could impose environmental conditions on a project was to use other Commonwealth powers, which in the case of uranium mines, was through the export power. (DITR sub. DR58, p. 3)

In relation to current operating uranium mines, recommendations made under the EPIP Act continue to be enforced in environmental requirements through the export permissions granted under the Customs (Prohibited Exports) Regulations, administered by DITR:

Amendments to the [Customs (Prohibited Exports)] regulations were made in 2000 to strengthen Australian Government control over uranium exports by providing the Minister for Industry, Tourism and Resources with a clear and administratively efficient mechanism by which the Minister can place legally binding conditions, including mine-site environmental conditions, on the export of uranium. ... (UIC 2006, pp. 2–3)

All *new* uranium mines are assessed under the EPBC Act. In addition, any major expansions, intensification or modification to *existing* mines would likely trigger an assessment under the Act (DITR sub. DR58).

As the Environment Minister has responsibility for enforcing environmental requirements under the EPBC Act, technically the power to impose environmental requirements on uranium mining activity resides with two Ministers. However, a number of considerations suggest that this is not likely to be a significant problem, in practice:

1. uranium mining activity will be carried out subject either to environmental requirements imposed under their export permission (based on assessments requirements under the EPIP Act) or the EPBC Act, but not both.
2. all *new* mines are subject to the provisions of the EPBC Act and for these operations there will be no need to attach environmental requirements to export permissions;
3. for all *existing* mines the EPBC Act states that projects can not be reassessed once already approved, except where the mine is expanded or extends beyond

the scope of the original assessment — in which case they would become subject to the EPBC Act requirements;

4. When assessing significant changes to existing mines, the Department of the Environment and Water Resources (DEW) will consider the whole of the operation of the mine (sub. DR67, p. 4)

Nevertheless, it is the case that in the absence of significant expansion or modification, the operations of existing mines will remain subject to environmental requirements imposed by the Minister responsible for resources, as a condition of the granting of their export permissions.

The Commission agrees with the AUA that it is more appropriate that environmental requirements are imposed under an environmental protection Act and in the draft report suggested that the assessment of environmental conditions for export permits should be consolidated into approvals under the EPBC Act, ensuring that approval from the Department of Environment and Water Resources is sufficient to satisfy any environmental requirements for export permits. The Commission also noted that the same outcome was likely to be largely or wholly achieved over time without any policy or legislative change as existing mines — with any significant expansion or modification — move over to coverage under the EPBC Act. This was also the judgment of DEW and DITR in their comments on the draft report. Indeed, DITR noted that at least two of the four currently approved mines will be moved over to the EPBC Act ‘in the near future’ (sub. DR58, p. 3).

Removal of the power of the Minister responsible for resources to impose environmental conditions on the granting of export permissions for uranium could be achieved by amending the Customs (Prohibited Exports) Regulations. However, in the absence of significant expansion or modification, it may not be legally feasible to make previously assessed operations subject to new environmental assessment requirements under the EPBC Act. Further, the current environmental requirements for existing mines rely on the Commonwealth’s export power and can not be applied directly under the EPIP Act. DITR submitted that ‘[W]e understand that there [is] no way legally to consolidate environmental conditions for mines approved under EPIP to EPBC’ (sub. DR58, p. 3).

Although the current difference in environmental assessment and approval conditions between existing and new uranium mines is unlikely to be imposing a substantial unnecessary regulatory burden (and moreover any burden could be expected to be substantially reduced or eliminated in coming years), there would be benefits in exploring the scope for earlier legislative action to consolidate requirements.

Notwithstanding that some uranium mines, with future expansion or modification, are likely to become subject to the provisions of the EPBC Act, the Uranium Industry Framework Implementation Group should examine the legal options for consolidating environmental conditions for all mines under the Act.

4.3 Petroleum-specific regulation

The Australian Government is responsible for petroleum resources in Australia's *offshore* areas beyond three nautical miles. These activities are currently governed by the *Petroleum (Submerged Lands) Act 1967* (the PSL Act). There is equivalent legislation at the state and territory level, so that the exploration and development of offshore petroleum is carried out under a uniform offshore regime applying in both Australian Government and state/Northern Territory jurisdictions.

The PSL Act provides for orderly exploration and development of petroleum resources, and sets out a basic framework of rights, entitlements and responsibilities of governments and industry. Under the legislation, all titleholders must carry out operations according to good oilfield practice, including doing so safely and preventing the escape of petroleum into the environment.

Petroleum located on land or in coastal waters is the responsibility of the relevant state or territory government. Thus, state and territory governments, *inter alia*:

- manage access to land for exploration and issue exploration licences
- allocate petroleum property rights
- have primary responsibility for land administration
- regulate operations (including environmental and OHS)
- collect royalties.

As noted above, Australian Government regulation has a major impact on business activity because more than 90 per cent of oil and gas resources are found in Commonwealth (offshore) waters, although state and Northern Territory regulators influence compliance costs associated with this regulation as the designated authorities for day-to-day administration.

Recent reforms (some of which are ongoing) to the Australian Government legislation and regulations, include:

-
- a significant restructuring and rewrite of the legislation and its passage through the Commonwealth Parliament in the form of the *Offshore Petroleum Act 2006* (OP Act) and associated Acts to reduce compliance costs for industry and administration costs for governments. It will be proclaimed to cover Commonwealth waters once the remaining states have passed equivalent legislation (this process is due to be finalised by the end of 2007)⁵
 - since 1994, the Australian Government has been replacing prescriptive rules under the ‘Schedule of Specific Requirements as to Offshore Petroleum Exploration and Production in Waters under Commonwealth Jurisdiction’ (the Schedule) with a system of activity-focused objective-based regulations. Single-purpose regulations under the PSL Act have been harmonised to ensure that a similar approach is used in each, such as the use of risk management plans and some alignment of reporting requirements
 - following a review of the Petroleum (Submerged Lands) (Management of Environment) Regulations, amendments were made in 2005, primarily to achieve increased efficiencies and flexibility and to ensure consistency with other regulations under the PSL Act
 - responding to the industry’s concerns and the Regulation Taskforce findings, DITR recently initiated a legislative project to significantly consolidate and streamline single-purpose regulations, with a view to merging some of them.

The last-mentioned review has involved extensive consultation with the industry and government agencies. The project is seeking to identify areas of duplication, regulatory overlap and grey areas, overly onerous approval processes, duplicative reporting requirements and any other issues which might be impacting on industry’, such as regulatory creep, management and development plans, consents, the role of guidelines and clarity, transparency and consistency in regulations and guidelines (Pegler et al. 2007).

A Draft Consolidation Report including over 50 recommendations was circulated for stakeholder comment at the end of September 2007. The Report found that although the regulatory framework for the petroleum industry in offshore Commonwealth waters is seen by industry as ‘largely workable’, it is ‘inconsistently applied, unclear in places, has duplicative requirements and has aspects of over-regulation’ (DITR 2007, p. 1).

It is expected that some recommendations are likely to be implemented before the end of the year (Western Australian Department of Industry and Resources sub. 36, p. 2).

⁵ The PSL Act continues to operate until the new Act is proclaimed.

DITR's review provides a means by which to address some of the concerns raised in the context of this current assessment of regulatory burdens.

Concerns raised by the Australian Petroleum Production and Exploration Association (APPEA) in its submission to this study (sub. 39) were focused broadly on the operation of the petroleum regulatory framework as a whole:

- a multiplicity of approval requirements and regulatory bodies, including duplicative regulations
- some concerns relating to the transition to objectives-based regulation
- inconsistent interpretation and administration of regulations across jurisdictions
- long and uncertain approval time lines.

Each of these is discussed below.

Too many approvals, regulatory bodies and too much duplication

A particular concern relates to the duplicative requirements that industry must meet for activities involving pipelines crossing from Commonwealth waters to one or more state or Northern Territory onshore jurisdictions for processing. This reflects a special characteristic of many oil and gas projects.

With regard to the whole regulatory framework, including requirements imposed by different jurisdictions, APPEA has stated:

Every step in the exploration, development and production of crude oil and natural gas is highly regulated ... In every jurisdiction ... the industry must potentially meet hundreds of requirements relating to timing, location, environment protection, worker and public safety, and management and extraction of the resources ... (sub. 39, p. 4)

... to develop any of these projects requires extensive teams of potentially dozens of highly trained people to shepherd the approvals through the company, engage with government, engage with scientists, engineers and other specialist contractors and of course engage in consultation with local communities. (sub. 39, p. 7)

The length and complexity of the multi-jurisdictional approvals regime is contributing to an international perception that Australia is a difficult place to invest in oil and gas exploration and development. This is reducing Australia's competitiveness for petroleum investment. (2007, p. 63)

Some requirements are duplicated across jurisdictions and, unless characteristics of different regions vary so much as to require different regulatory responses, impose unnecessary costs:

In many of the states and territories, there are often duplicated requirements that industry must follow for a given activity for each of the respective jurisdictions. (APPEA sub 39, p. 4)

... unnecessary and/or duplicative regulations can have a significant impact upon the oil and gas industry ... (APPEA sub. 39, p. 4)

An indication of the burden imposed by the multiplicity of approvals required for petroleum projects, and the number of regulatory agencies involved, is provided by the case studies presented in table 4.3. The regulatory approvals required for petroleum projects can vary considerably, from roughly 40 to nearly 300 approvals. Of note is the number of pipeline approvals, comprising between 20 and 50 per cent of approvals required for projects involving pipelines. In addition, firms must also deal with multiple regulatory agencies. Each of the first three, more standard, projects involved dealing with roughly 20 agencies, while the case of the floating production facility required dealing with only six agencies.

Managing numerous approvals with various agencies imposes considerable costs on firms. For instance, in case study 2, APPEA estimated that the cost of meeting regulatory requirements included:

- approximately 6 man years overall for the internal management by the operator of all 163 approvals and regulatory requirements;
- 54 man months of the internal management and coordination of all health, safety and environmental approvals; and
- engagement of contractors for the drilling and pipeline approvals totalling over \$100,000. (sub. 39, p. 9).

While for case study 3, the costs involved:

- Environmental approvals (EPBC and PSL Acts) that have cost approximately \$200,000 in environmental consultants fees as well as 5 man-months of time from the operator;
- Production Licence, Field Development Plan, Pipeline Management Plans, Pipeline Licence that have required about 8 man-months of time from the operator to prepare;
- Installation Vessel Safety Case Revision, Dive Management Plan and supporting HSE [Health, Safety and Environment] management plans and procedures for installation that have cost around \$200,000 in consultancy fees; and
- HSE assessments in design for the operation have cost a further \$300,000 in consultancy fees. (APPEA sub. 39, p. 10)

Table 4.3 Case studies – regulatory approvals for selected petroleum projects

	<i>Case study 1</i>	<i>Case study 2</i>	<i>Case study 3</i>	<i>Case study 4</i>
Description	Natural gas in Commonwealth waters, pipeline through state waters to onshore processing, liquefaction and export	Unmanned oil facility in Commonwealth waters, with a pipeline to onshore processing	Gas entirely in Commonwealth waters, tying into existing onshore gas processing	A floating production, storage and offloading facility in Commonwealth waters ^a
Government agencies – total	19	22	17	6
• Australian Government	9	8	14	-
• state and territory governments	10	14	3	-
Regulatory approvals – total	277	163	83	44
• Pipeline approvals (including design, construction and operation)	49	61	46	0
• Drilling approvals (including design, construction and operation)	53	18	24	18
• All other approvals (including general project approvals, environmental, health and safety, shipping, storage and processing facilities)	175	84	13	26

^a Floating production facilities process the crude oil onsite, which is then offloaded onto a shuttle tanker for transport directly to the customer. As such they do not require any regulatory approvals relating to pipelines.

Source: APPEA (sub. 39, pp. 8–11).

It is important to note that the information provided relates to the total number of approvals and regulatory costs, and does not identify which are unnecessary in whole or part. As the Western Australian Department of Industry and Resources noted, in relation to the Cliff Head project in Western Australia, multiple approvals for one pipeline may be necessary where the pipeline crosses different types of environment, giving rise to a variety of risks:

This project, for a small offshore oil field in Commonwealth waters, involved construction of an unmanned platform and a pipeline spanning three jurisdictions from the platform to an onshore processing plant from which oil is trucked to the BP Kwinana Refinery.

The safety, environment and public risk factors for the Cliff Head project differ within each jurisdiction. The platform is located within the valuable Western Rock Lobster fishery. The oil pipeline from the platform passes under the coastal reef with a beach crossing before passing through a variety of land tenure, (including a nature reserve), before reaching the processing facility in a disused quarry. The pipe lay issues on the pipe lay barge, (technical, safety and environmental) differ markedly from the pipe lay construction process onshore with the added complexity of a beach crossing. (sub. 36, p. 3)

In addition, further care must be taken as the table contains case studies only, which may not necessarily be reflective of the regulatory approvals required for every petroleum project.

Many of the above concerns relate not only to the Australian Government approvals and other requirements, but also to state and territory onshore regulatory regimes.

Assessment

Australian Government regulation

With regard to offshore petroleum, at the Australian Government level, there has been significant review activity in recent years focused on streamlining both the PSL Act and its regulations, as noted above.

The Commission commends DITR's current review, in terms of its objectives, consultation processes and anticipated implementation timeframes. The scope for this exercise to result in a substantial consolidation of regulations and streamlining of approval and information requirements is encouraging, but it is vital that this good work translates into actual practical reforms.

However, since the DITR coordinated review focuses primarily on the PSL Act regulations for which it has administrative responsibility, it is unlikely to address

inconsistencies and overlap between Australian Government regulations and regulators outside DITR's area of responsibility, for example with the Environment and Water Resources and Transport portfolios.

Although the industry did not raise specific concerns about the interaction between different Australian Government regulations and agencies, it is highly desirable that the relevant departments liaise closely and ensure a coordinated response to reducing unnecessary regulatory burdens on the petroleum sector. Should the broader review of the whole Australian onshore and offshore petroleum regulatory framework proceed (see response 4.3 below), it would be appropriate to include within its scope a consideration of such intra-jurisdictional coordination issues.

In relation to environmental issues, there remain some duplicative requirements between the PSL (Management of Environment) Regulations and the EPBC Act. Two avenues to address this include: amendments to the EPBC Act, which came into effect in February 2007 (section 4.5), that allow the Environment Minister to take account of the decisions made by other Australian Government Ministers; and the Standing Committee on Environmental Approval Processes for Offshore Acreage which provides a forum for DITR and DEW to coordinate policy and actions.

State and territory regulation

There would be benefits if any improvements that enhance the efficiency of the Australian Government regulations were also taken up, where appropriate, by other governments to reduce compliance costs associated with their onshore regimes.

The Western Australian Department of Industry and Resources (sub. 36) has also flagged that any amendments to Australian Government regulations coming out of the consolidation exercise will be mirrored in the Western Australian regulations.

Further, the Commission understands that a number of state governments (for example the Western Australian Office of Development and Approvals Co-ordination) have commenced an examination of the need for more substantial reforms to their regulatory regimes. Ideally any such reform efforts should be coordinated across jurisdictions, with the ultimate objective of harmonisation of regulatory regimes wherever possible.

A national approach?

There is a strong argument for a more national approach to regulation of the sector.

At a minimum, road maps of reporting and regulatory requirements could provide a valuable way to improve transparency of regulatory requirements (Western Australian Department of Industry and Resources sub. 36, p. 2).

Beyond this, there is a strong case for greater uniformity across onshore and offshore regimes. APPEA suggested two approaches for achieving this. One is to build further on recent successes of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) where stakeholders developed ‘a consistent law with regard to decommissioning offshore facilities’. APPEA considered that this provides an ‘excellent model for improving the regulatory regime and reducing inconsistency’, noting:

The approach of engaging stakeholders very early in the development of new and critical policy, assessing the existing legal framework, and then basing regulations on the best available science is commended by the industry. Such a process should be mirrored for the development of all critical new policies. This would result in fewer new regulations having unintended consequences or conflicting with or duplicating existing regulations. (2007, p. 67)

Secondly, APPEA (sub. 39, p. 7) considered that there is the potential for the model of the National Offshore Petroleum Safety Authority (NOPSA) to be adopted for non-safety aspects of petroleum regulation, with a new national regulatory authority established to manage all regulatory approvals for the oil and gas industry. The wider application of the NOPSA model could go further, providing greater scope to coordinate and streamline requirements across jurisdictions and thereby address the duplication of regulatory approvals.

More generally, APPEA have called for a ‘detailed and extensive investigation and benchmarking of the Australian petroleum regulation system across all jurisdictions’ (sub. 39, p. 7). In its *Platform for Prosperity* report, APPEA recommended that such a review should involve:

- a benchmarking of the Australian petroleum regulation system with globally competing provinces, including the United States, Canada, the United Kingdom, Norway, Indonesia and Brazil
- ensuring that the Prime Minister’s Taskforce Principles for Good Regulation are adopted
- a consideration of opportunities for streamlining and removing a number of areas of duplication in petroleum regulation, whilst ensuring that governments are able to continue to regulate the industry on the issues that matter to them to provide public assurance
- implementing clear time frames for approvals retained under the new system to further reduce the potential delays arising out of regulatory requirements. (2007, p. 63)

The Commission considers that there may be merit in establishing a new national regulatory authority. However, the costs and benefits of alternative models would be best considered in the context of a broader and comprehensive review of the onshore and offshore petroleum regulatory framework and its administration, including the effectiveness and efficiency of the current Joint Authority and Designated Authority processes.

RESPONSE 4.3

The Council of Australian Governments should endorse a broad review of the whole Australian onshore and offshore petroleum regulatory framework to:

- *address inconsistencies and duplication across and within jurisdictions*
- *evaluate how regulations can be restructured to reduce compliance costs*
- *assess the case for a national authority to oversee onshore and offshore petroleum regulation throughout Australia.*

In its response to the Commission's draft report, DITR advised that the Minister for Industry, Tourism and Resources is actively pursuing an expanded study of petroleum regulation across jurisdictions:

Specifically, he has sought the support of his state and territory colleagues in the Ministerial Council on Mineral and Petroleum Resources (MCMPR), asking that the Chair of MCMPR write to the Chair of COAG seeking endorsement at that level. While a terms of reference for such a study is yet to be defined, it is likely that it would include an assessment of the case for a national authority for on and offshore petroleum regulation. (sub. DR58, p. 3)

Some concerns with moving from prescriptive to objective-based regulation

With regard to Australian Government regulations concerning offshore petroleum, while the petroleum industry supports the move to objective-based regulations, as it *potentially* provides greater flexibility and reduces compliance costs, some aspects of the transition are causing concern:

- the costs associated with the preparation and submission of management plans
... the growing requirement for management plans to be submitted to government and approved is imposing a significant cost and time burden on the industry and can create substantial duplication in regulation. It also imposes a burden on the scarce resources of government agencies. (APPEA 2007, p. 67)
- the requirement to submit the same or similar information to different agencies under *multiple* management plans — the regulations for safety, the environment,

pipelines, diving safety, data and well operations all require the preparation of management plans

Many of the regulations necessitate submission of the same information — for example, about safety and environmental considerations — at different times and to different agencies. This information is also provided to NOPSA in the form of a Safety Case and to the Commonwealth’s Designated Authority in the form of an Environment Plan. In addition, each of these processes in turn has its own, often unique, reporting requirements, drawing on precisely the same performance data, just in a different form. The reporting burden is another area that clearly warrants attention to improve regulatory efficiencies and make Australia an even more attractive place to invest. (APPEA 2007, p. 67)

- as some of the clauses under the Schedule of Specific Requirements remain active, this has created some uncertainty for companies. The problem is exacerbated because the active clauses vary between jurisdictions.

Assessment

The PSL Act enables the following sets of single-purpose regulations:

- Management of Well Operations
- Management of Safety on Offshore Facilities
- Occupational Health and Safety
- Diving Safety
- Management of Environment
- Pipelines
- Datum
- PSL Act regulations
- Data Management
- Resource Management (forthcoming)
- Carbon Capture and Storage (forthcoming).

Industry has complained about the need to submit a management plan for each one so that similar information is provided in multiple management plans. This issue was highlighted in the Regulation Taskforce report, although no specific recommendation was made.

In response, as noted above, DITR recently initiated a legislative project to consolidate and streamline the regulations under the PSL Act/OP Act. The project is reviewing all current single-purpose regulations with a view to merging these into three sets of regulations responding to the three basic rationales for regulation — safety, environment and resource management.

This process aims to reduce the cost and time associated with meeting regulatory requirements through a reduction in overlap and duplication of documentation. The

project is also seeking to ensure that there is no duplication between the Act and the regulations and will seek to bridge any regulatory gaps.

APPEA have expressed strong support for this rationalisation of requirements to submit management plans:

APPEA has been particularly encouraged by the work of the Commonwealth and state industry departments, and welcomes the real prospect that potentially up to 60 duplicative decision points might be removed from the Petroleum (Submerged Lands) Regulations. Specifically this would involve repeals of the Pipeline Management Regulations, Diving Safety Regulations and the many legal consents required to construct, install and operate a facility or pipeline. This process should also result in significant amendments to the Well Operations Regulations. (sub. 39, p. 6)

Through this process, government has worked constructively with industry to go back to first principles and consider the purpose of each clause of the regulations, how it is regulated, and whether this purpose has already been addressed in another regulation, such as safety or environmental requirements. This process has been a very successful exercise in identifying duplication and reducing the number of approvals required. (APPEA sub. 39, p. 6).

RESPONSE 4.4

The current Department of Industry, Tourism and Resources' project to consolidate the Petroleum (Submerged Lands) Act 1967 Regulations has the potential to streamline and reduce compliance costs associated with the offshore regulations for which the Department is directly responsible. The necessary reforms should be implemented as soon as possible.

Inconsistent administration of regulation

In its *Platform for Prosperity* report, APPEA highlighted inconsistent *administrative processes* between jurisdictions, as adding to costs and uncertainty. This particularly arises from the state and territory governments' role in administering offshore regulation on behalf of the Australian Government.

Although the states and the Northern Territory have enacted legislation, based on the Australian Government model, for exploration and development of petroleum in offshore (including coastal) waters, in many cases, problems with offshore regulation stem from inconsistent administrative implementation and interpretations of that legislation by designated authorities in each jurisdiction.

Assessment

Within the legal framework established under the PSL Act, with equivalent legislation at the state and territory level, the Australian Government and the states/Northern Territory jointly administer and supervise petroleum operations in *offshore* areas beyond coastal waters through Joint Authority arrangements. Each Joint Authority comprises the Australian Government Minister and the relevant state/Northern Territory Minister. In addition, the relevant state/Northern Territory Minister administers day-to-day operations as the Designated Authority, in accordance with the Act.

APPEA highlighted an existing model for achieving greater consistency in the interpretation of regulation as worthy of further consideration — the Environment Assessors Forum (EAF).

The EAF (box 4.2) includes representatives from all jurisdictions, and seeks to remove inconsistent *interpretation* of environmental regulations contained within the PSL Act. APPEA considers that the Forum ‘has made significant in-roads towards addressing inconsistent application of the law.’ It discusses ways to further remove ‘inconsistent interpretation of regulations and find pragmatic solutions to regulatory issues while preserving the intent of the regulation’ (2007, p. 66).

Box 4.2 Environmental Assessors Forum

The EAF was established in mid 2004 as a key mechanism to ensure that environmental regulators have robust systems in place to provide consistency of environmental processes over all jurisdictions.

The EAF consists of the Australian Government Departments of Industry, Tourism and Resources (DITR) and Environment and Water Resources, Geoscience Australia and state/territory Designated Authorities (DAs) responsible for the application of the Petroleum (Submerged Lands) (Management of Environment) Regulations 1999. Other agencies and organisations, such as APPEA, are engaged dependant on the agenda.

The EAF is focused on promoting greater interaction between DAs (sharing ideas and experiences) and also between DITR and the DAs (wherein DITR could act as a driver of actions which could help promote consistency and improved regulatory practices).

There are no formal terms of reference for the EAF and the matters discussed at meetings are dictated by those issues most relevant at the time. An EAF teleconference is held approximately every quarter with a two-day face to face EAF workshop held twice a year.

The EAF reports to the Ministerial Council on Mineral and Petroleum Resources as required.

Source: DITR (pers. comm., 7 August 2007).

There would be merit in extending the EAF model to other areas of petroleum regulation to ensure greater consistency in the administration of offshore petroleum regulation by designated authorities.

RESPONSE 4.5

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

Long and uncertain approval time lines

APPEA notes that:

... it often takes a lot of time, money and effort to secure regulatory approval to explore and develop oil and natural gas. Gaining this approval often causes delays that can be costly and inefficient for both industry and government, and has the potential to drive investment overseas (sub. 39, p. 4)

With respect to delays in gaining approvals under petroleum regulation, APPEA has stated:

Delays in decision making within joint ventures can also arise as a result of the time needed to reach consensus on important matters as well as the differing corporate approvals requirements and time lines for new expenditure. Joint venture arrangements are used to spread risk over a portfolio of assets. Delays to activities within titles are limited by legislated time frames determined under the *Petroleum (Submerged Lands) Act 1967* (or the *Offshore Petroleum Act 2006*) or the relevant state and territory provisions. While the legislation imposes time frames on the title holder to provide information or applications to the regulator, certainty could also be increased by setting more time frames for the regulator to make decisions. (2007, p. 65)

Delays in gaining approvals can fundamentally alter the economics of a project and over time have a serious negative impact on the relative competitiveness of Australia as a destination for oil and gas investment. The Commission considers that, in principle, regulators should be required to commit to clear and reasonable time frames.

RESPONSE 4.6

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

4.4 Access to land

Mineral and petroleum firms operating in Australia must go through processes relating to native title rights and Aboriginal cultural heritage before they are able to access the land from which they extract resources. The mining and petroleum sectors have raised significant concerns relating to these processes. APPEA, for example, submitted:

The lengthy and uncertain time lines involved in Native Title and Aboriginal heritage processes are one of the main onshore impediments and pose considerable additional costs for petroleum exploration. (sub. 39, p. 5)

This section examines concerns relating to both native title and Aboriginal cultural heritage.

Lengthy timelines in native title processes

Native Title Representative Bodies (NTRBs) — and Prescribed Bodies Corporate (PBCs) — play important roles in the native title system, assisting and representing claimants in the lodging and processing of native title claims, determinations and associated negotiations, as well as mana. The MCA raised concerns that NTRBs:

... have been chronically under-resourced in fulfilling their statutory functions, which has delayed the negotiation of mutually beneficial agreements with industry and the resolution of native title claims. (sub. 37, p. 18)

As illustrated in the value chain in table 4.1, land access approvals are required at the beginning of a project, and as such, delays in approvals can give rise to significant costs within the mining industry, as entire projects can be delayed, or subject to uncertainty, pending native title negotiations. To remedy this, the MCA called for the ‘Australian Government [to] ensure adequate, performance-based resourcing to Native Title Representative Bodies, both in terms of human and financial capital ...’ (sub. 37, p. 19). In particular, the MCA believed that it was important that such funding come from government — rather than industry — for three main reasons:

- **Impact on independence of negotiations (real and perceived):** the minerals industry has strong concerns that external parties would not consider the negotiations to be independent if they are fully funded by a minerals company ...
- **capacity of PBCs to engage with industry:** PBCs need to be established and capable of engaging with companies where there are potential projects in Greenfields areas. Without some initial funding by government these organisations will simply exist as shelf-companies and will not have the capacity to engage ...
- **sustainable Indigenous communities:** ... Without the provision of core funding, PBCs will not have the capacity to consider the development of independent economic

enterprise, and will be restricted to their only economic development opportunities coming essentially from mining or pastoralist activities (sub. DR70, pp. 1–2)

Any reforms that streamline negotiation periods, while maintaining the objectives of the native title system (namely to recognise and protect native title rights, while providing a mechanism and standard for allowing activities that may affect native title rights to proceed – *Native Title Act 1993*, s.3), would reduce unnecessary burdens. The Australian Government has recently enacted a package of reforms aimed at improving the performance of the native title system. This package consisted of six ‘elements’:

- a claims resolution review
- technical amendments
- improving the capacity of prescribed bodies corporate
- funding for respondents to negotiate
- improving the performance of native title representative bodies
- consultation with state and territory governments over these reviews.

Generally, these reforms focused on encouraging participants to negotiate and reach agreement over native title, rather than taking issues to litigation.

Claims resolution review

The review focused on improving (and speeding up) the functions of the National Native Title Tribunal (NNTT), while reducing duplication between it and the Federal Court. The suggested reforms also grant the NNTT powers to require attendance by a party or the production of documents and the ability to assess material to see if it would support a native title claim. The Government responded in August 2006, accepting nearly all of the review’s recommendations, and changes were enacted as part of the March 2007 Amendment Act.

Technical amendments

These amendments focus on practical matters in the native title process such as information requirements for the registration and compensation of parties, the timing of notices for future acts, what information will be included on the NNTT’s Register of Native Title Claims, and how claims can be removed from the register.

Of note, these amendments examined the status of the right to negotiate provisions in the Native Title Act. The Government believed that:

... the right to negotiate provisions, as amended in 1998, are appropriately balanced and workable. Whilst the Government is prepared to consider technical changes to the right to negotiate process, it does not believe that significant changes are necessary. (AG's 2007e, p. 3)

Additionally, the amendments make Indigenous Land Use Agreements more flexible, making it simpler to modify them, while still preserving the rights they cover. These amendments received royal assent on 20 July 2007, and most of them came into effect from 1 September 2007.

Prescribed Bodies Corporate (PBCs)

Following the determination that title exists, PBCs implement and monitor native title agreements, exercise native title rights (including and negotiating about any proposed future acts that may affect the native title, and investing and managing money held in trust on behalf of the native title holders) and discharge land management obligations (such as maintaining watercourses and clearing refuse). Following targeted consultation, the Australian Government committed to:

- improve the ability of PBCs to access and use existing sources of assistance, including from Native Title Representative Bodies (NTRBs)
- authorise PBCs to recover costs reasonably incurred in performing specific functions at the request of third parties
- encourage greater State and Territory government involvement in addressing PBC needs
- improve the flexibility of the PBC governance regime while protecting native title rights and interests. (AG's 2007c)

The Steering Committee for the report also considered that:

... there is scope for further assistance to be provided to PBCs by the Australian Government in particular circumstances, it is also necessary to consider complementary measures to ensure better use is made of resources which are currently available within the native title system. (AG's 2007d, p. 24)

The MCA also raised funding of PBCs as an issue in their submission (subs. 37 and DR70). It recommended that the Australian Government provide core funding to PBCs to meet statutory obligations, negotiate with third parties, and secure further assistance from existing programs.

Funding for respondents to negotiate

This covers funding to non-claimants parties (such as the South Australian Chamber of Minerals and Energy, or pastoralists groups like the Pastoralists and Graziers

Association of Western Australia). The reforms aim to ‘strengthen [the] focus on resolution of native title issues through agreement making, in preference to litigation’ (AG’s 2007a). Revised *Guidelines on the provision of financial assistance by the Attorney-General under the Native Title Act 1993* commenced on 1 January 2007.

Native Title Representative Bodies

The reforms changed the funding arrangements for NTRBs by offering funding for up to three years instead of just one year at a time, while also providing recognition of NTRB status for a fixed term of one to six years (to allow for a review of performance at the end of the period), among other things. These aim to encourage improved performance by generally granting longer terms to better performing NTRBs.

Evidence given at the Senate Committee hearings into the 2007 Amendment Act indicates that the government is focusing on funding for capacity building:

...the key to improving performance is to increase capacity to provide professional services, rather than putting additional funds into organisations that are struggling through lack of appropriate skills and experience. The capacity building program includes specialist training in governance, administrative law and contract management. There is also a project designed to improve the capacity of NTRBs to attract and retain quality staff. (AG’s and FaCSIA 2007, p. 10)

Consultation with state and territory governments

The Attorney-General convened Native Title Ministers Meetings in 2005 and 2006. These meetings have provided a forum to allow all jurisdictions to work together, notably engaging the states and territories in the Australian Government’s reform process (above).

The industry’s response to the Australian Government’s reforms is mixed. APPEA stated that it ‘... welcomes the recently proposed amendments to the Native Title Act, including those that will allow for the creation of template agreements’ (sub. 39, p. 5). While the MCA remarked that:

Government reforms have taken a narrow and overly onerous approach to improving the performance of such organisations, rather than building capacity for improved outcomes. (sub. 37, p. 18)

It is clear from the reform process that the Government is aware of the need for capacity building and has sought to address it through several reforms. In this context, the Commission considers that these reforms should be given time to take

effect and then be subject to evaluation after they have been in operation for a suitable time period, say five years.

RESPONSE 4.7

Recent Australian Government reforms to the native title system — aimed at building capacity for Native Title Representative Bodies and encouraging agreements — are being progressively implemented. They should be given time to take effect and then be subject to independent evaluation within five years of implementation.

Complexity and inconsistency in Aboriginal cultural heritage processes

The MCA raised two concerns relating to Aboriginal cultural heritage. First, they noted the complexity in the system, with heritage registers existing at both Australian Government and state and territory government level. To remedy this, it recommended '[t]hat a single heritage register is maintained by the Commonwealth, incorporating sites and artefacts of both National and State significance ...' (sub. 37, p. 19).

Second, they raised concerns relating to duplication and inconsistency in Aboriginal cultural heritage processes across Australia:

... the assessment of cultural heritage is imprecise, often leading to substantial delays in the project assessment and approval process. ... Australia needs to develop a consistent approach to Indigenous heritage matters and to integrate Indigenous heritage conservation procedures with other land management procedures to avoid duplication and overlap between legislative instruments and requirements. (sub. 37, p. 19)

Assessment

The protection of Aboriginal cultural heritage is primarily covered by state and territory legislative regimes, although there is some involvement from the Australian Government. As the Australian Heritage Council noted, this system is appropriate as, in regard to Indigenous Australian heritage places:

... many of the most special places are of local significance and indeed, private places of ceremonial or spiritual importance. General statutory protection of these Indigenous heritage places is afforded by State-based Aboriginal heritage laws and, as an act of last resort, through the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. (ATSIHP Act). Council does not expect that these very significant local places will be nominated for national listing ...

Since Indigenous Australia consists of hundreds of locally-based socio-political groups, places that might be considered of national significance are most likely to be ones from the nineteenth and twentieth century that have had an impact across the nation. (AHC 2007, p. 24)

In the context of such local significance, there will be differences in Aboriginal cultural heritage laws across jurisdictions. As such, individual registers by jurisdiction are required, so that each jurisdiction retains power, and responsibility, over places of significance that they consider need to be listed. Nonetheless, the Commission encourages jurisdictions to examine each other's models and — as far as possible — work towards a consistent national approach, particularly in relation to heritage management processes.

For example, the Commission notes that the Victorian Aboriginal Heritage Act 2006 (which came into force in May 2007) seeks to incorporate Aboriginal cultural heritage processes into broader land management processes:

The Act links the protection of Aboriginal cultural heritage more directly with planning and land development processes. It does not seek to stop or delay development. It establishes a process by which Aboriginal heritage can be protected and managed, with the involvement of Aboriginal people, while allowing development to proceed. (AAV 2007)

While other jurisdictions also incorporate Aboriginal heritage into planning and development processes — for example, the Environment Planning and Assessment Act 1997 in New South Wales requires that local governments must consider Aboriginal cultural heritage in the planning and development process (Allen Consulting Group 2007, p. 76) — there is variation in the manner and degree of this inclusion between jurisdictions. As such, this is one issue that would benefit from cooperation between jurisdictions.

Additionally, the Commission notes that DEW has begun a process of reforming the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*:

The Australian Government will engage in further consultation with Indigenous groups on reforming this legislation to provide a new national scheme that will ensure protection of Indigenous areas and objects to the best contemporary standards. The primary role of state and territory laws and the views of Indigenous people and other stakeholders will be central to this reform. (DEH 2006b, p. 27)

The Australian Government, through debate in the Senate, has since clarified the status of this review:

The government indicated that it is reviewing the act. This is an internal government review but in the process of doing this my understanding is ... the government will of course be consulting. (Kemp 2006, p. 8)

As part of this process, the Commission considers that ‘best contemporary standards’ should be taken to include reduction in regulatory burdens where possible. One area that may be worthy of further examination is the possibility for consolidating access to information regarding Aboriginal cultural heritage sites listed by each of the jurisdictions. If this information were available through a single, consolidated portal, it could ease burdens on business by allowing them to access such listings in a simple and timely manner. The MCA supported the creation of such a portal, and suggested that it be based on:

- clearly established rules and guidelines designed to promote consistency in the listing, collection and presentation of consolidated information and regarding access;
- the protection of knowledge required to be kept secret by Aboriginal and Torres Strait Islander tradition or for other relevant purposes; and
- maintaining a record of those who have accessed the register for legal reasons.(sub. DR70, p. 2)

It is important that such a consolidation should not undermine the ability of individual jurisdictions to control and change their own registers. In this light, care would need to be taken to ensure that those who access the portal are made aware of differences between each jurisdiction’s register – particularly relating to the purpose that each register serves in the context of jurisdictional legal systems.

Access to information on registers may be restricted, to protect knowledge required to be kept secret by Aboriginal tradition or information that may be (personally and commercially) confidential, as well as to record those who have accessed the register, for legal reasons. Therefore, any consolidation should not proceed without first ensuring that jurisdictions retain the ability to determine — and record — who accesses their own registers.

These factors mitigate against the creation of a single consolidated register as such. However, they do not prevent consolidating access to the information. This could be as simple as links on the heritage page of DEW’s website to the relevant Aboriginal cultural heritage registers in each jurisdiction.

RESPONSE 4.8

A single point of access for information regarding Aboriginal cultural heritage areas listed in all jurisdictions should be considered in the course of current reforms to the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

4.5 Environment Protection and Biodiversity Conservation Act

As noted in chapter 3, the EPBC Act was introduced to protect Australia's environment and heritage and, in particular, matters of 'national environmental significance'.

In terms of the value chains set out in tables 4.1 and 4.2, the EPBC Act is relevant to most stages and, in particular, in the:

- minerals sector — to the 'exploration', 'mine approval', 'mine development and construction' and 'mine closure and site rehabilitation' stages
- petroleum sector — to the 'exploration', 'drilling of wells and platform construction', 'pipeline design and construction' and 'decommissioning' stages.

Overlap and duplication with state and territory processes

Concerns have been raised within the mining, oil and gas sector (and agriculture sector, see chapter 3) about ongoing overlap and duplication of the EPBC Act with state and territory environmental assessment and approval processes.

The EPBC Act enables the reduction of duplication with state and territory environment assessment and approval processes through the accreditation of these processes under bilateral agreements between the Australian Government and a state or territory government. Specifically, the Act allows for bilateral agreements to:

- protect the environment
- promote the conservation and ecologically sustainable use of natural resources
- ensure an efficient, timely and effective process for environmental assessment and approval of actions
- minimise duplication in environmental assessment and approval through Australian Government accreditation of the processes of the state or territory (and vice versa).

There are two types of bilateral agreement — assessment bilateral agreements and approvals bilateral agreements.⁶ To date, assessment bilateral agreements have been

⁶ An *assessment* bilateral agreement allows an action that would otherwise require Australian Government assessment under the EPBC Act to be assessed using a state or territory assessment process. An *approvals* bilateral agreement allows an action that would otherwise require

signed with the Northern Territory, Queensland, Tasmania, Western Australia and, just recently, New South Wales. One approvals bilateral agreement has been signed with New South Wales in relation to the Sydney Opera House.

Bilateral agreements must be consistent with the objectives of the EPBC Act and the processes they accredit must meet certain criteria. For example, they must ensure adequate public consultation.

Where there is no bilateral agreement, state and territory assessment and approval processes are accredited by the Australian Government case-by-case.

The MCA suggested that where bilateral agreements were not in place, duplication of processes can turn into a ‘major issue’ for the industry (sub. 37, p. 21). It recommended that approvals bilateral agreements with all states and territories be established as a ‘matter of urgency’ and that those states and territories that are yet to enter into assessment bilateral agreements with the Australian Government be encouraged to do so (sub. 37, p. 22).

Fortescue Metals Group noted in relation to a particular development in which it was involved that although the assessment bilateral agreement between the Australian Government and the Western Australian Government ‘significantly’ reduced the duplication of documentation for assessment, an additional 3 months was added to the assessment process ‘waiting for the Federal Minister to issue his decision after the State Minister had made his decision’ which ‘did impact on Fortescue’s development timetables’ (sub. 40, p. 2).

Assessment

The Regulation Taskforce (2006, p. 74) recommended that the Government seek to expedite the signing of environmental bilateral agreements with all remaining states and territories, and that all bilateral agreements be extended to include the approval process. It further recommended that, in implementing the agreements, the Government provide ‘national leadership’ aimed at achieving efficiencies in state and territory administrative and approval processes.

In its response, the Australian Government agreed to the recommendation (Australian Government 2006b, p. 36). It noted that COAG agreed at its July meeting in 2006 to pursue further regulatory reform in the area of bilateral

Australian Government approval under the EPBC Act to be assessed and approved using a state or territory approvals process.

agreements with senior officials reporting at the end of 2006 on strategies for improvement within the existing architecture of the EPBC Act.

Since the Regulation Taskforce report and the Australian Government's response, there have been some further developments towards the harmonisation of environmental assessment and approval processes.

- An assessment bilateral agreement was signed in January 2007 between the Australian Government and the New South Wales Government. A draft assessment bilateral agreement with South Australia has been released for public comment in July 2007. DEW advised that it is working closely with the ACT and Victoria to finalise their assessment bilateral agreements, with the ACT committed to signing an agreement by the end of 2007. It also notes that negotiations with Western Australia are progressing for the development of an approval bilateral agreement for industrial development on the Burrup Peninsula (sub. DR67, p. 5).
- Amendments to the Act were introduced in 2006 to, among other things, deal with duplicative and inconsistent processes within the Act and between the Act and state and territory regimes including dealing with difficulties in accrediting or recognising state and territory authorisation processes for the purpose of an approvals bilateral agreement and enabling agreements to continue to have effect during reviews.
- At its meeting in April 2007, COAG identified environmental and assessment processes as one of ten regulatory 'hotspots'. It agreed that the Australian Government Minister for the Environment and Water Resources would develop a proposal, in consultation with the states and territories, for a 'more harmonised and efficient system of environmental assessment and approval as soon as possible' (COAG 2007a, p. 5).

In the draft report, the Commission noted that there has been some progress in dealing with the overlap between the Australian Government and state and territory governments through assessment bilateral agreements. That said, it considered that completion of all assessment and approvals bilateral agreements warrants high priority by all governments.

However, DEW disagreed that the achievement of approvals bilateral agreements was taking too long. It said:

Given that approvals bilateral agreements effectively delegate all aspects of the approvals process under the EPBC Act to States and Territories for actions likely to have a significant impact on matters of national environmental significance, the standards to be met are necessarily rigorous. Because of this ... places such as heritage sites or listed wetlands with rigorous management plans or arrangements offer the best opportunity for accreditation under the EPBC Act through an approvals agreement.

Development of such place-based agreements may assist with the development of agreements which apply more widely by informing parties about the requirements for an approvals bilateral agreement. (sub. DR67, p. 5)

DEW further said that, in addition to progressing bilateral agreements, it is exploring options with the states and territories to streamline their processes and improve effectiveness. It considered that it has provided ‘national leadership’ on this matter through the 2006 amendments to the EPBC Act (sub. DR67, p. 5).

The Commission acknowledges the progress that has been made to date through the introduction of the 2006 amendments and the conclusion of assessment bilateral agreements. It also supports ongoing actions by DEW to explore options with the states and territories to streamline their processes.

The Commission remains concerned about the lack of progress on negotiating approvals bilateral agreements. It notes DEW’s comments that focusing on places such as heritage sites or listed wetlands with rigorous management plans or arrangements offer the best opportunity for approvals process accreditation under the EPBC Act. The scope of negotiations for an approvals bilateral agreement might need to be narrowed in this way if any progress on the harmonisation of government approvals processes is to be made.

RESPONSE 4.9

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

The Department of Environment and Water Resources should, in consultation with the states and territories and other stakeholders, identify specific aspects of the EPBC Act and state and territory processes that are amenable to a bilateral agreement for approvals and set a timeframe for negotiations.

Inadequate resourcing

Underresourcing of DEW in relation to its administration of the EPBC Act was a concern for the mining, oil and gas sector in so far as it contributed to delays in referrals, assessments and approvals under the Act and held up progress on the conclusion of bilateral agreements (MCA sub. 37, pp. 21–2).

Assessment

The Commission notes that, according to the 2007-08 Budget, additional funding of \$70.6 million over four years has been provided to DEW to enhance its administration of the EPBC Act (DEW 2007d, p. 18). The funding of the administration of the EPBC Act is properly a matter for Budget deliberation.

4.6 National Pollutant Inventory

The MCA raised concerns about the National Pollutant Inventory (NPI) that relate to:

- the inclusion of transfers
- limited public awareness
- the inappropriate use and quality of data
- the lack of adequate resourcing
- the use of the NPI for reporting of greenhouse gas and energy emissions.

Concerns relating to greenhouse gas and energy reporting are dealt with in the next section on climate change policies. Concerns within the agriculture sector were dealt within chapter 3.

In terms of the value chains set out in tables 4.1 and 4.2, the NPI is most relevant in the:

- minerals sector — to the ‘mining, primary processing and ongoing mine-site rehabilitation’ and ‘secondary processing’ stages
- petroleum sector — to the ‘production/pipeline operation’ stage.

Inclusion of transfers

The MCA was concerned about the proposed inclusion of transfers in the NPI given the ‘ongoing lack of resources’ (sub. 37, p. 23).

As noted in chapter 3, the Environment Protection and Heritage Council decided at its June 2007 meeting that the NPI include transfers, among other things (EPHC 2007a).

A ‘transfer’ is defined as the:

... transport or movement, on-site or off-site, of substances to a mandatory reporting transfer destination or a voluntary reporting transfer destination; but does not include

the transport or movement of substances contained in overburden, waste rock, uncontaminated soil, uncontaminated sediment, rock removed in construction or road building, or soil used for the capping of landfills. (DEW sub. DR67, p. 6)

Assessment

The inclusion of transfers in the NPI flows from a recommendation of a 2005 review (Environment Link 2005, p. 18). The Regulation Taskforce, however, recommended that the inclusion of transfers be deferred and reconsidered when the capacity of the NPI to deliver existing requirements has been improved (Regulation Taskforce 2006, p. 77). This recommendation was not agreed to by the Australian Government, which supported the inclusion of waste transfers in the NPI as:

... this data will enable a more accurate evaluation of environmental performance and provide for a consistent national regime for compliance and reporting on waste transfers. (Australian Government 2006b, p. 38)

The impact statement supporting the inclusion of transfers in the NPI found that information on transfers would be 'an important public good that would not otherwise be publicly available in a comprehensive and integrated fashion' (NEPC 2006b, p. 27). The inclusion of transfers would also align the Australian NPI with international pollution and transfers registers. The estimated cost for industry would be an initial average increase of \$1800 per facility with ongoing average costs of \$630 per facility per annum (EECO 2007, p. 2). The estimated cost for government would be a one-off implementation cost of around \$800 000 plus on-going costs of \$400 000 per annum (NEPC 2006b, p. 27).

The Commission considers that, in view of the decision of the Environment Protection and Heritage Council, no further action is required at this stage.

Limited public awareness

The MCA was concerned that the NPI 'remains a little known and under-utilised resource' (sub. 37, p. 22).

Assessment

Public awareness of the NPI is important. If it is limited, then the objectives of the NPI National Environment Protection Measure are undermined. And the burdens placed upon business would be difficult to justify.

There are various means used by DEW to raise the public profile of the NPI, including outreach programs to local communities and schools.

Selective data provided by DEW suggest that public awareness of the NPI is improving. The data indicate that new user sessions of the NPI website increased from 200 000 in 2004-05 to 560 000 in 2006-07, an average annual increase of around 60 per cent.

The Commission's draft response was that DEW should give high priority to monitoring public awareness of the NPI and to take action to increase its profile as appropriate.

In its submission on the draft report, DEW advised that a detailed communication and awareness plan is part of the implementation of the NPI National Environment Protection Measure variation of June 2007. The first stage of the plan is to be developed in October 2007 (sub. DR67, p. 6). Key elements of the plan include:

- an improved public website that includes updated search functions and fact sheets
- extensive and ongoing consultation with industry and focus groups, and concept and prototype testing
- the website updated regularly with profiles of pollution projects, including case-studies of industries making improvements to their production processes, improved information on the use of NPI data and additional information on reducing pollution.

The Commission considers that the plan is a useful step towards improving public awareness of the NPI. After allowing a reasonable time for implementation, DEW should monitor and evaluate the impact of the plan in order to determine its effectiveness.

Quality of the data

The MCA expressed concerns about quality and inappropriate use of data from the NPI.

For those members of the public who do visit the NPI website, the lack of accurate, current and plain english guidance on the interpretation of the data means that using the site is extremely difficult, if not impossible for the majority of users. (sub. 37, p. 22)

It recommended that to overcome inappropriate use of data, specific guidance needs to be included to ensure that data users are aware of the limitations of the data and the contexts in which the data are designed to be used (sub. 37, p. 22). It also

recommended updating the emission estimate techniques manual relating to mining and other associated manuals to deal with the ‘perceived overestimation of some substances (sub. 37, p. 23).

Assessment

If the quality of data reported to the NPI are deficient, then the objectives of the National Environment Protection Measure, particularly the objective to ‘provide information to enhance and facilitate policy formulation and decision making for environmental planning and management’, are undermined. And the burdens placed upon business are difficult to justify.

Concerns about the quality of data were considered in the 2005 review of the NPI. The review identified areas where the NPI could be improved to increase its use by the community, industry and government. In response to this review, and to subsequent changes made to the NPI National Environment Protection Measure in June 2007, DEW noted that it will be working in partnership with state and territory governments over the next two to three years to enhance and improve the NPI. Areas of improvement include:

- a web-based system to streamline report by industry
- improved and updated industry reporting materials, reflecting changes in industrial processes and emission factors
- improved and updated emission factors, including emission factor calculators (sub. DR67, p. 7).

In addition to these actions, the Department systematically responds to feedback from user forums on the NPI, which may lead to better quality data.

The Commission is satisfied that DEW’s actions to improve the quality of data from the NPI are progressing. It considers that, after allowing a reasonable time for the implementation of these actions, DEW should evaluate their effectiveness in improving the quality and use of data reported to the NPI.

RESPONSE 4.10

Progress has been made by the Department of Environment and Water Resources to improve public awareness of the NPI, through the development of a communication and awareness plan, and to improve the quality of data reported to the NPI. The Department should, after a reasonable time, evaluate the effectiveness of these actions.

Inadequate resourcing

The MCA considered that, among other things, there was a ‘pressing need for a substantial and sustained increase in the level of resourcing’ for the NPI, particularly in the areas of updating the emissions estimation techniques manuals for industry sectors and of the provision of better contextual data for substances reported under the inventory (sub. 37, p. 23).

Assessment

Data provided by DEW suggest that funding to support the NPI since 1994-95 has declined in real terms by an average 3 per cent per annum.

The Commission considers that the Environment Protection and Heritage Council should not initiate further expansion of the NPI until there is sufficient funding available for existing functions.

RESPONSE 4.11

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

4.7 Assessment of site contamination

The MCA was concerned that the Assessment of Site Contamination National Environment Protection Measure led to inappropriate use of data by regulators, specifically the use of levels used to trigger an investigation as a trigger for site clean-up operations (sub. 37, p. 22). It recommended that, to overcome inappropriate use of data by regulators, specific guidance be included to ensure that users were aware of the limitations of the data and the context in which the data were designed to be used.

The National Environment Protection Measure was made in 1999 to establish a nationally-consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community, including regulators, site assessors, environmental auditors, land owners, developers and industry (clause 5(1)). The purpose of assessment is to determine whether site contamination poses an actual or potential risk to human health and the environment, either on or off the site, of sufficient magnitude to warrant remediation appropriate to the current or proposed land use. The National Environment Protection Measure includes schedules setting out a recommended

process for the assessment of site contamination and guidelines on various technical and administrative aspects.

The recommended process for the assessment of site contamination within the National Environment Protection Measure consists of a preliminary investigation stage and a detailed site investigation stage.

- Preliminary investigation involves assessment against an ‘investigation level’, which is the concentration of a contamination above which detailed site investigation is triggered.
- Detailed site investigation involves assessment against a ‘response level’, which is the concentration of a contaminant for which some sort of response is required to provide an adequate margin of safety to protect public health and/or the environment such as site remediation.

In terms of the value chains set out in tables 4.1 and 4.2, the Assessment of Site Contamination National Environment Protection Measure is most relevant in the:

- minerals sector — to the ‘mine closure and site rehabilitation’ stage
- petroleum sector — to the ‘decommissioning phase’.

Assessment

The inappropriate use of investigation levels can result in unwarranted and costly remediation of site contamination that can increase unduly the overall costs of developing a site.

A review of the National Environment Protection Measure in 2006 considered, among other things, concerns about the inappropriate use of investigation levels that resulted in unwarranted costs in site remediation. It recommended that the National Environment Protection Measure framework and the schedule setting out the process for the assessment of site contamination be revised to ‘improve clarity and understanding of the fundamental site assessment principles and emphasise the appropriate use of the National Environment Protection Measure, in particular to address the misuse of investigation levels’ (NEPC 2006c, p. 4).

At its meeting in June 2007, the Environment Protection and Heritage Council (which incorporates the National Environment and Protection Council) agreed to initiate a process to vary the National Environment Protection Measure based on this and other recommendations made in the 2006 review.

The Commission considers that, given the action of the Environment Protection and Heritage Council in June 2007, reforms to deal with concerns about the use of investigation thresholds as triggers for site remediation are progressing.

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

4.8 Climate change policies

Multiplicity of greenhouse gas and energy reporting requirements

Several participants in the mining, oil and gas sector raised concerns about the compliance burden arising from multiple greenhouse gas and energy reporting requirements (for example, the MCA sub. 37, pp. 23–5; QRC sub. 22, p. 3). (Concerns were also raised by the Red Meat Industry and Australian Pork Limited sub. 44, p. 15, which are outlined in chapter 3.) The MCA expressed concern about the ‘risks and uncertainties of uncoordinated national and State-based climate change measures’ and supported greenhouse gas reporting that was nationally consistent as well as consistent with international standards (sub. 37, p. 24). The QRC said:

... given the multitude of reporting programmes which cover energy or greenhouse gas, either currently in operation or being considered, there is need for streamlining to provide for consistency and consolidation of reporting requirements. (sub. 22, p. 3)

In addition, particular concerns were raised about the proposal of the National Environment Protection Council for greenhouse gas and energy reporting through the NPI National Environment Protection Measure given that COAG had already decided on a national purpose-based system. The MCA considered that:

... the reconsideration of [greenhouse gas] emission reporting under the [National Pollutant Inventory] as an expensive and time-consuming process for what appears to be a short-lived exercise. Time could be better spent focussing on COAG’s agreed national reporting system. (sub. 37, p. 25)

APPEA supported ‘the development of a mandatory national emissions reporting and verification system that streamlines current arrangements and reduces existing reporting burdens’ (2007, p. 51). The Association considered that:

... the methodologies and tools for the system should be based on the Greenhouse Challenge Plus Program and incorporate internationally recognised emission estimation methodologies for the oil and gas industry. This would be applicable to all organisations based on the Greenhouse Challenge Plus Program. As part of the system, a very rigorous data confidentiality and access protocol should be established possibly

on a par with that applying to data supplied by the industry to the Australian Taxation Office. While data may be reported under the system, there should be no public disclosure of information that could reveal proprietary business, competitive or trade secret information about a specific facility, technology or corporate initiative or the physical security of facilities. The industry does not support the use of the National Pollutant Inventory as the reporting vehicle. (APPEA 2007, p. 51)

Presently, there are at least 20 Australian Government and state and territory government greenhouse gas and energy programs through which businesses report greenhouse gas emissions and/or energy data (table 4.4). The general objective of these programs is to deal with community concerns about climate change as well as about energy use and production. (Further discussion of the programs themselves is contained in the next section.)

Differences in the reporting requirements relate to:

- emission source categories covered
- fuels covered
- greenhouse gases covered and modes of reporting
- the emission factors used to derive emissions from energy used
- the treatment of ‘offsets’ such as carbon take-up provided by forestry activities
- reporting periods
- constraints on passing on data to third parties (Australian Greenhouse Office 2006, p. 9).

At its April 2007 meeting, COAG agreed to establish a mandatory national purpose-built greenhouse gas emissions and energy reporting system (COAG 2007b). COAG’s decision was given effect by the *National Greenhouse and Energy Reporting Act 2007*, which received assent on 28 September 2007. The Act introduces a single national system for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations from 1 July 2007. The new national system is intended to:

- underpin the introduction of an emissions trading scheme in the future
- inform government policy formulation and the Australian public
- meet Australia’s international reporting obligations
- assist government programs and activities and
- avoid the duplication of similar reporting requirements in the states and territories.

Table 4.4 Key government programs with greenhouse gas and/or energy reporting requirements^a

<i>Jurisdiction</i>	<i>Program</i>
Australian Government	ABARE Fuel and Electricity Survey Australian Petroleum Statistics Energy Efficiency Opportunities Generator Efficiency Standards Greenhouse Challenge Greenhouse Challenge Plus Greenhouse Friendly Mandatory Renewable Energy Target National Greenhouse Gas Inventory Ozone Protection and Synthetic Greenhouse Gas Management Act
NSW	NSW Energy and Savings Plans and Fund NSW-ACT Greenhouse Gas Abatement Scheme NSW Load Based Licensing
Victoria	Victorian State Environment Protection Policy (Air Quality Management) <i>Victorian Environment Protection Act 1970</i> Victorian State Environment Protection Policy (Greenhouse Emissions and Energy Efficiency in Industry)
Queensland	13 per cent Gas Scheme EcoBiz
Western Australia	Western Australian Greenhouse Gas Inventory Western Australian Greenhouse Registry
South Australia	South Australian Greenhouse Strategy
Northern Territory	Northern Territory Greenhouse Gas Reporting Program
ACT	NSW-ACT Greenhouse Gas Abatement Scheme

^a The ABS has produced energy and greenhouse gas emissions accounts for Australia (for example, Cat. 4604.0 – Energy and greenhouse gas emissions accounts, Australia, 1992-93 to 1997-98 and Cat 1301.0 – Year Book Australia). These data have been derived from sources other than ABS surveys.

Sources: APPEA (2007, 49); CGERG (2006, p. 8); Environment Protection Authority Victoria (2007, pp. 6–7).

Key features of the new national system are:

- a single online entry point for reporting based on the Online System for Comprehensive Activity Reporting
- a standard data set and nationally consistent methodologies for reporting
- public disclosure of company level greenhouse gas emissions and energy data

-
- consistent and comparable data provided to government for policy making
 - secure data storage and
 - reporting thresholds that avoid capturing small business.

In relation to the reporting thresholds, companies emitting more than 125 000 tonnes of greenhouse gases or using or producing more than 500 terajoules of energy will be required to report at the start of the new system. These thresholds will be phased down over time to 50 000 tonnes of greenhouse gases or 200 terajoules of energy used or produced. Around 700 companies will be required to provide detailed reports on their greenhouse gas emissions and energy use and production under the new system (DEW 2007e).

The Government has announced it will conduct further consultation with stakeholders on the details of the new national system (DEW 2007e). Regulations underpinning the administrative and technical arrangements of the Act will be developed in advance of the commencement of the system.

The passage of the National Greenhouse and Energy Reporting Act supersedes an agreement reached by the Environment Protection and Heritage Council at its June 2007 meeting to a variation to the NPI National Environment Protection Measure to include greenhouse gas emissions pending the establishment of a national purpose-built system.⁷

Assessment

Harmonising of multiple greenhouse gas and energy reporting requirements is progressing — as evidenced by the recent passage of the National Greenhouse and Energy Reporting Act. Adequate regulatory impact statement requirements, including effective public consultation, should accompany the development of the underpinning regulations.

To avoid adding to the reporting compliance burden of businesses, reporting requirements under existing greenhouse gas and energy programs should be phased out as quickly as circumstances permit, once implementation of the new national reporting system commences.

⁷ The NPI National Environment Protection Measure as amended to June 2007 provides that ‘[s]hould a more comprehensive national scheme of greenhouse gas emissions and energy reporting come into force, Council will revoke the greenhouse gas and energy reporting obligations established in this Measure’ (clause 34).

Reform is progressing to harmonise multiple greenhouse gas and energy reporting requirements through a new national reporting system. The development of regulations under the system should be accompanied by adequate regulatory impact analysis and include effective public consultation. Reporting requirements under existing programs should be phased out expeditiously once the new national reporting system commences.

Multiplicity of greenhouse gas and energy programs

As noted in the previous sub-section, the various greenhouse gas and energy reporting requirements stem from a multiplicity of Australian Government and state and territory programs (table 4.4).

Indeed, there is an extensive patchwork of policies imposed on various sectors, not just the energy sector, which are intended to reduce greenhouse gas emissions and energy use. In addition to the programs mentioned in table 4.4, other examples are:

- mandatory renewable energy schemes
- subsidies for installing solar hot water systems
- regulations that require the flaring of landfill gas
- requirements that firms invest in energy efficiency measures
- mandatory energy efficiency standards for appliances and buildings
- mandatory disclosure of a building's energy efficiency at the time of lease or sale and
- subsidies for recycling and levies on landfill (PC 2007, p. 35)

The Australian Government recently announced that it will review all existing greenhouse programs in 2008 to ensure that they are complementary to the emissions trading scheme (see next section), with a view to phasing out less efficient abatement policies and any policies that will interfere with the carbon price signal arising from emissions trading (Australian Government 2007a, p. 9). The Australian Government will also seek agreement with state and territory governments to streamline their programs and remove burdens on business (Australian Government 2007a, p. 10)

Assessment

The current approach to dealing with climate change concerns in Australia is fragmented across sectors and jurisdictions. This is out of step with the nature of the problem sought to be addressed, which is the emission of greenhouse gases regardless of how or where they occur. It has resulted in a patchwork of costs and bans in various sectors and jurisdictions, but no consistent economy-wide signal of the social cost of greenhouse gas emissions. The outcome is that the average cost of reducing greenhouse gas emissions is higher than need be and many low-cost abatement options are not pursued.

The Commission considers that the Australian Government's recent announcement to review existing programs and policies and to seek government agreement to streamline programs have the potential to reduce regulatory burdens on businesses.

As DITR observed, it is likely that there will be a transitional period in which potentially overlapping programs operate (sub. DR 58, p. 4). The longer the transitional period to the rationalisation of programs, the more costly it is for businesses to comply. The Commission considers that, to ensure that the transitional period is not unduly protracted, an inter-government agreement is negotiated as soon as practical following the review. As part of the agreement, all governments should commit to specified time frames for reform and to have their compliance monitored and subject to public reporting.

RESPONSE 4.14

The Australian Government's proposals to review existing greenhouse gas and energy programs and policies and to seek government agreement to streamline programs have the potential to reduce regulatory burdens on businesses.

An intergovernmental agreement to rationalise existing programs should be negotiated as soon as practical following the review. As part of the agreement, all governments should commit to specified timeframes for reform, which are monitored and subjected to public reporting.

Design of the Australian emissions trading scheme

As noted in chapter 3, several participants in the agriculture sector commented on the introduction of a greenhouse gas emissions trading scheme in Australia. The scheme is also of relevance to the mining, oil and gas sector.

The Prime Minister announced in June 2007 that Australia will move towards a domestic 'cap and trade' emissions trading scheme, beginning no later than 2012

(PMC 2007a) and in July 2007 launched the Government's climate change policy statement — Australia's Climate Change Policy (Australian Government 2007a). The statement endorsed the key features of the emissions trading scheme set out in the Prime Ministerial Task Group on Emissions Trading report (PMTGET 2007). The scheme is to be the primary mechanism for achieving Australia's long-term emissions goal and, thus, to deal with climate change. (As noted earlier, an element of the emissions trading scheme is a single, national framework for greenhouse gas and energy reporting.)

The key features of the emissions trading scheme include:

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

Public consultations are being conducted on the design of the scheme.

Assessment

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

and allow for ongoing monitoring and evaluation of the scheme. The Commission reiterates its views on Australia's approach to climate change expressed in its submission to the Prime Ministerial Task Group on Emissions Trading (PC 2007) and summarised in box 4.3.

Box 4.3 The Commission's views on Australia's approach to climate change

- To be fully efficient and effective, greenhouse gas emissions reductions must occur globally.
- It is in Australia's interest to participate in the design of a multilateral framework for reducing greenhouse gas emissions.
- Independent action by Australia to substantially reduce its greenhouse gas emissions (beyond a 'no regrets' action), would deliver barely discernible climate benefits, but could be nationally very costly.
- The strongest rationale for Australia to act independently is to facilitate its transition to an impending lower emissions economy — but this is contingent on imminent emergency of an extensive global response.
- There is a need for a national approach to the current disjointed, fragmented patchwork of climate change measures across sectors and jurisdictions.
- A national approach should be based on greenhouse gas pricing — through an emission tax or an emission trading scheme.
- If a national emissions trading scheme were introduced
 - to constrain costs, the emissions price should be kept modest by way of a 'safety valve' until a multilateral regime that comprised major emitting countries is in place
 - to limit adjustment costs and international relocation of production, it may be appropriate to mitigate the most adverse competitive impacts on energy-intensive producers until a multilateral regime is in place
 - existing regulations that substitute for emissions trading should be discontinued.
- Other policies may be warranted to address related market failures. These include support for relevant technological development and deployment, addressing barriers to energy efficiency and carbon capture and storage, and research into adaptation strategies.

Source: PC (2007, p. viii).

DITR expressed the view that while rights to emit greenhouse gases generally should go to their highest value uses, the introduction of the scheme will place an additional cost burden on some industrial activities that international competitors may not face:

Without market intervention, such as the free allocation of emission permits, there is a chance that these domestic industrial activities would soon become uncompetitive due

to the additional costs of compliance with emissions targets. There is a risk that these activities, and the associated emissions, would move overseas, impacting on the economy without any reduction in global emissions. (sub. DR58, pp. 4–5)

As noted earlier, a feature of the scheme is to ameliorate, through the free allocation of permits, impacts on trade-exposed emissions-intensive businesses. Although ideally, an emissions price signal should be applied as widely as possible across the economy, it is possible to mount a case for mitigating impacts of the scheme on these businesses. Without such mitigation, production may relocate to other countries at cost to Australia without necessarily resulting in a net reduction in greenhouse gas emissions. However, there would need to be some trigger or review mechanism that could be activated once enough parties joined a multilateral regime for such continued protection would be unwarranted.

However, the case for mitigating impacts on businesses other than energy-intensive and trade-exposed businesses appears to be less strong. There are many factors that influence the location of production for these businesses. Depending on the elements of the scheme, the result could be a relatively small decrease in profitability of businesses rather than a serious decline in competitiveness.

RESPONSE 4.15

Development of the Australian greenhouse gas emissions trading scheme has the capacity to address red tape and reduce unnecessary burdens provided that best practice policy design is applied. In particular, the new scheme should establish ways to facilitate market transactions so that abatement occurs at the lowest overall cost and any exemptions from the scheme are fully justified. Ongoing monitoring and evaluation of progress is important.

4.9 Labour skills and mobility

Participants identified a shortage of skilled workers as a major constraint to growth in the minerals sector. Currently there are shortages for trades (especially competencies associated with mechanical and electrical trades), semi skilled employees (such as miners and plant operators) and for professionals (mining engineers, metallurgists and geoscientists). There are also severe shortages in related areas, such as transport and logistics, for example, heavy vehicle and train drivers, port and at-sea pilots. According to the MCA, based on projected future expansion, the minerals sector will require 75 per cent (or 70 000) more employees by 2015 than in 2005. The most chronic shortages are likely to be for semi-skilled workers and trades (MCA sub. 37, p. 16).

Regulations aimed at delivering training, skills mobility and skilled migrants were considered to need further improvement. In particular:

- The vocational education and training system is seen as insufficiently driven by industry needs, particularly in delivering skilled tradespeople to meet industry needs.
- While the Mutual Recognition Agreement has gone some way to facilitating the movement of labour across jurisdictions, diverse approaches by industry regulators to assessing skills impede the movement of some tradespeople across state borders, such that VET training is often not sufficient to satisfy their requirements.
- While skilled migration visas are generally seen to be flexible and effective, recent reforms and proposals for further reform risk adding to red tape and reducing efficiency.

Assessment

While shortages of particular trades and other skills appear particularly severe in the mining sector, the problems are not confined to the primary sector and policy responses tend to impact generally across the economy. Addressing skills shortages has been a key focus of governments and industry in recent years.

COAG has been working on implementing an action plan for addressing skills shortages through a national approach to apprenticeships, training and skills recognition (COAG 2006a).

Recently the MCA and the National Farmers Federation entered into an Agreement with the Australian Government on addressing *regional* skills shortages. A Memorandum of Understanding has been signed to:

collaboratively establish the basis to build a pool of skilled workers capable of meeting the needs of both industries throughout regional Australia ...

Under the MoU, parties to the Agreement will trial different ways of coordinating existing activities, facilitate improved engagement with the National Vocational Education and Training (VET) system, specifically the Australian Technical Colleges, and establish direct linkages to on-the-job training and subsequently, employment in agriculture and mining. (MCA 2007)

A number of observations are made below in relation to the following three broad strategies for addressing the problems:

- education (especially vocational and higher education) and training

-
- mutual recognition of skills and qualifications to enhance mobility across jurisdictions
 - skilled migration policies and recognition of overseas qualifications.

Vocational education and training system is not meeting industry needs

The MCA identified the need for improvements in vocational education and training (VET) calling for a system that:

- is driven by industry and business needs;
- recognises training providers as service providers;
- prioritises public resources to areas of greatest need within the national economy and in the case of the minerals industry to critical skill shortage needs in the mechanical and electrical trades and semi skilled areas;
- delivers quality training outcomes, including nationally consistent and streamlined pre-employment training for secondary students and school leavers in the traditional trades in greatest demand; and
- services industry at times and places that meet industry and employee needs. (sub. 37 pp. 16–7)

It would appear these objectives are widely shared in the parts of the VET system that are servicing the mining industry. Generally education policy objectives, including vocational education and training, are met through funding and administrative programs, rather than through regulation, and responsibility for these programs largely rests with the state and territory governments. Where legislation or regulation is involved, concerns often relate to policy design rather than to streamlining or eliminating red tape.

The COAG National Action Plan, referred to above, has included initiatives directed towards improving the quality, flexibility and portability of skills and training. This has included consideration of:

- making training more flexible and responsive, for example, through recognition of prior learning, shortening the duration of apprenticeships where competencies are demonstrated and allowing intermediate or specialised qualifications as well as full apprenticeships
- enabling (including by removing regulatory barriers) school-based New Apprenticeships
- making skills and training more portable, for example through a nationally consistent Statement of Attainment that clearly sets out competencies and skills achieved

-
- facilitating effective competition between training providers
 - a targeted response to skills shortages affecting particular industries or regions.

It was apparent from consultations that there can be an inherent tension between the industry's desire for, on the one hand, flexible vocational education and training options, including recognition of prior learning, acceptance of shortened duration formal education and training and support for a wide range of government and non-government training providers, and, on the other hand, assurance of quality training outcomes. Cases were cited, for example, where certificates of competencies obtained did not appear to be consistent with actual observed or tested workplace competencies. It was suggested quality assurance standards were uneven across training providers and that the agreed competencies for the attainment of certain certificates were too vague or broad. With a view to ensuring the quality of outcomes from the training system, COAG has agreed to accelerate the introduction of a national outcomes-based auditing model and stronger outcomes-based quality standards for registered training organisations with specific quality assurance measures.

Many of these reforms being implemented or under consideration have the *potential* in the coming years to alleviate some of the shortages impacting on the minerals sector. However, previous attempts to bring about improvements have delivered disappointing results, especially with regard to the recognition of VET skills. Future success in this area will depend in part on the willingness of mining companies to establish the flexibilities within their own training systems and processes and their capacity to partner with training organisations (and vice versa).

As was the case when the Commission examined VET issues as part of its 2005 *Review of National Competition Policy Reforms*, while 'many of the policies required to move forward in the VET area are already in place or recently announced' (PC 2005a, p. 343), there needs to be a resolute commitment to accelerated implementation of reforms.

RESPONSE 4.16

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

Limitations in the mutual recognition of skills

For occupations, the Mutual Recognition Agreement and the Trans Tasman Mutual Recognition Arrangement, and the relevant legislation giving effect to these arrangements, allow a person who is registered in one jurisdiction to be registered in the other participating jurisdictions for the equivalent occupation and to carry on that occupation in those other jurisdictions.

The MCA (sub. 37) while registering its strong support for mutual recognition of skills across jurisdictions to promote the movement of people and equipment around Australia, did not raise *specific* concerns in relation to the operation of the arrangements. Indeed, this was the case with participants more generally.

Nevertheless, it is clear to the Commission that the objectives of the mutual recognition arrangements for occupations are still some way from being fully met.

The Australian National Training Authority's *Licence to Skill* Report made the following observations about mutual recognition of occupations:

- Mutual recognition is of limited benefit where occupations are not consistently regulated across jurisdictions.
- Mutual recognition does not assist the portability of occupations between jurisdictions in instances where occupational knowledge and skill requirements are mandated by legislation, but for which no physical licence or registration is issued. (ANTA 2002, p. 8)

The Commission conducted a major review of mutual recognition in 2003. Its Report *Evaluation of the Mutual Recognition Schemes* found that mutual recognition of registered occupations had, in general, reduced impediments to occupational mobility, but identified considerable scope for improvements (box 4.4).

More recently, COAG has included the effective implementation of full mutual recognition of skills/qualifications across Australia as part of its national approach to address skills shortages:

COAG has agreed to new measures to enable people with trade qualifications to move more freely around Australia without undergoing additional testing and registration processes. COAG has agreed that governments will work with employers and unions to put in place more effective mutual recognition arrangements across States and Territories for electricians, plumbers, motor mechanics, refrigeration and air-conditioning mechanics, carpenters and joiners and bricklayers (skills shortage trades) by June 2007 and by December 2008 for all licensed occupations where people normally receive certificates and diplomas. (COAG 2006a)

Box 4.4 **Productivity Commission Report on Mutual Recognition**

The Commission considered that several problems in the day-to-day operation of the schemes could be dealt with by:

- enhancing the information exchange systems and procedures among registration boards (for example, in relation to incomplete disciplinary actions) by greater use of electronic database registration systems with capacity for access by counter-part registration boards;
- improving the capacity of registration systems to accommodate short notice applications for registration to allow short term service provision across jurisdictions;
- encouraging Australian occupational registration authorities to develop national registration systems where the benefits justify the costs; and
- encouraging jurisdictions to continue to work on reducing differences in registration requirements to address concerns that the entry of professionals through the 'easiest jurisdiction' might lower overall competencies.

Source: PC (2003, p. XVIII).

More specifically, COAG's agreed outcome is that by December 2008 for all licensed occupations where people normally receive certificates and diplomas, 'individuals in licensed trades will have full mutual recognition of their licences in all jurisdictions and do not face duplicate assessment requirements for obtaining qualifications and licences'. New arrangements for mutual recognition of occupational licences for 22 occupations within the six priority skill shortage trades came into effect in February 2007, ahead of the scheduled June deadline (COAG 2007b), with Premiers and Chief Ministers signing ministerial declarations for the mutual recognition of a further nine occupations in August 2007 (Robb 2007).

Also, from February 2007, new arrangements have been put in place with the aim of making it easier for licensed tradespeople in specific skills shortage trades, and authorities that issue the relevant licences, to know what licence a worker is entitled to when applying for a licence in another jurisdiction. One aspect of the new arrangements is the establishment of a COAG 'Licence Recognition' website (<http://www.licencerecognition.gov.au>). This website allows the user to look up a licence entitlement in another state or territory, based on the currently-held licence. The website also has information on who to contact to apply for a licence and answers to frequently asked questions. As work continues the intention is to include additional vocationally-trained, licensed occupations, on the website.

While the website will be a valuable information source, there will inevitably continue to be some issues around:

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- familiarity with the different laws and procedures across jurisdictions
 - whether the knowledge required by one jurisdiction is necessarily sufficient to practice that occupation in other jurisdictions.

Because of differences in practice, local knowledge requirements, occupational definitions and scope of registrations it will not be possible to eliminate all problems around establishing equivalence between occupations. It is also an inevitable consequence where states and territories adopt different approaches to the licensing of occupations. It is not uncommon for selected occupations to be unlicensed in one or more jurisdictions and to be licensed in others.

In addition to the range of occupations that are licensed for general industry (some of which may be employed in mining), states generally require, under their mining codes, mines to have a number of statutory roles that are filled by appropriately qualified individuals. For metaliferous (non-coal) mining, these roles are largely confined to mine manager, while for coal statutory roles also include deputy mine manager, open cut examiner, ventilation officer (Queensland) and various engineering officers (New South Wales). Consultations indicated there had been progress in simplifying mutual recognition arrangements, with faster progress in metaliferous mining.

Jurisdictions should continue to work closely to, wherever possible, harmonise generic requirements and competencies and the way they recognise experience, skills and qualifications, thereby keeping additional local requirements to a minimum. Processes for the Recognition of Prior Learning and Recognition of Current Competence should be made efficient and applied generally in these areas.

The Commission notes that some of the most severe skills shortages impacting on the mining sector are in trades that are not specifically included in COAG's priority 'skills shortage' trades and/or are not 'licensed' trades. Mutual recognition arrangements apply to all occupations that require an individual to have some form of legal registration to practise and there is a case for the broadest possible interpretation to cover any occupation subject to regulatory requirements or restrictions.⁸

⁸ Some argue that mutual recognition should extend further to occupations that do not have explicit registration requirements such as those subject to 'negative licensing' arrangements — where a person is deemed to be eligible to practice an occupation unless explicitly barred because of poor performance or unacceptable conduct.

Recent COAG initiatives to facilitate mutual recognition of skills are welcome, but progress toward fully implementing the objectives of the mutual recognition arrangements has been slow and selective. COAG programs should be broadened to cover all trades experiencing severe skills shortages, including those specifically affecting the primary sector.

Reforms to 457 visas may increase compliance costs

The only specific issue raised by participants in relation to skilled migration was with respect to the operation of the Business (Long Stay) (temporary business entry) visa, (the '457 visa') scheme. The mining sector appears to have been happy with the scheme, but is more concerned about how it might be changed in response to recent criticisms, in particular reports of some abuse of the system by a minority of employers (underpaying workers or other unfair practices that exploit the vulnerable position of some of these guest workers).

The MCA supported the Australian Government's Skilled Migration Program and endorsed the flexibility and effectiveness of the 457 Temporary Business Visa arrangements as an instrument for sourcing skilled personnel from overseas. It called for a skilled migration system , where:

- 457 Visa arrangements are flexible and avoid unnecessary processing delays — any measures to strengthen the integrity of the arrangements should focus on correcting demonstrated instances of abuse and give adequate consideration to the risk of increasing red tape, cost and processing times;
- fast tracking processes are available for pre-qualified companies to ensure recruitment times are less than 3 months;
- fast tracking of processing times is available for skilled occupations paid over a minimum salary cap;
- highly skilled occupations and those with identified skills gaps remain exempt from labour market testing;
- other skilled occupations to be registered with a Job Network member or other recruitment company, to be done concurrently with the skilled migration application process rather than requiring a mandatory 28 day registration period;
- continued access to employer sponsored visas for “labour hire” companies and their associated obligations, provided the labour hire company remains the direct employer of the 457 visa holder; and

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- employers are to be denied access to the 457 Visa if they misuse the process. (MCA sub. 37, pp. 17–8)

Migration policies come under the jurisdiction of the Australian Government and are largely codified in regulations.

The COAG work program referred to above has also been considering how migration policies, including the 457 visa scheme, can contribute to addressing the shortage of skilled workers. This has included an assessment of strategies for more efficient processes for recognising overseas qualifications, particularly in priority skills shortage occupations.

Specifically, COAG has agreed to new arrangements to make it easier for migrants with skills at Australian standards to work as soon as they reach Australia, and they will be in place in the five main source countries for our skilled migrants by December 2008, initially for skills shortage trades and later for other occupations in the skilled migration program. There will also be a parallel on-shore assessments for those who want overseas skills recognized.

In addition, the Joint Standing Committee on Migration conducted a public inquiry into skills recognition, upgrading and licensing, tabling its report *Negotiating the Maze* in September 2006. The Commission notes that the Committee's Report made a number of recommendations for streamlining overseas skills recognition, including improved communication to users and between Australian Government agencies, removing duplication, addressing complexity and processing delays and achieving greater national consistency in licensing and registration. Some changes to the skilled migration program have been announced by the Government and other administrative changes have been made by bodies involved in the process.⁹

In August 2007, the same committee released a report *Temporary visas ... permanent benefits*, following its inquiry into eligibility requirements and monitoring, enforcement and reporting arrangements for temporary business visas, particularly 457 visas. The Report appropriately identifies the need for a careful balancing of policy objectives. The Committee Chairman notes:

While few would deny the skills shortages facing Australia due to a strong economy and historically low levels of unemployment, public support for temporary business visas has the potential to be undermined by abuse of the system. ...The integrity of the system needs to be protected and strengthened and, with it, public acceptance of the

⁹ Further, the Senate Legal and Constitutional Affairs Committee recently conducted an inquiry in relation to the Migration Amendment (Sponsorship Obligations) Bill 2007. The Bill amends the *Migration Act 1958* and the *Taxation Administration Act 1953* to create new obligations for sponsors of skilled temporary overseas workers.

need for temporary skilled workers from overseas to meet proven skill shortages in key industry sectors. ...

While there is a need, from the viewpoint of business, to have such skilled workers identified and brought to Australia as quickly as possible through streamlined processes, that must also be weighed against the need for sufficiently rigorous checking of the credentials and background of these workers. (JSCM 2007, pp. vii–viii)

The Commission is concerned that amendments to the Migration Regulations 1994, made in October 2007, as this report was being finalised, may have significantly increased costs and processing times for businesses wanting to make use of the 457 visa arrangements. In particular, new rules prevent labour hire firms from sponsoring 457 workers unless they agree to meet worker's expenses and to certain requirements in relation to training of workers. These labour hire firms have sponsored 457 holders before contracting them out to other companies, including supplying temporary skilled migrants to major mining projects.

RESPONSE 4.18

Given that the operation of the 457 visa scheme has been the subject of several reviews, the Commission does not propose any new actions at this stage. The operation of the scheme should be monitored, however, to ensure that it is effective and efficient and compliance costs imposed on business are justified. There should be a particular focus on the impacts of recent amendments to regulation and whether they have unnecessarily increased red tape and processing times.

4.10 Transport infrastructure

The minerals and petroleum industry is a major user of transport and logistics services. The industry has identified transport bottlenecks as a major capacity constraint.

Although inefficiencies in domestic container/freight transport (ports, road and rail) also increase costs for businesses in the sector, the focus of this section is on the rail and port infrastructure that handles the export of bulk commodities, as well as cabotage restrictions on coastal shipping. This emphasis is appropriate given that these elements of the transport infrastructure impact (apart from the direct impact on the transport service providers) almost exclusively on primary sector users, whereas the impacts of any inefficiencies in the general road and container freight transport infrastructure impact more broadly across sectors, most notably on the manufacturing, wholesale and distributive trades. Some specific road transport issues affecting the primary sector were discussed in chapter 3.

With respect to the broader transport issues, the Commission has previously recommended that governments initiate an independent national review of the national freight transport system, encompassing all freight transport modes (PC 2005a). The MCA has also recognised the need for transport issues to be considered in the context of the whole system and inter modal issues:

... the fundamental point in addressing the systemic failure in Australia's minerals export corridors is the efficiency and effectiveness of the whole transport and logistics chain – not merely an element of it. (sub. 37, p. v)

Following on from the Commission's *Review of National Competition Policy Reforms* (PC 2005a) and the Prime Minister's Exports and Infrastructure Taskforce report (see below), COAG has committed to a national transport market reform agenda covering rail, road and ports, with the objective of improving the efficiency, adequacy and safety of Australia's transport infrastructure. COAG has also signed a Competition and Infrastructure Reform Agreement which aims to reduce regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure — including ports and export related infrastructure (see access discussion below).

With respect to bulk commodity transport, notwithstanding significant investment in recent years to build capacity, growth in export demand has put pressure on the rail and port infrastructure. Bottlenecks have been a particular problem in the transport and handling of high volume bulk commodities such as coal and iron ore. The situation is especially acute in the delivery of coal by rail through the ports of Newcastle in New South Wales and Dalrymple Bay (near Mackay, central Queensland). Some of Australia's largest export coal customers (Japanese and South Korean steel makers) have been so concerned about coal ship queues at Newcastle and they have recently made representations to state governments stressing the importance of improving the infrastructure. The situation is exacerbated by a tight global shipping market which sees substantial demurrage costs incurred for ships waiting offshore. One coal company, Gloucester Coal, has estimated that queues at the Newcastle Port have resulted in cost increases of \$2.50 a tonne, equating to a '\$4 million cost increase over the year, which represented about 10 per cent of the company's bottom line' (Australian Financial Review 18 July 2007, p. 12).

Rail and port infrastructure comprises both state-government owned and private rail systems and ports. The Pilbara iron ore industry in Western Australia, for example, owns and operates highly integrated mining, transport and ship loading assets. Generally, the private transport infrastructure is operated by third parties, rather than mining companies.

There are many *non-regulatory* factors contributing to the current transport infrastructure bottlenecks, including under investment, fragmentation of ownership, poor management or work practices, a lack of coordination and planning, inadequate integration of supply chain elements, or a lack of coordination and cooperation between parties (although some of these factors can be an *indirect* consequence of disincentives created by regulation).

Many of these issues were highlighted in the recent report of a parliamentary inquiry into integration of regional rail and road networks and their interface with ports. The Report identified an urgent need for substantial government funding to upgrade ports and surrounding transport corridors, but also found that a lack of integration was a major problem:

What we discovered as we moved from port to port, was a pattern of logistics or infrastructure failures in the access to, or the operation of, ports — a missing supply link, a lack of rail capacity, a need for bypass or ring roads, road and rail loops, and the functionality of channels to cater for larger or more frequent vessels. (HRSCTRS 2007, p. vii)

The need for improved integration was also recognised in the 2007 *Goonyella Coal Chain Capacity Review*¹⁰, which found:

There is significant complexity in managing the supply chain from both strategic and operational viewpoints. This complexity is primarily a function of the number of entities directly associated with it. Eight coal producers operating across 13 mines, BBI (long term port leaseholder), DBCT P/L (port operator), QR Network Access ... QR National ... responsible for rail haulage. In addition there are regulatory, commercial and shareholder interfaces with the QCA, ACCC, PCQ and the State Government. When the system is underperforming there is ample opportunity to blame other parties, ... (QRC sub. DR71, attach., p. 2)

The review recommended that a central coordination role be created to oversee and if necessary coordinate all activities which span the whole of the supply chain. (QRC sub. DR71, attach.)

Although *non-regulatory* issues, including funding, are clearly very important *regulation* can also have a significant impact, both directly and indirectly, on transport infrastructure capacity and efficiency. The main areas of regulation are:

- planning approval processes, for the construction of export infrastructure, including ports — the responsibility of state and territory governments or local governments, with approvals covering matters such the environment, OHS, local planning and zoning and industrial relations

¹⁰ The Review was jointly commissioned by the Queensland Government and Queensland Resources Council.

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- Australian Government and state and territory government competition regulation (access regimes) for critical infrastructure
 - legislative restrictions (cabotage) on coastal shipping services.

The rest of this section looks at: concerns relating to the national access regime (under Part III of the Trade Practices Act); other concerns relating to access regimes governed by state and territory legislation; and concerns about coastal shipping.

Part IIIA concerns

The national access regime is a regulatory framework which enables business to seek access to certain infrastructure services owned and operated by others when commercial negotiations regarding access have been unsuccessful. These arrangements are contained in Part IIIA of the *Trade Practices Act 1974* which sets out the mechanisms for permitting third party access to the services provided by eligible facilities or infrastructure, the arbitration of access disputes and the roles and responsibilities of the institutions which administer the arrangements.

These arrangements were seen by some participants as being problematic. Fortescue Metals Group was of the view that the national access regime was ineffective for those seeking access to infrastructure.

In contrast, Rio Tinto (sub. 21) claimed that the access arrangements presented a low threshold for those seeking access and had major efficiency impacts on export dedicated infrastructure. It was critical of a number of aspects of the access arrangements, in particular:

- the declaration criteria used under the Part IIIA arrangements which focused on marginal increases in competition rather than on overall economic efficiency and productivity. As increases in competition need not be in Australia, export facilities could be required to provide access to third parties even where the benefits from increased competition are provided to foreign buyers at the expense of domestic producers
- the reduction in investment in infrastructure due to the regulatory risk associated with being mandated to provide access to privately owned infrastructure.

The MCA (sub. DR70) commented that the access regime under Part IIIA put further investment and the efficiency and international competitiveness of the Pilbara iron industry at risk. It noted that the different interpretations of the legislation by the courts in regard to the Pilbara iron ore railways had resulted in four conflicting decisions on essentially the same facts — particularly in respect of

what constituted a production process and therefore outside the scope of Part IIIA. It said:

Rather than relying on the slow, uncertain, costly and confusing process of litigation, there is a need to amend the law to address continuing uncertainty around access to a company's private, purpose-built, integrated infrastructure. (sub. DR70, p. 6)

The MCA (sub. DR70) also made note that:

- the objects clause is something regulators and courts/tribunals must have regard to, but do not have to satisfy
- the legislation requires that access would not be contrary to the public interest, but this is stated in the negative and there is no guidance as to what is meant by 'public interest' which significantly narrows the test's transparent application
- the lack of any authorisation mechanism based on efficiency that could be used to limit the scope of access
- the separate regimes for other infrastructure such as gas, telecommunications and the state access regimes.

The Institute of Public Affairs (IPA) (sub. 4) said that Part IIIA had created an unnecessary and intrusive regulatory regime which had hindered overall economic welfare. The most costly impact of the regime was its 'chilling effect' on investment due to the risk that the business undertaking the investment may be required to provide unrelated businesses and competitors access to their facilities. Moreover, it was unnecessary as the Trade Practices Act provided a general prohibition on market power. This was due to the access regime (Part IIIA) having been conceived when the prohibitions on market power were seen as inadequate. However, since then certain court decisions had provided greater clarity to the misuse of market power by infrastructure owners and, in the IPA's view, rendered the Part IIIA provisions unnecessary.

Rio Tinto (sub. 21) called for the legislation to be amended to include an 'efficiency override' for vertically integrated export facilities by providing the Minister with the ability to exempt key export facilities on national interest grounds. However, the National Competition Council (NCC) (sub. DR56) noted that any 'efficiency override' was unnecessary due to the comprehensive nature of the declaration criteria and the specific criterion that required that the provision of access or increased access not be contrary to the public interest.

In responding to the Commission's draft report proposal that the scheduled 2011 review was the most appropriate forum to assess the national access regime, the MCA (sub. DR70) raised concerns that this would result in unnecessary delays in

making any changes to the legislation given the lengthy delays in implementing the findings of the previous review.

It concluded by recommending that to ensure the access regime contributed to economically efficient outcomes and improved Australia's economic performance, the Productivity Commission be asked to assess how to amend the definition of a 'service' and 'production process' in the legislation to provide certainty in the law and limit the need for recourse to the courts. It also recommended that the Productivity Commission assess exempting private, vertically integrated, tightly managed export infrastructure chains from Part IIIA. In addition, overseas legislative approaches to infrastructure access should be examined with a view to improving the efficiency and application of Part IIIA (sub. DR70).

Assessment

The national access regime as set out in Part IIIA has proved to be an innovative, but often controversial, piece of economic regulation since its inception in 1995. Although there have been relatively few determinations under Part IIIA, the high profile nature of the handful of applications for access made under the legislation and related court actions have created ongoing attention on the regime. For example, a case involving access to BHP Billiton's rail lines in Western Australia's Pilbara region may be destined for the High Court following a recent appeal before the full bench of the Federal Court.

The regime was subject to scrutiny through a comprehensive review in 2001 as part of the National Competition Policy reforms which provided for a review of the regime after five years of operation. This review was undertaken by the Productivity Commission. Among other things, the Commission was asked to:

- clarify the objectives of the regime
- examine its benefits and costs and ways to improve it
- consider alternatives to achieving the regime's objective
- examine the role of the bodies administering the regime.

The Commission supported the retention of the regime, but noted that it needed to provide a greater emphasis on ensuring there were appropriate incentives to invest in essential infrastructure and made a number of recommendations to improve the operation of the regime.

As to using alternatives such as the Part IV provisions of TPA to regulate access, the Commission in its review noted that, 'reliance on the competitive conduct

provisions of Part IV of the Trade Practice Act would not be a viable stand-alone mechanism for facilitating access to essential facilities’ (PC 2001).

The Government endorsed the majority of the recommendations and made a number of legislative amendments to Part IIIA in 2006 through the Trade Practices Amendment (National Access Regime) Bill 2006. The majority of the amendments focused on procedures and were designed to:

- encourage efficient investment
- clarify the regime’s objectives
- strengthen incentives for commercial negotiation
- improve the transparency, certainty and timeliness of the regulatory process.

The key changes made to the legislation involved:

- inserting an objects clause that provides for Part IIIA to ‘promote the economically efficient operation and use of, and investment in, essential infrastructure services and promote effective competition in upstream and downstream markets’. The NCC, the Minister and the Australian Competition Tribunal are required to take these objectives into account in their decision making processes
- changes to the declaration criteria requiring a lifting of the threshold to have a service declared. Declaration must promote a *material increase* in competition in at least one market where previously declaration was only required to promote competition in at least one market. The explanatory memorandum states that this means a ‘not trivial’ increase in competition. The Commission (PC 2001) recommended that declaration must promote a *substantial increase* in competition in at least one market to provide assurance against the possibility of inappropriate declarations
- the adoption of pricing principles and the requirement for the ACCC to have regard to these principles when arbitrating access disputes and considering undertakings
- time limits on the NCC, the Minister, the Australian Competition Tribunal and the ACCC in making access decisions and the requirement that all decision making processes be published.

Importantly, in responding to the review, the Government announced that there would be a further independent review five years after the changes have been in place. This is due to take place in 2011.

Also, further amendments to Part IIIA have been proposed by the Government in response to the Productivity Commission review of the price regulation of airport

services (PC 2006b). The Government accepted the recommendation to amend Part IIIA to address uncertainty surrounding the competition test in the declaration criteria that had arisen in light of the Federal Court decision on the declaration of domestic air services at Sydney Airport (Costello 2007). In effect, this should ensure that the interpretation of the legislation does not lower the 'entry bar' in relation to accessing major infrastructure.

The NCC (sub. DR56) is of the view that many of the issues raised by participants would be addressed by the Government's amendments and other changes to Part IIIA that have been foreshadowed by the Australian Government. The Commission concurs with this view.

The MCA (sub. DR70) was concerned that amendments arising from the 2011 review may again be delayed with consequences for the efficient use, operation and investment in essential infrastructure. The Commission understands this concern, but considers that a review process prior to 2011 may be problematic as there are likely to be insufficient applications for declaration against which to consider the effectiveness of the recent and foreshadowed amendments to Part IIIA.

The Commission considers that the independent review of the national access regime scheduled for 2011 remains the most appropriate course of action and any required amendments to the legislation should be in place as soon as practicable following the review.

In the interim, the Minister, the NCC and the ACCC should fulfil all requirements to make more transparent and publish their considerations in reaching decisions, thus providing greater clarity to infrastructure providers and access seekers.

Currently, the 'no action – no declaration' provision in the legislation reduces clarity and transparency in the decision making process. Where the designated Minister does not make a decision within 60 days of receiving the final recommendation from the NCC in regards to declaring a service, the Minister is deemed to have published a decision not to declare the service. In the draft report, to further improve transparency, the Commission proposed that clause 44H(9) of the legislation be amended to require the designated Minister to publish reasons as to why the service has not been declared following the expiry of the 60 day time limit.

In responding to the draft report, the NCC (sub. DR56) proposed that where the designated Minister has not made a decision within the 60 day period, the deemed decision would follow the NCC's recommendation which would then serve as the reason for the decision.

Requiring the Minister to publish reasons as to why the service has not been declared or having the NCC recommendation as the deemed decision at the expiry of the 60 day time limit would improve transparency and avoid the situation of a non-declaration occurring without a reason for the decision as well as assist in any subsequent review. However, using the NCC's recommendation at the expiry of the 60 day time limit would provide the designated Minister with the scope to avoid active involvement in the decision process and defer to the independent body established to assess applications for declaration under Part IIIA.

RESPONSE 4.19

The proposed review of Part IIIA in 2011 is the appropriate forum to reassess the national access regime. Any required amendments to the legislation should be put in place as soon as practicable following the conclusion of the review.

RESPONSE 4.20

To further improve transparency relating to decisions made concerning access applications, clause 44H(9) of the Trade Practices Act 1974 should be amended so that, if the Minister has not made an explicit decision at the end of the 60 day period, the National Competition Council's recommendation becomes the deemed decision of the Minister.

Concerns about state and territory access regimes

There have been ongoing concerns surrounding bottlenecks in the operation of export infrastructure mainly involving rail and port facilities operating under state and territory access regimes. Most of these industry specific access regimes are governed by state and territory legislation administered by a variety of regulators applying criteria which vary from regime to regime.

The MCA (sub. 37) voiced frustration at this inconsistency in access regulation which had added to the regulatory burden faced by mining companies operating in more than one jurisdiction. This had adversely impacted on the effectiveness and efficiency of Australia's mineral's export corridor contributing to the bottlenecks at export infrastructure facilities.

It said:

All of the major rail systems are subject to some form of economic access regime however, regulatory processes, mechanisms for determining prices and the provisions for resolving disputes vary from system to system. Furthermore, the process of seeking an access determination by the relevant regulator (ACCC or state/territory authority)

can be both time consuming and expensive, typically taking many months and, for major infrastructure developments, a year or more.

Jurisdictional variations in structures and pricing policies add unnecessarily to the regulatory compliance burden both for minerals companies and their independent transport service providers operating in more than one state. Clearly greater regulatory harmonization is necessary for the modern Australian economy. (sub. 37, p. 28)

In 2005, the Prime Minister commissioned a Taskforce (Exports and Infrastructure Taskforce 2005) to identify any physical or regulatory bottlenecks that could impede Australia's export opportunities. The Taskforce found that some parts of Australia's export infrastructure faced immediate capacity constraints. Localised bottlenecks emerged when an unexpected increase in world demand for Australia's minerals ran into tight and inflexible supply. Although these difficulties were localised, impediments to efficient investment in infrastructure needed to be addressed before capacity constraint problems involving Australia's export infrastructure became more widespread.

The Task Force found that the greatest impediment to the development of necessary infrastructure was that an excessive number of regulators were administering cumbersome, complicated, time consuming and inefficient regulatory regimes. It specifically recommended that COAG examine the scope for a single national regulator or other ways to reduce the number of regulators administering export related infrastructure. It also recommended that COAG explore the scope for simplifying and streamlining regulatory processes applying to export infrastructure by encouraging commercial negotiations between infrastructure providers and users and by a greater reliance on light handed regulation. Where more intrusive regulation was required, COAG should make changes to the regulatory arrangements to improve timeliness, consistency and clarity of objectives (Exports and Infrastructure Taskforce 2005).

In response to the Taskforce's report, COAG in February 2006 signed a Competition and Infrastructure Reform Agreement to provide for a simpler and consistent approach to the economic regulation of nationally significant export related infrastructure, including ports and railways and an agreed timetable for the implementation of specific reform commitments (COAG 2006a). This agreement was welcomed by the MCA (sub. 37).

The agreement contained:

- requirements for regulators to make decisions within binding time limits
- a commitment to review the regulation of ports, port authorities and handling facilities at major ports by the end of 2007, these reviews are currently in

progress, with the findings of these reviews to be implemented by the end of 2008

- a commitment to implement a simpler and consistent system of rail access rail regulations for agreed interstate rail track and intrastate freight corridors by the end of 2008.

COAG also agreed to amend the Competition Principles Agreement to incorporate the following into all access regimes:

- the inclusion of an object clause that promotes the economically efficient use, operation and investment in significant infrastructure
- consistent pricing principles
- merit review of regulatory decision to be limited to the information submitted to the regulator (COAG 2006a).

Although the Australian Government considered a single regulator was preferable, it advised that it would adopt a ‘wait and see’ approach and reserved the right to legislate to this effect if the new arrangements were not effective (COAG 2006a).

Restrictions on competition in coastal shipping

Coastal shipping in Australia typically carries bulk commodities over long distances. It is of particular importance to the minerals sector, with shipments of iron ore, bauxite, crude oil and petroleum products together making up 61 per cent of coastal freight loaded in Australia by tonnage in 2004-05 (BTRE 2007).

Australian Government cabotage requirements restrict the coastal trade to only Australian licensed vessels (which includes both Australian and, subject to conditions, foreign owned vessels). Such restrictions can impact on the cost of shipping services to Australian businesses through higher crew costs, less flexibility and less competition in shipping services.

In light of such costs, the MCA suggested that ‘[a] review of Australia’s cabotage arrangements should be undertaken through completion of the Australian Government’s Legislation Review Program’ (sub. 37, p. 33).

The MCA also raised some concerns relating to intra-state voyages and the limitations on the use of continuous and single voyage permits (CVPs or SVPs):

...[Given] CVPs and SVPs are only required when unlicensed vessels are engaged on inter-state voyages and that the requirements for unlicensed intra-state voyages vary between individual States, these requirements need also to be reviewed and standardised. (sub. 37, p. 33)

Similarly, in the agriculture sector, Australian Pork Limited also called for a review of coastal shipping, noting that licensing arrangements had led to increased costs for the grains industry stating that ‘[d]uring recent droughts, it was more costly to ship grain from WA ports to the eastern seaboard than to do so from the major US grain ports’ (sub. 44, p. 17).

Assessment

These costs have been partly ameliorated by the use of the permit system. Voyage permits (CVPs or SVPs) allow unlicensed vessels to engage in coastal trade where the service provided by licensed vessels is inadequate or unavailable. In commenting on cabotage, the MCA noted that:

In the absence of any change to cabotage arrangements aimed at improving efficiency and reducing transport costs, the MCA supports the Australian Government’s current position on CVPs and SVPs. ... [because]

- the bulk commodity industry has no alternative but to use foreign flagged and crewed bulk carriers (eg. to meet seasonal fluctuations and demand spikes) given the small number (17) of Australian flagged dry bulk carriers, the majority of which have fixed contract commitments; and
- the use of the CVP/SVP system is now integral to the efficient transport of domestic dry bulk commodities with the Australian economy being the obvious beneficiary. (sub. 37, p. 42)

However, the permit system does not represent a long-term solution regarding coastal shipping in Australia:

... reliance on these permits without a definitive judgement on the future of cabotage is said to be creating uncertainty within the industry and ... hampering investment. (PC 2005a, p. 221).

As such, the Commission reiterates its previous call for a review, made as part of its 2005 *Review of National Competition Policy Reforms*, where the Commission considered that coastal shipping should be included as part of a wider review of the national freight transport system (PC 2005a, pp. 220–22).

The Commission believes that intra-state requirements should also be considered as part of an overall review covering coastal shipping. As mentioned above, COAG has already committed to a national transport market reform agenda.

RESPONSE 4.21

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

4.11 Safety and health

In the context of this study, participants from the mining sector raised a number of concerns about OHS laws (many mirrored similar concerns raised by the agricultural sector and reported in chapter 3). The MCA, for example, submitted:

The current approach to OHS regulation in the minerals sector is based on eight separate State/Territory legislative regimes resulting in inefficiency, unnecessary cost, complexity and uncertainty for industry... some OHS legislation and its application hinders rather than assists business in achieving its objective of improved safety outcomes. (MCA sub. 37, p. 15).

Other specific barriers to efficient outcomes that were highlighted by participants, included:

- the difficulty understanding what will be deemed ‘reasonable’ and therefore constitute compliance with OHS obligations
- too much discretion and scope for inconsistent interpretations by regulators
- conflicts *within* jurisdictions between OHS regulations and other regulations
- a lack of understanding and emphasis by governments of the role of risk management
- enforcement policies where the penalty is disproportionate to the level of fault; and increasing emphasis on prosecution as an initial response to non-compliance — the industry is particularly concerned at the inconsistent approach to industrial manslaughter laws across Australia with differences in penalties, length of jail terms, the nature of an offence subject to prosecution, the availability of defences and the basic rights of appeal
- a shortage of mine managers attributed in part to concerns about criminal liability.

A challenge for the industry and regulators is to strike the right balance between, on the one hand broadly specified ‘duty of care’ obligations, and prescriptive rules on the other. While the industry supports a risk-based preventative system with minimal prescription, it can lead to uncertainty for businesses and employees. In this regard, MCA recommended that ‘codes of practice and guidelines should be developed and applied on a national basis and provide consistent parameters for mining operators’ (sub. 37, p. 16).

As noted in chapter 3, the Commission does not intend to comment extensively, or make recommendations, on the *general* OHS regulatory frameworks. The regulations are, in the main, of a generic nature and do not *particularly* impact on the primary sector — offshore petroleum safety and the National Mine Safety

Framework are the exception and are discussed below. Moreover, COAG has included OHS as one of its 10 regulatory hotspots and has developed a program and timeline for achieving a nationally consistent framework and standards as recommended by the Regulation Taskforce. This area of regulation has also been the subject of many reviews (including recently by various state governments and a major review by the Productivity Commission (PC 2004e)).

Offshore petroleum safety

The offshore petroleum regulatory safety regime for both Commonwealth and states' waters and some offshore islands is administered, on behalf of the respective ministers, by a single national body — the National Offshore Petroleum Safety Authority (NOPSA).

NOPSA commenced in January 2005 after a major review of offshore safety regulation. Key features of the NOPSA model include:

- Ministers have not ceded their regulatory responsibilities to another minister, but instead have opted to use the one regulator to administer each minister's responsibilities for offshore petroleum safety (Commonwealth waters and state and Northern Territory coastal waters).
- The Authority is fully funded by an industry safety fee.
- It was established under Australian Government legislation.
- The Authority has an expertise-based advisory board and is responsible to the Australian Government Minister, the MCMPR and individual state and Northern Territory Ministers.

The industry strongly supports the regulatory efficiencies that have been generated by NOPSA's creation, indeed APPEA have suggested NOPSA represents a good model for achieving greater consistency in petroleum regulation more broadly.

However, as noted in section 4.3, some concerns remain about requirements to submit the same or similar information to NOPSA as is submitted to various regulatory agencies and the relevant Designated Authorities. APPEA have also argued that NOPSA should be jointly funded because there are both public and private benefits associated with safety regulation (APPEA 2007).

The Commission notes that some of these issues are being considered in the context of the current review of offshore petroleum regulations (section 4.3), while others including cost recovery issues, will be best addressed early next year when the operations of NOPSA are to be reviewed. An independent review team is to:

... make recommendations to improve the overall operation of NOPSA and its Board and the safety performance of the Australian offshore petroleum industry ... [and] provide a report to the Commonwealth Minister within six months of the completion of the review. (MCMPR 2007)

Slow progress in implementing the National Mine Safety Framework

For more than ten years the MCA and others have been calling for a more consistent national approach to mine health and safety regulation. The MCA (sub. DR70, p. 7) highlighted inconsistencies across jurisdictions, including:

- penalties
- length of gaol terms
- the nature of an offence subject to prosecution
- the availability of defences and the basic rights of appeal.

The MCA is particularly concerned with the OHS laws and their application in New South Wales, and supports a policy platform for further reform specific to that State.

The Australian Government has no direct responsibility for mine safety. Its primary goal is to ensure an effective and consistent nationwide approach and it has provided resources to help achieve this goal.

In March 2002, the MCMPR endorsed the National Mine Safety Framework (NMSF) as a mechanism for delivering a nationally consistent (not necessarily identical) mine health and safety regime across jurisdictions. The NMSF is made up of seven strategies which have been identified as key elements of improving the health and safety record of the Australian mining industry, which are:

- the development of a nationally consistent legislative framework
- competency support (that is, support for the establishment of an effective basis for determining the competency of key management and employees in meeting their mine safety and health obligations)
- compliance support (particularly through the development and promulgation of a range of guidance material)
- consistent and reliable data collection, management and analysis
- consistent and effective approaches to consultation at workplace and state/territory and industry levels, and investigation of the need for a national consultative body
- a nationally coordinated and consistently applied protocol on enforcement

-
- a collaborative and strategic approach to mine safety and health research and development.

In November 2005, the MCMPR re-endorsed the initiative by establishing a tripartite Steering Group with representation from the states/Northern Territory and Australian Governments, industry associations and unions.

Consistent with this development, the Regulation Taskforce recommended 'the Council of Australian Governments should establish a high-level representative group to oversee the NMSF. This group should work closely with the MCMPR to oversee the next stage of reform, including the delivery of a single national regulatory body' (recommendation 4.30).

This recommendation was supported by the Australian Government, which agreed to implement the NMSF and explore options for establishing a single national regulatory body.

The MCA advocates the development of a nationally consistent legislative framework for OHS and strongly endorses the implementation of the NMSF (sub. 37, p. 16). Specifically the MCA supports:

- current efforts to establish and implement a nationally consistent OH&S legislative framework, within existing regulatory regimes; and
- the current focus on finalising and implementing the NMSF as providing the best opportunity to achieve the nationally consistent and effective approach sought by most stakeholders. (sub. DR70, p. 7)

The NMSF Steering Group has been focusing on three out of the seven NMSF strategies: nationally consistent legislation; consultation and data collection, with Working Groups established to advance each strategy. An Overarching Principles and Key Features document has been drafted, which forms the basis of the legislative framework. Extensive public consultations have been conducted on these first three strategies. Final recommendations on the implementation of these strategies will be provided to the MCMPR in late 2007 (DITR sub. DR58, p. 5)

At the August 2007 MCMPR meeting, Ministers:

... endorsed the process going forward for the development of the remaining strategies over the next 12 months. Ministers noted that there remained some significant issues/challenges to implementation but reinforced that they remained highly committed to the process, and expressed their pleasure at the level of goodwill apparent between the parties in the Steering Group. This augurs well for a successful outcome. (MCMPR 2007)

While the NMSF is intended to achieve a nationally consistent approach towards legislation, enforcement, compliance, competency, data, consultation and research,

progress in implementing the Framework has clearly been extremely slow — governments first reached agreement on draft principles and key goals of the framework in 2000.

Significant progress appears to have been made since the establishment of the tripartite NMSF Steering Group and this was recognised by the MCA (sub. DR70, p. 7). Nevertheless, substantive implementation of the Framework will not occur for at least 12 months, extending the development process to more than 8 years.

The Commission understands that Ministers have agreed to defer consideration of the establishment of a single national regulatory authority, given the complexity of the work underway to implement the NMSF, until the framework is complete.

The MCA made it clear that ‘the minerals industry is not looking to establish a single national body for OH&S regulation of the industry’ (sub. DR70, p. 7). The QRC also did not favour a single national mine safety and health regulator (sub. DR71, p. 4). Notwithstanding these views, the Commission considers that it is important that the MCMPR maintains a commitment to considering the merits of establishing a national authority as recommended by the Regulation Taskforce and supported by the Australian Government.

Finally, in its submission to the Regulation Taskforce (sub. 7) the MCA expressed concern that the responses to state reviews of OHS in Western Australia, New South Wales and Queensland would have the potential to undermine efforts to achieve national consistency through the NMSF. These concerns were drawn to the attention of the MCMPR and its Standing Committee of Officials. A particular concern was that the Stein Review of OHS laws in New South Wales — currently being considered by the New South Wales Government and not yet publicly released — may have recommended retention of strict liability offences for safety breaches that are the most stringent in Australia and which have been a barrier to efforts to harmonise laws across jurisdictions.

RESPONSE 4.22

Despite in principle agreement between Ministers, reform of mine safety regulation is taking too long. Governments should maintain a strong commitment to the implementation of the National Mine Safety Framework as soon as possible. Transparent, clear and staged timelines should be adhered to. There should also be an examination of the costs and benefits of establishing a single national authority. Further, individual jurisdictions should not undertake initiatives which would have the effect of undermining efforts to achieve a nationally consistent and effective approach to mine safety.

5 FORESTRY, FISHING AND AQUACULTURE

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5 Forestry, fishing and aquaculture

5.1 Forestry

Introduction

The forestry and logging subdivision of the *Australian and New Zealand Standard Industrial Classification* covers those business units mainly engaged in:

- growing standing timber in native or plantation forests, or timber tracts, for commercial benefit, and the gathering of forest products such as mushrooms, kauri gum or resin from forest environments
- logging native or plantation forests, including felling, cutting and/or roughly hewing logs into products such as railway sleepers or posts, including cutting trees and scrubs for firewood.

Forestry activity takes place in a range of settings, for example, in old-growth native forests, hardwood and softwood plantations, and on farms (where trees are intercropped with other farm crops — agroforestry). Generally, its ultimate objective is to harvest trees for such uses as chips, pulp, paper, paper products, timber and timber products. Quite often the downstream value added exceeds that of the unharvested or harvested tree itself. Some forestry activity is directed at other objectives, for example the enhancement or preservation of a forest, or the planting of trees as wind breaks on farms.

The responsibility for forestry policy and forestry regulation largely lies with state and territory governments, and most forestry activity is regional in nature. The Australian Government plays a role both through funding and through its involvement with certain aspects of environmental policy and regulation.

- Funding is advanced through such means as the regional forests agreements, softwood forests agreement and the Tasmanian native forestry agreement.
- Forestry is subject to national oversight in terms of certain world heritage aspects and other environmental and biodiversity goals.

Rationales for some form of intervention in forestry activity, including possible regulation, include addressing possible market failure and externalities, for example in terms of environmental effects.

Issues that may need to be addressed include erosion, reduced water runoff and compromised water purity from excessive clearing of forests and any increased fire risk arising from inappropriate forestry practices.

A future role for forestry in sequestering carbon dioxide is a matter for detailed study going beyond the scope of this current review.

Table 5.1 Forestry value chain and the impact of regulations

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of forestry cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • Aboriginal land rights/native title • national heritage, world heritage • sustainable use of natural resources 	<p>Farming proposal, strategy and planning</p> 	<ul style="list-style-type: none"> • state and regional conservation and catchments management objectives, relevant planning schemes and legislation • establishment requirements • land use and planning regulation • licensing • permits • Aboriginal land rights/native title
<ul style="list-style-type: none"> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • natural heritage, world heritage 	<p>Acquisition of permits (non-land owners)</p> 	<ul style="list-style-type: none"> • state and regional conservation and catchments management objectives, relevant planning schemes and legislation • land use and planning regulation • licensing • permits • regional development plans
<ul style="list-style-type: none"> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • natural heritage, world heritage • licensing and approval of chemicals, fertilizers and pesticides • water management • occupational health and safety legislation and policy 	<p>Preparation of site conditions, land, water; equipment; plant selection and breeding</p> 	<ul style="list-style-type: none"> • water quality (physical, chemical, or biological) management • land use and planning regulation • soil stability • native vegetation legislation • water regulation • weed and vermin control regulation • use of chemicals and pesticides • natural heritage • environmental protection/assessment

(Continued next page)

Table 5.1 (continued)

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of forestry cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • chemical and pesticides • National Pollutant Inventory • biosecurity regulation • occupational health and safety legislation and policy 	<p>Growth, farming species development and care</p> 	<ul style="list-style-type: none"> • requirements on soil, water catchments, cultural landscape, roads and tracks • disease control regulation • use of chemicals and pesticides • plantation health • fire control • natural heritage • environmental protection/assessment • chemical use approval • plant species, insect and animal pests and plant diseases control • occupational health and safety legislation and policy
<ul style="list-style-type: none"> • export markets • export control regulations • export certificates • national land transport regulatory frameworks • shipping and maritime safety laws • international maritime codes and conventions • competition laws • national standards • international agreements 	<p>Plantation processing; harvesting; product grading; classification and transport</p> 	<ul style="list-style-type: none"> • certification and labelling • transport equipment • transport regulations • government owned public/private transport infrastructure • occupational health and safety legislation and policy • road access • harvesting equipment • reforestation • product classification • qualification requirements
<ul style="list-style-type: none"> • marketing legislation (mandatory codes and acquisition) • quarantine regulation • export controls • export incentives • taxation 	<p>Marketing: boards and customers</p>	<ul style="list-style-type: none"> • interstate certification arrangements • taxation

Problems with the regulation of land and water use

The National Association of Forest Industries (NAFI) said that Australia's forest industry is underpinned by 'extensive and complex' regulations that affect the growing and production of forest resources and the utilisation and marketing of timber products (sub. 11, p. 3).

Restrictions on access to forest and water resources

As for many other primary industries, forestry depends on access to land and water, both of which are subject to a wide range of regulations. NAFI noted that regulation, much of which is state-based and applies to both native and plantation forests, 'has increased dramatically and become increasingly complex over recent years'. In particular, it expressed concern that the industry is facing increasing restrictions on access to forest resources.

It said that adoption by Australian, state and territory governments of the National Forest Policy Statement in 1992 and the implementation of ten Regional Forest Agreements had led to a significant reduction in access to native forest resources. Together with decisions by state governments to 'lock-up' more native forest resource, this has led to a significant reduction in the size of the native hardwood industry:

This failure to secure the forest resources required over the longer term often limits the industry's ability to commit to further investment in areas such as value adding for downstream processing. (sub. 11, p. 5)

It added that, in some jurisdictions, the viability and competitiveness of the native hardwood sector has been 'severely depleted' and the impacts on dependent rural and regional communities have also been significant. Moreover, NAFI argued that the transfer of production forests to conservation reserves has failed to achieve the environmental outcomes for which the reserves were created:

State governments have regularly transferred once well-managed production forests into conservation reserves, based largely on political decisions, where the resulting mismanagement of these reserves leads to suboptimal outcomes for the conservation of biodiversity. (sub. 11, p. 4)

NAFI said that the contraction of the industry has also led to greater reliance on alternative building materials that do not possess the same environmental credentials (see below), and to increased imports from countries that rely upon forestry practices that 'carry no guarantees in relation to their legality and sustainability'. Moreover:

Australia's increased reliance on overseas timber obtained from questionable sources is a clear contravention of national policy objectives to utilise timber which is derived from forests which are sustainably managed ... (sub. 11, p. 5)

While the plantation forestry sector has expanded in recent years, NAFI said that there are regulatory and non-regulatory impediments which may limit that expansion and the competitiveness of the sector. It said that plantation timber faces 'a complex set of regulations, many of which are not always applied consistently across other agricultural land uses'. Examples include discriminatory controls on land use that disadvantage plantation development at the expense of other land uses, restrictions on the use of wood waste for renewable energy (see below), and water management regulations and policy, such as the identification in the National Water Initiative of plantation forestry as a land use with the 'potential to intercept significant volumes of surface and/or groundwater' (section 3.22) (sub. 11, pp. 7–8).

Australian Forest Growers drew attention to the regulatory burdens faced by private forest growers in Victoria when investing in commercial tree crops. It said that the Victorian Code of Practice for Timber Production discriminates against small-scale operations and low-impact forestry operations and creates 'an onerous legislative burden' (sub. 46, p. 1). It added that:

... unlike many voluntary codes of practice for dry land farming pursuits, compliance with the [Code of Practice] for Timber Production is compulsory and a high level of policy interpretation expertise is required. The only way to avoid compliance under the code is to plant less than 5ha, which is generally unviable. (sub. 46, p. 4)

NAFI also drew attention to the 'undue costs, delays and uncertainty' for the forest industry arising from the operation of the EPBC Act. It expressed concern about 'the constant legal challenges to major projects, the [Regional Forest Agreements] and the EPBC Act itself' (sub. 11, p. 9). As an example, it cited the Gunns pulp mill proposed for northern Tasmania, which was subject to legal challenge under the EPBC Act but eventually approved with 48 conditions. NAFI argued the need for greater industry certainty to allow the industry 'to complete legitimate projects and activities' without 'lengthy and complicated legal and approval processes resulting from the EPBC Act' (sub. 11, p. 9).

Failure to achieve this will only hinder the industry from achieving further investment, resulting in a reduced capacity for it to operate viably and competitively with overseas markets and other products. (sub. 11, p. 9)

Chapter 3 notes that there have been recent legislative amendments to the EPBC Act, intended to improve aspects of its operations (section 3.2).

Inconsistencies across jurisdictions

NAFI said that, while the regulations that affect forestry apply at the federal, state and local government levels, ‘perhaps the most prominent jurisdiction affecting the industry in terms of the regulations applied, is the state government’ (sub. 11, p. 3).

It also pointed to differences in regulations across state and territory jurisdictions:

For example, certain native forest harvesting practices are permitted in some states but not others despite the fact that the same forest types with the same silvicultural requirements may occur across these states. (sub. 11, p. 6)

It added that differences in the impacts of regulations across jurisdictions are often ‘a reflection of an inconsistent jurisdictional application of these regulations’ (sub. 11, p. 5).

Moreover, while a number of national policy objectives have been agreed, their fulfilment ‘is not always consistent with the stipulation of regulations which apply at other levels of government’ (sub. 11, p. 3). Indeed, ‘the implementation of regulations at all levels of government can lead to outcomes which are contrary to the stated national government policy objectives’ (sub. 11, p. 3). A consequence is often ‘contradictory policy outcomes that do not fulfil these objectives and have a negative impact on the industry’s ability to develop and remain competitive’.

NAFI called for a greater role and greater powers for the Australian Government in overcoming these problems (sub. 11, p. 14).

Assessment

Many of the matters raised by the industry effectively propose changes to existing government policy covering land and water use in general, and the forestry industry in particular. These are matters that may be considered as part of the ongoing national policy debate in these areas, but they are beyond the scope of the current review, which seeks to focus on regulatory imposts that are unnecessarily burdensome relative to the implementation of an agreed policy. Moreover, as is apparent in the discussion above, specific concerns that warrant a response fall within the province of state and territory governments and are thus also beyond the scope of this review.

Building regulations and the energy efficiency of timber

NAFI criticised current building codes and energy rating schemes, stating that they ‘do not fully recognise the carbon benefits of wood products as they are typically

not based on full life cycle assessments’ (sub. 11, p. 10). By failing to recognise embodied energy, NAFI claimed that timber flooring was disadvantaged relative to, for example, concrete slab flooring (sub. 11, p. 10).

The issue of building regulation in general is a designated COAG ‘hot-spot’ — indeed, the April 2007 COAG Regulatory Reform Plan notes a strong commitment by all jurisdictions to a nationally consistent Building Code of Australia. That code includes building energy efficiency requirements. However, such commitment does not necessarily imply uniformity between jurisdictions — New South Wales, for example, has adopted different building energy efficiency standards.

The forestry industry also considers that the Online System for Comprehensive Activity Reporting (OSCAR) used by the Australian Greenhouse Office to help companies lower emissions, biases assessments against the use of wood by:

- measuring operational, but not embodied energy
- being insufficiently flexible to assess the energy efficiency of well-designed wooden houses.

In the industry’s view, Australia’s energy efficiency rating schemes should reflect the low energy emissions and subsequent carbon benefits of wood products in construction applications (NAFI sub. 11, p. 50). And as OSCAR is based on international standards, several participants argued that Australia should address concerns about biases in international energy rating standards in the appropriate international fora.

Assessment

In regard to embodied energy, the Commission in a 2005 report on energy efficiency noted that the need to address this issue was recognised by some relevant authorities. It concluded that:

... the current approach of ignoring many building-related emissions has undermined the effectiveness of building standards in reducing Australia’s energy use and emissions. (PC 2005, p. 218)

However, it recognised that ‘a more comprehensive life cycle approach could address this problem, but it would be difficult to implement’ (PC 2005b, p. 218). Building regulation more broadly was discussed by the Commission in 2004 (PC 2004c).

The Commission considers that the concern is relevant to the 2008 review year, given that the main impact is felt by the timber manufacturing industries. Deferring

the review to that year would allow developments flowing from the April 2007 COAG initiatives to be assessed at that time.

RESPONSE 5.1

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

Use of waste wood for power generation

Some jurisdictions prohibit or restrict the use of waste wood from native forest harvesting for power generation. There are also controls on the use of waste wood (from both native forests and plantations) for power generation under Australian Government legislation designed to promote the production of renewable energy. NAFI claimed that such controls ‘represents a contradiction of the national policy objective of lowering greenhouse gas emissions’ (sub. 11, p. 9). The Tasmanian Forest Contractors Association said that:

If relevant Regional Forestry Agreements are followed then why shouldn't the Federal Government encourage the utilisation of wood waste for electricity generation? Such a covenant should ensure that increased native forest harvesting is not promoted. (sub. DR53, p. 2)

Assessment

The Australian Government provisions were reviewed by the Mandatory Renewable Energy Target (MRET) Review Panel, which reported in September 2003. The Government noted that the report:

... was inconclusive in its analysis of the use of native forest for renewable energy, as it required consideration of factors outside its terms of reference, including National Forest Policy. (AGO 2005)

In November 2005, the Government reiterated its view that only wastes from sustainable forestry operations can be eligible to create Renewable Energy Certificates under the MRET scheme:

These criteria are designed to encourage more efficient use of existing resources, rather than promoting increased harvesting of native forests to supply wood wastes for electricity generation. (AGO 2005)

It said that it did not intend to make changes to the *Renewable Energy (Electricity) Act 2000* or the *Renewable Energy (Electricity) Regulations 2001* relating to the eligibility of native forest wood waste (AGO 2005).

In a submission to this review, DAFF reiterated that a native forest specifically cleared for power generation cannot qualify for MRET credits, adding that ‘wood waste from harvesting operations can be burned in the forest, but this same material cannot be used to claim MRET credits’ (sub. 74, p. 11).

It added that the Office of the Renewable Energy Regulator has been assisting energy generators to better understand the wood waste provisions in the *Renewable Energy (Electricity) Regulations 2001*.

RESPONSE 5.2

The Australian Government has explicitly rejected the use of native waste wood for power generation, in order to avoid promoting increased harvesting of native forests.

Other matters

The Tasmanian Forest Contractors Association also expressed concern about:

- fatigue management in the transport sector, particularly regulations that may be too complex for small businesses to effectively implement (sub. DR53, p. 1) (the broader issue is discussed in section 3.9)
- mutual recognition across forest harvesting sectors of different states and territories, which is ‘still problematic and certainly could be more streamlined’ (sub. DR53, p. 2)
- the level of forestry expertise in relation to workplace safety in state agencies
- interpretation of safety legislation in relation to onsite visitors and non employees
- issues in relation to the interplay between various state legislative instruments, policies, regional forestry agreements, the Tasmanian Community Forestry Agreement, together with municipal councils and their associated planning schemes.

5.2 Fishing

Introduction

The fishing group of the *Australian and New Zealand Standard Industrial Classification* covers those business units engaged in fishing, including:

-
- line fishing in inshore, mid-depth or surface waters
 - trawling, seining or netting in mid-depth to deep ocean or coastal waters
 - catching rock lobsters, crabs or prawns from ocean or coastal waters.

The complex Australian marine environment, community expectations and fisheries-related social and economic concerns create a significant challenge for fisheries management. Ecologically sustainable development is becoming more important in fishing management in order to maintain a balance between exploitation of fisheries and their capacity to regenerate. Fish stocks are also affected by: the high level of recreational and commercial fishing; illegal fishing by foreigners; and environmental change and aquatic habitat degradation.

Australian fisheries management is shared between the Australian Government and the states. Offshore Constitutional Settlement arrangements assign Australian Government or state management responsibility for fisheries. DAFF said that these arrangements:

... are in place for all major fisheries, acknowledging jurisdictional lines, however there are numerous instances where management of a fish stock is shared and there is a need for better collaboration between jurisdictions to provide for sustainable, profitable fishing and effective efficient administration. (sub. 31, p. 12)

Offshore Constitutional Settlement arrangements also establish some joint authorities for fisheries (for example, the Queensland Fisheries Joint Authority).

The *Fisheries Management Act 1991* provides the main Australian Government legal framework governing the fishing industry. It addresses over-fishing, maintenance of fish stocks and ensuring that ecologically sustainable development principles apply. Under the Act, management of Commonwealth fisheries is undertaken by the Australian Fisheries Management Authority (AFMA), which develops management plans, regulates fishing effort, and is responsible for licensing, monitoring compliance and enforcement.

AFMA manages fisheries within the 200 nautical mile Australian Fishing Zone, on the high seas, and, in some cases, by agreement with the states to the low water mark. In particular, AFMA is empowered to set the total allowable catch for particular species and for particular fishing periods.

In addition, under the EPBC Act, fisheries management must have regard for the ecologically sustainable management of fisheries that export or that operate in the Commonwealth marine area.

Table 5.2 Fisheries value chain and the impact of regulations

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of fisheries cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • <i>United Nations Convention on Law of the Sea</i> • fisheries conventions • conservation conventions • shipping and maritime safety laws • international maritime codes and conventions • <i>Fisheries Management Act 1991</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • fisheries strategic assessment • marine protected areas, world heritage areas • species listings • Aboriginal land rights and native title • fisheries Offshore Constitutional Settlement arrangements 	<p>Acquisition of permit</p> 	<ul style="list-style-type: none"> • fishing licensing • boat survey, safety and pollution requirements • boating qualifications and licensing • equipment requirements
<ul style="list-style-type: none"> • <i>Fisheries Management Act 1991</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> 	<p>Preparation of gear and equipment</p> 	<ul style="list-style-type: none"> • equipment requirements • port requirements • boating licensing • occupational health and safety legislation and policy
<ul style="list-style-type: none"> • <i>Fisheries Management Act 1991</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • protected species • recovery plans, threat abatement plans • standards • fuel excise rebates • immigration and transport security • research and development funding and support 	<p>Fishing</p> 	<ul style="list-style-type: none"> • fisheries landing and marketing requirements (size limits etc) • restricted areas • by-catch • occupational health and safety legislation and policy

(Continued next page)

Table 5.2 (continued)

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of fisheries cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • export certificates • environmental regulation • marketing legislation (mandatory codes and acquisition) • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • export approval for wildlife trade • food safety regulation • quarantine regulation • export controls • export incentives • taxation • research and development funding 	<p>Marketing and processing</p> 	<ul style="list-style-type: none"> • interstate certification arrangements • occupational health and safety legislation and policy • food safety regulation • taxation
<ul style="list-style-type: none"> • national land transport regulatory frameworks • competition laws • international food standards 	<p>Packaging, transport, insurance and logistics</p>	<ul style="list-style-type: none"> • packaging requirements • transport regulations • government-owned public/private transport infrastructure • insurance requirements

DEW's primary role is to evaluate the environmental performance of fisheries managed under Commonwealth legislation and state export fisheries in accordance with the EPBC Act, including:

- the strategic assessment of fisheries under Part 10 of the EPBC Act
- assessments relating to impacts on protected marine species under Part 13
- assessments for the purpose of export approval under Part 13A.

DAFF said that 'the management of Commonwealth fisheries aims to meet the objectives of both the Fisheries Management Act 1991 ... and the [EPBC Act]' (sub. DR74, p. 11).

Duplication in fish stocks management

The Commonwealth Fisheries Association (CFA) expressed concern about the lack of harmonisation between the Fisheries Management Act and the EPBC Act. It said

that, while it supports the broad intent of both Acts, the interaction and overlap between them:

... creates an environment of uncertainty in terms of ... future access to commercial fish stocks and ultimately brings into question the value of statutory fishing rights as an asset and financial security. (sub. 30, p. 3)

The CFA is generally satisfied with the arrangements under the EPBC Act to manage interaction with threatened, endangered or protected species and to monitor and regulate these requirements. It also accepts the need for the Minister to have authority to nominate particular fishing methods as ‘threatening processes’ when objective and transparent criteria justify such an action. However, it argued that the strategic assessment processes under the EPBC Act ‘are widely regarded as yet another burden on the commercial fishers, focused on a relatively narrow set of conservation-orientated objectives’ (sub. 30, p. 4).

It added that the ‘worst possible outcome’ is to have different assessment standards and processes imposed by different agencies, adding that any strategic assessment regime should be effectively integrated and harmonised with existing fisheries management, monitoring and compliance regimes.

The CFA proposed that DEW and AFMA should be required to jointly review their respective requirements and processes and develop an agreed and transparent process to integrate and harmonise these assessment activities:

The strategic assessment processes required under the EPBC Act are resource intensive and potentially disruptive processes. Accordingly, it is essential that within DEW, assessments undertaken as part of issuing a permit to export wild caught product are fully harmonised and accredited with strategic assessments undertaken to conform to the requirement that all fisheries undergo strategic environmental impact assessment before new management arrangements are brought into effect. (sub. 30, p. 4)

The CFA added that, even if all of the requirements of the Fisheries Management Act were met, a fishery could be closed by the listing under the EPBC Act of a key target species (or one that may be caught unintentionally). It expressed concern that:

- the EPBC Act listing criteria adopted for marine species are derived from criteria developed for terrestrial flora and fauna and are thus in the main inappropriate for marine species
- it is not clear how species listed under the EPBC Act can subsequently be removed from that list.

In the CFA’s view, the Fisheries Management Act is an effective vehicle to manage Commonwealth fisheries and should be the sole legislative mechanism by which commercial species are managed. It argued that any species managed under the

Commonwealth Fisheries Harvest Strategy Policy (HSP — see below) should not be subject to listing under the EPBC Act. It proposed that the EPBC Act be amended to acknowledge the clear primacy of the Fisheries Management Act in managing commercial marine species. Alternatively, it argued that:

- the criteria by which species are judged to be threatened and the criteria by which fish stocks are judged to be ‘over fished’ should be harmonised
- the listing of fish species as threatened, endangered or protected under the EPBC Act should not be contemplated when the stock is above the level that would be considered ‘overfished’
- the HSP should clearly set out all of the consequences of fishing beyond limit reference points defining when a fish stock is overfished and the actions that need to be taken to have any potential EPBC Act listing removed (sub. 30, p. 6).

DAFF said that, while there may be further efficiency gains to be had in terms of regulation of fisheries, there are some initiatives already in place, such as the Australian Government’s HSP, which has just been developed between DAFF, DEW and the AFMA (sub. DR74, p. 13).

The Commonwealth Fisheries Harvest Strategy Policy

The HSP was released in September 2007 (after the release of the Commission’s draft report). It is a key component of the Australian Government’s *Securing our Fishing Future* program. DAFF said that the HSP is intended to ensure that commercial fish species are being managed for long-term biological sustainability and economic profitability. It seeks to provide a framework for applying an evidence-based precautionary approach to set harvest levels for each fishery.

Among other things, DAFF said that the HSP outlines the linkages between the Fisheries Management Act and the EPBC Act regarding the status of key commercial species and ‘addresses the concerns raised regarding the listing of key commercial species as under the EPBC Act’ (sub. DR74, p. 12). It advised that, broadly:

- while a stock biomass is above a limit at which the risk to the stock is regarded as unacceptable, there is no expectation that the species would be added to the list of threatened species under the EPBC Act
- if the stock biomass is at or is below this limit, then those stocks may be the subject of action under both the fisheries and environment legislation and consideration may be given to listing the species as ‘conservation dependent’

-
- if the stock biomass falls more substantially, there is an increased risk of irreversible impacts on the species, which will likely be considered for listing in a higher threat category and may require development of a formal recovery plan
 - where the biomass of a listed stock is rebuilding toward target levels, consideration could be given to deleting the species from the list of threatened species (sub. DR74, p. 12).

DAFF added that:

The best available science underpins all key decisions in the application of the HSP and relevant provisions of the EPBC Act. Stakeholders will be well informed and agencies will ensure transparency. (sub. DR74, p. 12).

Assessments under the EPBC

In respect of catch limits for particular species of fish, DAFF advised that this is the responsibility of AFMA, with input from DEW:

While DEW has some direct management levers, the decisions are routinely made through discussion and agreement on how AFMA will implement the necessary measures. In the one case to date where a commercial species (orange roughy) has been listed under the EPBC Act, the Conservation Plan and associated total allowable catches were developed by AFMA, in consultation with DEW. (sub. DR74, p. 12)

DEW added that the approach taken by the Minister and Department in imposing conditions is to ensure that:

... the conditions are drafted broadly with a focus on overall outcomes to be achieved and are consistent with the overall legislative and policy framework for regulating the fishery. It is left to fisheries managers to determine the best way to achieve these outcomes. (sub. DR67, p. 10)

DEW said it considers the ecological risk assessments being undertaken by AFMA for Commonwealth managed fisheries is an important process for identifying and managing risks associated with fishing activities. However, 'while the ERA identifies the level of risk, in and of itself it does not take any action to mitigate the identified risk.' It added that:

The Department looks forward to the Authority developing and ultimately implementing an ecological risk management framework/process to mitigate unacceptable risks. Once such a system is developed and implemented there may well be opportunity for further harmonisation of processes to meet the objectives of both Acts. (sub. DR67, p. 10)

DEW also argued that there is no need to revisit the criteria by which harvested fish species are judged. It pointed out that the EPBC Act has been amended so that the

listing of a harvested fish species as ‘conservation dependent’ can occur so long as it was the subject of a suitable plan of management:

Thus, compliance with the Harvest Strategy Policy should avoid the need for consideration of harvested fish species in the long-term, and probably conservation dependent in the short-to-medium-term. If, in the long-term, a harvested fish species is listed in a category higher than conservation dependent, DEW considers that it remains appropriate for the risk of irreversible impact to be managed under the EPBC Act until such time as the species has recovered to a point of sustainable harvest, at which time the listing could be amended and fisheries management resumed. (sub. DR67, p. 12).

DEW referred to the call by the CFA for DEW to harmonise export assessments with strategic assessments, and argued that strategic assessments, export assessment and protected species accreditations ‘are generally undertaken at the same time to ensure a streamlined process’ (sub. DR67, p. 10). It added that it ‘does not consider there is a need to rationalise requirements under the Fisheries Management Act 1991 and the [EPBC Act] insofar as it pertains to fisheries and fishing’ (sub. DR67, p. 11) and that the extent to which the listing provisions of the EPBC Act apply in the future will be dependent on successful fisheries management by AFMA and the industry (sub. DR67, p. 12).

DAFF also argued that it was working closely with DEW and AFMA ‘to streamline processes and ensure that work undertaken for fisheries management (such as ecological risk assessments, bycatch action plans) is harmonised with work undertaken for the EPBC Act (sub. DR74, p. 12). But it added that:

The Australian Government is currently considering a comprehensive review of the economic and ecological sustainability of Australian fisheries which would examine the regulation of the fisheries sector in depth. (sub. DR74, p. 11)

Assessment

Representatives of fishers in the Commonwealth fisheries continue to express concerns about the regulation of their activities under both the Fisheries Management Act and the EPBC Act, although the regulating agencies have claimed that their activities are well-coordinated and designed to minimise such problems.

Since the release of the Commission’s draft report, the Australian Government’s policy framework for Commonwealth fisheries has been released. Time will be required for its requirements and processes to be incorporated into fisheries management.

Also, DAFF advised that the Australian Government is considering a comprehensive review of Australian fisheries, which would also encompass the regulation of the sector in depth.

RESPONSE 5.3

The recently-released Commonwealth Fisheries Harvest Strategy Policy may help address concerns about the interactions between the Fisheries Management Act and the EPBC Act, but time will be required for the full effect of this policy to be felt.

Export licence accreditation processes for the tuna industry

The South Australian Government expressed concern about the export accreditation risk facing fishers operating in the southern bluefin tuna fishery. It said this has arisen in the context of strategic fisheries assessments required under the EPBC Act. Environmental groups have appealed the Minister's decision to accredit the fishery for export, arguing that it is not ecologically sustainable. While the issue was resolved in favour of the industry in the most recent case, 'the issue is likely to arise again in several years with another round of assessment and auditing to confirm compliance with the EPBC Act' (sub. DR50, p. 12).

While expressing support for the objectives of the EPBC Act, the South Australian Government said that the Act 'in its present form may not be the best way to achieve the sought outcomes' (sub. DR50, p. 12). It expressed concern that 'satisfying due process in the court has been onerous, complex and costly', and that the present process results in 'a high stakes situation' for the industry. It noted that the Convention for the Conservation of Southern Bluefin Tuna, which sets quotas for fishing and progresses conservation and stock management of the species, provides 'a perfectly adequate international framework' for ensuring the ecological sustainability of the fishery (sub. DR50, p. 13).

Assessment

The southern bluefin tuna fishery is a Commonwealth-managed fishery and the export approval assessment is undertaken by DEW, based on a submission from AFMA. Export approval assessments are required to, among other things, ensure conservation of biodiversity and that any commercial utilisation of native wildlife for export is managed in an ecologically sustainable way. Any review of these policy requirements, including the scope for appeals, is a matter for government.

Recreational fishing: the cost and availability of information about regulations

The Recreational Fishing Alliance of New South Wales (RFA) said that recreational fishing is a multi-billion dollar industry, with recreational fishers spending about \$1.8 billion each year on fishing and undertaking about 23 million fishing trips. It highlighted the effect of regulations on recreational fishers in New South Wales,

The RFA expressed concern about the significant cost of informing the public of Australian Government and state government rules and regulations, some of which is borne by the Alliance. It noted, for example:

- information brochures explaining regulations are now only available at stores which collect recreational fishing fees
- greater use of the internet for information dissemination is of limited usefulness because not all recreational fishers have access to the internet.

It argued that government has an obligation to effectively disseminate information concerning rules and regulations to all recreational fishers, and before rules such as the banning of fishing from dangerous areas are imposed, education campaigns should be undertaken. It said that ‘this will ensure that excessive regulations are avoided’ (sub. 10, p. 5).

Assessment

In principle, reasonable efforts need to be made to ensure that government rules and regulations are widely known and understood, especially by the target group. But this also needs to be balanced against the costs involved. In practice, information about recreational fishing in New South Wales is made available through most fishing tackle stores, via a 1300 telephone service and the internet, and through information sent to recreational fishing groups. Some information relates to Commonwealth fisheries, but an important function is to disseminate information about the rules, restrictions and exemptions concerning recreational fishing in New South Wales waters, including size limits, bag limits and fishing methods and the obligation to pay the New South Wales Recreational Fishing Fee.

These matters are for the New South Wales Government to determine and fall outside the scope of this review.

Recreational fishing: endangered species — the grey nurse shark

The RFA also expressed concern about the adverse effect on recreational fishers in New South Wales of regulations that protect the grey nurse shark, which became the first protected shark in the world under New South Wales legislation in 1984. The east coast population of grey nurse sharks is also listed as a critically endangered species under the EPBC Act.

The RFA said that these developments have disadvantaged recreational fishers, as they have led to the establishment of fishing exclusion zones intended to help rehabilitate the population of this species. This places a burden on recreational fishers, who are not permitted to fish in protected areas, which would otherwise be highly desirable recreational fishing grounds. Only recently, the Australian Government established the 500 hectare Cod Grounds Commonwealth Marine Reserve off the coast from Laurieton on the mid-north coast of New South Wales (DEW 2007b). This follows recommendations in the *Recovery Plan for the Grey Nurse Shark*, prepared by the Environment Australia (EA 2001). All commercial and recreational fishing will be prohibited in the reserve. The New South Wales Government is also implementing a recovery plan to protect the grey nurse shark.

In the RFA's view, the methodology relied upon by government departments to assess current shark populations is potentially flawed and there are large discrepancies between estimates made by government departments and those of recreational fishers. It argued for more extensive research on grey nurse shark habitats, and the public release of such research, before further measures are taken to exclude recreational fishers from particular fishing areas.

Assessment

The Commission understands that the science behind the assessment of grey nurse shark numbers is disputed and remains topical. (It was, for example, the subject of a recent case before the Administrative Appeals Tribunal.) In addition, recreational fishers argue that the killing and injuring of grey nurse sharks is primarily caused by commercial, not recreational, fishing. The controversy about these matters will be ongoing and may only be resolved by better information and research, as proposed by the RFA.

For the meantime, while both state legislation and the EPBC Act have roles in regulating fishing, the principal restrictions on recreational fishers in New South Wales waters are matters for the New South Wales Government.

Recreational fishing: the cost of licensing

The RFA expressed concern about the New South Wales recreational fishing licensing system. In its view, the administration and department overhead costs that contribute to the cost of the licence are a burden on recreational fishers. It recommended that the New South Wales Government and its departments investigate the scope to reduced these overhead costs (sub. 30, p. 6).

This is a matter for the New South Wales Government and falls outside the scope of this review.

5.3 Aquaculture

Introduction

The aquaculture subdivision of the *Australian and New Zealand Standard Industrial Classification* covers those business units mainly engaged in:

- offshore farming of molluscs and seaweed using longlines or racks
- offshore farming of finfish using cages
- farming finfish, crustaceans or molluscs in tanks or ponds onshore.

State and territory governments have primary responsibility for the regulation of aquaculture production, and local government is usually responsible for development approval for aquaculture activities on land. Within their respective jurisdictions, they have varying levels of planning, development and management control relating to:

- ecologically sustainable development and environmental protection
- allocation and management of resources, disease notification and access to broodstock or juveniles
- compliance with state food safety regulations.

The Australian Government has a limited direct regulatory involvement in aquaculture. Through the EPBC Act, the *Native Title Act 1993*, the *Quarantine Act 1908*, and the *Great Barrier Reef Marine Park (Aquaculture) Regulations 2000*, it has power to deal with matters of national environmental significance, ecologically sustainable development, food safety, aquatic animal health, quarantine, trade and taxation.

Table 5.3 Aquaculture value chain and the impact of regulations

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of aquaculture cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • <i>Fisheries Management Act 1991</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> 	<p>Acquisition of permits</p> 	<ul style="list-style-type: none"> • land use and planning regulation • licensing • permits
<ul style="list-style-type: none"> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • natural heritage, world heritage • licensing and approval of chemicals, fertilizers and pesticides • quarantine regulations 	<p>Preparation of land, water, area, species, eggs and equipment</p> 	<ul style="list-style-type: none"> • land use and planning regulation • native vegetation legislation • water regulation • weed and vermin control regulation • use of chemicals and pesticides • natural heritage • environmental protection/assessment
<ul style="list-style-type: none"> • chemicals and pesticides • National Pollutant Inventory • biosecurity regulation • National Strategic Plan for Aquatic Animal Health 	<p>Growth, farming, species development and care</p> 	<ul style="list-style-type: none"> • animal welfare regulation • disease control regulation • use of chemicals and pesticides • natural heritage • environmental protection/assessment • occupational health and safety legislation and policy
<ul style="list-style-type: none"> • export certificates • national standards (food and packaging) • AQIS national pesticide residues testing • AQIS export program • national land transport regulatory frameworks • shipping and maritime safety laws • international maritime codes and conventions • competition laws 	<p>Harvest, packaging and transport and insurance</p> 	<ul style="list-style-type: none"> • certification and labelling • packaging requirements • transport equipment • boat licences • transport regulations • government-owned public/private transport infrastructure • occupational health and safety legislation and policy • insurance requirements
<ul style="list-style-type: none"> • marketing legislation (mandatory codes and acquisition) • food safety regulation • quarantine regulation • export controls • export incentives • taxation • market access 	<p>Marketing:</p> <ul style="list-style-type: none"> – boards – customers 	<ul style="list-style-type: none"> • interstate certification arrangements • taxation

In March 2007, some amendments were made to the *Great Barrier Reef Marine Park (Aquaculture) Regulations 2000*. Regulations relating to land-based aquaculture that may discharge to waterways leading to the marine park are currently under review by the Great Barrier Reef Marine Park Authority.

Recent developments

Over recent years, the aquaculture industry has been growing in size, and expanding the number of species it farms. It operates in all states. The Australian aquaculture industry is facing similar challenges to the industry worldwide in developing improved breeds of species, developing better and economically viable feeds, and improving health and environmental management systems to support sustainable growth of the industry.

The Aquaculture Industry Action Agenda (AIAA) is a strategic framework developed in 2002 between the aquaculture industry and the Australian Government to help the industry achieve its vision of \$2.5 billion in sales by 2010. The AIAA contains a set of ten strategic initiatives to work towards this goal.

One of the AIAA's objectives is to promote a regulatory and business environment that supports aquaculture. To this end, the *National Aquaculture Policy Statement* was developed and agreed to by all states, territories and the Australian Government in 2003 (DAFF website). This commits all Australian governments to working with the industry to achieve maximum sustainable growth, while meeting national and international expectations for environmental, social and economic performance.

In 2004, the Commission studied environmental regulatory arrangements for aquaculture in Australia (PC 2004d), finding significant differences across jurisdictions in the way that aquaculture is regulated. It concluded that there was an unnecessarily complex array of legislation and agencies in the areas of marine and coastal management, environmental management, land use planning, land tenure, and quarantine and translocation.

The Commission's report was used by the AIAA Implementation Committee to pursue reform in the regulatory and business environment for aquaculture. In 2005, the Committee released the *Best Practice Framework of Regulatory Arrangements for Aquaculture in Australia* for consideration by jurisdictions in undertaking aquaculture planning, regulation and management. The framework was endorsed by the Primary Industries Ministerial Council in 2005.

Australia's *National Strategic Plan for Aquatic Animal Health* (Aquaplan 2005–2010) was also published in 2005. It sets out a shared vision of the Australian

governments and the aquaculture industry to implement an integrated and planned approach to aquatic animal health.

Inclusion of aquaculture in the National Pollutant Inventory

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

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

An overview of the NPI is given in chapter 3 (section 3.4).

Assessment

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

The Commission notes that:

- the Council’s decision is inconsistent with a recommendation of a 2005 review to incorporate aquaculture in the NPI (Environment Link 2005)
- an impact statement prepared by the National Environment Protection Council in 2006 (NEPC 2006b, pp. 52–4) found that there was a strong ‘equity case’ for requiring aquaculture operations to report, in view of its similarities with current reporting sectors, especially intensive livestock facilities, and the impacts of their emissions on water quality
- the impact statement estimated reporting costs for industry of \$36 000 per annum, affecting around 60 facilities, or \$600 per facility — a relatively small cost

-
- while maintaining the aquaculture exemption enables the industry to avoid a regulatory burden, the exemption also places other intensive agricultural activities, which are required to report under the NPI, at a relative cost-disadvantage to the aquaculture industry.

The Commission considers that there should be no further examination by the Environment Protection and Heritage Council of the case for including aquaculture under the NPI until resourcing issues have been addressed (see response 4.11).

Other concerns

Broadly, the aquaculture industry, through submissions by the National Aquaculture Council (sub. 18) and the Tasmanian Salmonid Growers Association (sub. 16), expressed concern about:

- chemical registration (minor use permits)
- problems with AQIS' administration of the export program governing aquaculture products including the fees it charges, its communication and consultation with the aquaculture sector, and its approach to coordinating export requirements across the aquaculture sector (sub. 16, sub. 18)
- animal health.

Some of these matters are discussed in chapter 3 in the context of their importance to agriculture. The aquaculture industry's views were considered in that chapter.

APPENDICES

A Consultation

A.1 Introduction

Following receipt of the terms of reference, the Commission placed advertisements in national and metropolitan newspapers inviting public participation in the study. An initial circular was distributed in February 2007 and an issues paper was released in April 2007.

The Commission has held informal consultations with governments, peak industry groups in the primary sector as well as with a number of mining companies and individual farmers. A list of the meetings and informal discussions undertaken is provided below.

The Commission received 79 submissions and a list of these submissions is provided below. All public submissions are available on the Commission's website.

The Commission would like to thank all those who contributed to the study.

A.2 Submissions

Table A.1 **Submissions received**

<i>Participant</i>	<i>Date received</i>	<i>Submission no.</i>
	<i>2007</i>	
ACCORD Australasia	8 June	8
Animal Health Alliance (Australia)	1 June	7
Australasian Compliance Institute	13 June	20
Australian Beef Association	1 May 20 September	3 DR51
Australian Forest Growers	22 August	46
Australian Maritime Safety Authority	29 August	49
Australian Pesticides and Veterinary Medicines Authority	1 August 8 October	42 DR65

(Continued next page)

Table A.1 (continued)

<i>Participant</i>	<i>Date received 2007</i>	<i>Submission no.</i>
Australian Petroleum Production and Exploration Association	23 July	39
Australian Pork	8 August 9 October	44 DR66
Australian Property Institute (New South Wales) and Australian Spatial Information Business Association (Joint submission)	4 July	34
Australian Quarantine and Inspection Service	5 November	DR79
Australian Quarantine and Inspection Service and Biosecurity Australia (Joint submission)	28 August	48
Australian Uranium Association	5 July 2 October	33 DR54
AWB	8 June	23
Centrelink	23 August 5 October	47 DR63
Coles Group	7 June	9
Commonwealth Fisheries Association	3 July	30
Country Womens' Association of New South Wales	20 July	38
CropLife Australia	8 June	14
Department of Agriculture and Food (Western Australia)	9 July	35
Department of Agriculture, Fisheries and Forestry (Australian Government)	5 July 19 October	31 DR74
Department of Employment and Workplace Relations	12 October	DR72
Department of Environment and Water Resources	9 October 19 October	DR67 DR76
Department of Immigration and Citizenship (Australian Government)	13 August	45
Department of Industry and Resources (Western Australia)	9 July	36
Department of Industry, Tourism and Resources	5 October	DR58
Department of Primary Industries (Victoria)	16 October	DR75
Fortescue Metals Group	24 July	40
Growcom	8 June 5 October 16 October	15 DR62 DR73
Institute of Public Affairs	2 May	4
Professor Paul Martin	23 May	6
McKenzie Rural	20 March	1
Minerals Council of Australia	9 July 12 October	37 DR70

(Continued next page)

Table A.1 (continued)

<i>Participant</i>	<i>Date received</i> <i>2007</i>	<i>Submission no.</i>
National Aquaculture Council	12 June	18
National Association of Forest Industries	8 June	11
National Competition Council	4 October	DR56
National Farmers' Federation	15 June	24
	1 August	43
	5 October	DR60
National Transport Commission	4 October	DR55
New South Wales Farmers' Association	22 June	27
	10 October	DR69
Northern Territory Horticultural Association	18 June	25
Mr David Parfett	5 October	DR64
Plastics and Chemicals Industries Association	3 July	29
Queensland Farmers' Federation	13 June	19
	4 October	DR57
Queensland Resources Council	13 June	22
	15 October	DR71
Recreational Fishing Alliance of New South Wales	8 June	10
Red Meat Advisory Council	5 October	DR61
Red Meat Industry (Joint submission)	8 June	12A
	13 July	12B
	5 October	DR59
	22 October	DR77
Rio Tinto	13 June	21
RSPCA Australia	21 September	DR52
	22 October	DR78
South Australian Farmers Federation	17 May	5
South Australian Government	12 September	DR50
Standards Australia	31 July	41
Tasmanian Forest Contractors Association	24 September	DR53
Tasmanian Salmonid Growers Association	8 June	16
Veterinary Manufacturers and Distributors Association	25 June	28
Victorian Farmers' Federation	8 June	13
	10 October	DR68
Virginia Horticulture Centre	5 July	32
Western Australian Farmers' Federation	12 June	17
Mr Len Wheatley	16 April	2
Woolworths	20 June	26

A.3 Consultations with organisations and individuals

Agforce Queensland

Australian Lot Feeders' Association

Australian Petroleum Production and Exploration

Australian Property Institute

Australian Government

Department of Agriculture, Fisheries and Forestry

Department of Environment and Water Resources

Department of Industry, Tourism and Resources

Australian Spatial Information Business Association

Australian Uranium Association

Cadia Valley Mine, Newcrest

CBH Group/Grain Pool

Commonwealth Fisheries Association

Chamber of Minerals and Energy of Western Australian

Fortescue Metals Group

Grains Council of Australia

Hawthorne, Barry

Ingey, James

Krieg, Gary and Pam

Minerals Council of Australia

Monsanto Australia

National Aquaculture Council

National Association of Forest Industries

National Farmers' Federation

Newcrest Mining

New South Wales Farmers' Association

New South Wales Government

Department of Premier and Cabinet

Department of Environment and Conservation

Department of Primary Industries

Northern Territory Government

Department of the Chief Minister

Department of Primary Industry, Fisheries and Mines

Northern Territory Horticultural Association
Northern Territory Minerals Council
Queensland Farmers' Federation
Queensland Government
 Department of the Premier and Cabinet
 Department of Natural Resources and Water
 Department of Primary Industries and Fisheries
 Queensland Treasury
Queensland Resources Council
Rio Tinto
Santos
Smith, Andrew and Hilary
South Australian Chamber of Minerals and Energy
South Australian Farmers' Federation
South Australian Government
 Department of the Premier and Cabinet
 Department for Environment and Heritage
 Department of Primary Industry and Resources
 Department of Trade and Economic Development
 Department of Water, Land and Biodiversity Conservation
Tasmanian Government
 Department of Premier and Cabinet
 Department of Primary Industries and Water
 Department of Tourism, Arts and the Environment
 Department of Treasury and Finance
Victorian Farmers' Federation
Victorian Government
 Department of Premier and Cabinet
 Department of Treasury and Finance
Western Australian Farmers' Federation
Western Australian Government
 Department of the Premier and Cabinet
 Department of Agriculture and Food
 Department of Industry and Resources
 Department of Treasury and Finance

Office of Development Approvals Coordination
Western Australian Pastoralists and Graziers Association

List of Roundtable Attendees

Attorney General's Department, Native Title Unit
Australian Pesticides and Veterinary Medicines Authority
Australian Petroleum Production and Exploration Association
Australian Quarantine and Inspection Service
Australian Uranium Association
Biosecurity Australia
Commonwealth Fisheries Association
Department of Agriculture, Fisheries and Forestry
Department of Industry, Tourism and Resources
Department of Primary Industries and Fisheries, Queensland
Growcom
Minerals Council of Australia
National Farmers' Federation
Queensland Farmers' Federation
Victorian Farmers' Federation

B Selected reviews

This appendix lists selected reviews initiated by the Australian Government in relation to the primary sector and regulation impacting on that sector. This is not a comprehensive listing, but indicates the range and number of reviews undertaken in recent years. In addition, there have been numerous state and territory government reviews into these areas.

Table B.1 Selected reviews

<i>Review area</i>	<i>Title</i>	<i>Review body</i>	<i>When completed or due</i>
Access	Report on the Inquiry into the Provisions of the Trade Practices Amendment (National Access Regime)	Senate Economics Legislation Committee	2005
Agriculture	Creating Our Future: Agriculture and Food Policy for the Next Generation	Agriculture and Food Policy Reference Group (Peter Corish Chair)	2006
Assessment of site contamination	National Environment Protection (Assessment of Site Contamination Measures) Review	Review team established by the National Environment Protection Council	2006
Competition policy	Review of National Competition Policy Reforms	Productivity Commission	2005
Energy	Report on the Inquiry into the Provisions of the Energy Opportunities Bill	Senate Economics Legislation Committee	2005
Environment Protection and Biodiversity Conservation Act	Review of the EPBC Act	Chris McGrath	2006
Export	USA Beef Quota Review	Department of Agriculture, Fisheries and Forestry	2005

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Table B.1 (continued)

<i>Review area</i>	<i>Title</i>	<i>Review body</i>	<i>When completed or due</i>
Export	Export Efficiency Powers: Three Year Review	Richard Ryan (Chair), Peter Hancock and Mark Napper	2005
Export	Export Certification	Australian National Audit Office	2006
Export infrastructure	Australia's Export Infrastructure	Exports and Infrastructure Taskforce	2005
Food	Reducing the Food Regulatory Burden on Business	Mark Bethwaite (Chair), Department of Health and Ageing	2007
Food	A Growth Industry, Report of the Food Regulation Review	Food Regulation Review Committee, Dr Bill Blair (Chair)	1998
Fuel tax	Fuel Tax Credit Reform Discussion Paper	Department of the Treasury	2005
Gas	Review of the Gas Access Regime	Productivity Commission	2004
Gene technology	Review of the Operations of the Gene Technology Act 2000 and the Intergovernmental Agreement on Gene Technology	Susan Timbs (Chair), Murray Rogers and Kathryn Adams	2006
Imported food	National Competition Policy Review of the Imported Food Control Act 1992	C. Tanner, A. Beaver, A Carroll and E. Flynn	1998
Industry self-regulation in consumer markets	Industry Self Regulation in Consumer Markets: Report of the Taskforce on Industry Self-regulation	Department of the Treasury	2000
Livestock identification	Report of Findings from a Review of the Operation of the National Livestock Identification System	Price Waterhouse Coopers	2006
National Competition Policy	Review of the Wheat Marketing Act 1989	Mr Malcolm Irving, Mr Jeff Arney and Prof Bob Lindner	2000

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Table B.1 (continued)

<i>Review area</i>	<i>Title</i>	<i>Review body</i>	<i>When completed or due</i>
National Competition Policy	Review of the Export Control Act 1982	Department of Agriculture, Fishing and Forestry	2000
National Pollutant Inventory	Review of the National Pollutant Inventory	CH Environmental and JD Court and Associates	2005
Native Title	Claims Resolution Review	Graham Hiley and Dr Ken Levy	2006
Native Title	Native Title Representative Bodies (NTRBs)	Office of Indigenous Policy Coordination	2006
	Structures and Processes of Prescribed Bodies Corporate		
Native vegetation and biodiversity	Impacts of Native Vegetation and Biodiversity Regulations	Productivity Commission	2004
OH&S	National Workers' Compensation and Occupational Health and Safety Frameworks	Productivity Commission	2004
Pesticides and veterinary medicines	Report on the Australian Pesticides and Veterinary Medicines Authority	Australian National Audit Office	2006
Plant breeders' rights	Review of Enforcement of Plant Breeders' Rights	Advisory Council on Intellectual Property	2007
Quarantine	Managing for Quarantine Effectiveness — Follow Up	Australian National Audit Office	2005
Rail	Progress in Rail Reform	Productivity Commission	1999
Security sensitive chemicals	Review of Hazardous Material (Chemicals of Security Concern)	COAG (coordinated by Attorney General's Department)	2008
Small business	Time for Business	Small Business Deregulation Taskforce (Bell Report)	1996

(Continued next page)

Table B.1 (continued)

<i>Review area</i>	<i>Title</i>	<i>Review body</i>	<i>When completed or due</i>
Sugar	Independent Assessment of the Sugar Industry (also known as the Hildebrand Report)	Clive Hildebrand (Chair)	2002
Taxation: Business Activity Statements	Review of Tax Office Administration of GST Refunds Resulting from the Lodgment of Credit BASs	Inspector-General of Taxation	2005
Third party infrastructure access	Review of the National Access Regime	Productivity Commission	2001
Transport	Inquiry into Integration of Regional Rail and Road Networks and their Interface with Ports	Standing Committee on Transport and Regional Services	2007
Uranium	Uranium Industry Framework	Report of the Uranium Industry Framework Steering group	2006
Uranium	Australia's Uranium — Greenhouse Friendly Fuel for an Energy Hungry World	Standing Committee on Industry and Resources	2006
Uranium	Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?	Taskforce appointed by the Prime Minister	2006
Water	First Biennial Assessment of the National Water Initiative	National Water Commission	2007
Wheat marketing	2004 Wheat Marketing Review	Department of Agriculture, Fisheries and Forestry	2004

C Common concerns and some lessons

This appendix highlights some common themes that have emerged from this first year review of the regulatory burdens on the primary sector, and draws some lessons from the examples that were reported. It then looks at some broad principles that should be used to guide the development of regulation for the future.

C.1 Common regulatory concerns

Over the course of this review, a number of common regulatory problems became apparent. Each has implications for the costs faced by businesses in the primary sector.

Costs imposed due to delays in regulatory decisions

A key factor in reducing the regulatory burden on business is improved timeliness in the development and implementation of new regulations and in decision-making by regulators.

Delays in the development or implementation of new regulations can lead to considerable uncertainty for businesses and result in significant costs or deferred opportunities. Examples from the current review include the delays in the development of regulatory frameworks for water allocation and trading, carbon emissions trading and national mine safety. Delays in addressing industry's many concerns about the regulation of agricultural and veterinary chemicals were matters of concern for many participants in this review.

Significant costs can also be imposed on businesses when regulators fail to make timely decisions. At other times there can be a delay in implementation because further reviews are called to operationalise the intended policy direction. Evidence from this review suggests that time delays can have a far larger impact on some businesses than cost increases, particularly where approval is required for a major project intended to supply an export market. This was raised as an issue in respect of mining and native title. Where regulatory bottlenecks develop, the loss of competitive advantage, or other lost or forgone opportunities, can be significant.

Overlaps and inconsistencies in regulations imposed by different jurisdictions

A widespread problem encountered in the course of this review has been the degree of overlap and inconsistency in regulation between jurisdictions. This imposes costs on businesses operating in more than one jurisdiction, creates additional costs when new ventures are initiated in another state or territory and limits businesses in their efforts to achieve economies of scale. An example of this is the lack of recognition of licences, gained in other jurisdictions, to manage on mine sites, especially in regard to capacities to meet OHS regulations. This creates difficulties for businesses, particularly mining companies, operating in more than one jurisdiction.

Regulatory differences between jurisdictions also impose costs on those living and working near state and territory borders. For example, farmers operating properties near, or in some cases straddling, state borders face different regulations affecting the operation of farm machinery and the transport of livestock and grain. The NTC said that unjustified differences between jurisdictions are typically most apparent at the borders between states — ‘the risks are the same either side of the border (at least within the local vicinity) but the rules are different’ (sub. DR55, p. 2).

Cross-jurisdictional problems also arise, for example, in regard to offshore petroleum regulation, where different levels of government can have jurisdiction in adjoining areas. Offshore petroleum operation pipelines are subject to Australian Government regulation in the offshore zone and then to the relevant state or territory regulation as those pipelines come onshore.

Different administration and enforcement of similar regulations

Costs can also be imposed on businesses where different jurisdictions agree to implement similar regulations, but in doing so they administer and enforce the regulation differently. The regulation of ammonium nitrate was often raised as an example where inconsistent administration and enforcement of similar regulation had created unnecessary regulatory burdens, particularly for those in the agricultural sector.

Regulatory responses that may not reflect scientific evidence

At times, regulatory responses have been implemented to respond to citizens’ concerns without giving sufficient weight to scientific assessment. An example raised in this review was the lack of approval by state governments to grow genetically modified crops that have already been approved for release in Australia.

With respect to the mining of uranium, the study calls for the latest scientific evidence to be used to determine the best ways to manage any potential risks.

Changes to property rights

Regulations which aim achieve community-wide objectives can impose a loss of property rights and/or reduce the value of the resources or assets held by individual businesses. For example, changes to the operation of regulations protecting native vegetation, have diminished the value of property rights held by some agricultural producers, and led to a corresponding decline in the value of their assets. In a submission to this study, Mr Wheatley said that native vegetation rules effectively assert public ownership over a previously private resource. He argued that land rates should be based on the reduced value of the landowner's property (sub. 2).

Native title rules and potential changes to implement carbon trading provide other examples.

This raises the issue of who should bear the losses that any such changes generate. This is a very complex area and simple rules cannot be specified. For example, in some situations, there may be a case for a sharing of any loss between the business concerned and taxpayers in general, while in other cases there will not be. There are also difficulties in determining the value of any such losses. And irrespective of any arguments about compensation, there may or may not be a case for some form of transitional assistance for the business, industry or region affected. All such arguments should be decided on a case-by-case basis against national welfare principles.

Although these questions are well beyond the scope of this review, they are important in the context of implementing or amending regulations that have a significant impact on property rights.

Communication difficulties

While it is uncontroversial to assert that information about any policy or regulatory change ought to be communicated to those affected, this is not always done well. The Commission became aware of areas where lack of knowledge or misunderstandings about regulatory requirements had caused confusion and led to the perception of problems where this was in fact not the case. For example, there was a belief that imported food was subject to different standards from domestically produced food, which it is not. Informing businesses about regulation is important.

If governments fail in respect of communication, they are also likely to fail to fully achieve their policy objectives.

C.2 Lessons from this review

There has been considerable progress in developing a national policy consensus in many areas of government regulation through COAG and Ministerial Council processes and in instituting better regulation-making and review processes across governments. However, inconsistencies and duplication across jurisdictions remain. For example, sensible and pragmatic regulatory changes undertaken to introduce greater consistency often falter as each jurisdiction implements its own specific regulation to meet specific local interests. Progress in this area has also been hindered by longstanding delays and interagency conflicts.

The major lessons coming out of the review include the following.

- Costs are imposed on businesses and the community when policies or regulations that are agreed by governments at the national level, perhaps via COAG or an intergovernmental agreement, are subsequently implemented and enforced in different ways in each jurisdiction.
- Where policy changes have been agreed, timeliness in the development and implementation of the regulatory regime to underpin those changes provides benefits in terms of greater certainty and stability in the business environment.
- Timeliness of decision-making when administering regulations is crucial in keeping the regulatory burden on business to an unavoidable minimum. Unjustifiable delays impose financial and time costs on businesses and hinder their ability to take advantage of market opportunities in a timely manner.
- More generally, it is important to recognise that regulatory frameworks can fundamentally affect the effectiveness and efficiency of the businesses they regulate. New frameworks should be designed to ensure that this occurs to the minimum extent consistent with meeting the aims of the regulatory regime.
- Regulations administered by different agencies within a single jurisdiction can sometimes overlap or conflict. Where this is so, the use of memoranda of understanding, coordinators to adjudicate on conflicts and/or a one stop shop may be of benefit.
- Reviews should not be used as a device to defer desirable or necessary change. On the other hand, some reviews are seen as necessary to assess underlying policy objectives to formulate an efficient national regulatory response. One such review into chemicals and plastics regulation is now underway.

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- Undertaking further reviews of regulatory implementation after policy objectives have been settled can delay productive changes, consume resources and produce little or no new information or analysis. This imposes unnecessary costs.
 - The use of scientific evidence in cost–benefit analysis to provide evidence-based hazard identification, risk assessment and risk management would improve the regulatory arrangements in these areas and enable the pursuit of economic opportunities within acceptable policy frameworks. Moreover, using cost–benefit analysis to identify and manage risk in the development of regulation would reduce the overuse of regulation by governments to manage this risk.
 - Notwithstanding that considerable progress has been made in refining governments’ approaches to developing new regulatory regimes, adhering to widely accepted principles of good regulatory practice does not always occur.
 - At times, businesses that have already put in place administrative processes to meet regulatory requirements can be aware that they benefit from the barrier to entry these regulatory requirements present for firms wanting to enter the market.

This review for the most part has focused on the unnecessary costs imposed on business from existing regulation. In some instances, however, concerns were raised as to possible future regulation, particularly in regard to water and greenhouse gas emissions. To ensure the efficiency of any future regulation it is important that appropriate regulatory frameworks are developed.

Such frameworks should facilitate market transactions and deliver price outcomes that reflect scarcities, such as in the case of water, to encourage the allocation of the resources to their highest value uses.

Also, minimising the number of special treatments or exemptions in order to reduce the burden on specific groups, improves the likelihood that the underlying environmental, social or economic objectives of the regulation will be achieved.

In developing regulatory frameworks, COAG has recently decided to require regulation impact analysis to assess whether a uniform, harmonised or jurisdictional specific model for a regulatory framework would achieve the least burdensome outcome. This may go some way to ensuring that governments and regulators select the most appropriate regulatory framework.

C.3 Principles of good regulatory practice

A number of bodies have developed general principles of good regulation that are likely to ensure that regulatory frameworks (such as those being developed for water and greenhouse gas emissions trading) will deliver the greatest net benefit to society, including minimising the adverse impacts on industry.

The OECD's *Guiding Principles for Regulatory Quality and Performance 2005*, in box C.1, identifies elements of government processes and institutions that are key to achieving good regulatory outcomes.

Box C.1 Guiding principles for regulatory quality and performance

- Adopt at the political level broad programs of regulatory reform that establish clear objectives and frameworks for implementation.
- Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
- Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
- Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
- Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
- Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
- Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

Sources: OECD (2005).

The way regulatory instruments are chosen, developed and delivered also affects the extent to which they impose unnecessary burdens on industry.

There is broad agreement on the characteristics of the regulatory processes which are likely to engender good regulation with efficient and effective outcomes. Most OECD countries have adopted explicit regulatory review and reform programs, and member countries agree on a number of broad best practice strategies for achieving better quality regulations.

The use of regulation impact analysis

Governments and international bodies consistently agree that regulatory impact analysis (RIA) is a core part of the tool kit for achieving better regulations (box C.2).

Box C.2 Regulatory impact analysis

RIA should incorporate a cost–benefit approach (where appropriate embodying risk analysis) to systematically assess whether proposed regulations can generate more benefits to the community than the costs that are incurred. Indeed, more than this, RIA is an analytical tool that aims to optimise policy outcomes by maximising the net benefit of regulation.

In Australia, RIA has been integrated into the policy-making process through the use of Regulation Impact Statements (RISs). A RIS is prepared by the government department, agency, statutory authority or board responsible for a regulatory proposal and is made available to decision makers prior to the choice of regulatory instruments.

As an analytical tool, a RIS involves systematically and rigorously working through a series of key questions:

- Is there a demonstrated need for government intervention?
- What are the objectives of intervention?
- What are the options for dealing with the problem? As well as regulation, are there other alternatives?
- What are the impacts of the feasible options on different groups?
- What is the preferred policy solution?
- Have all the interested parties been adequately consulted?
- Is the proposed policy solution consistent with relevant international standards?
- How will the policy be implemented and reviewed at a later date to ensure the objectives have been achieved?

A full explanation of these elements is contained in Best Practice Regulation Handbook (OBPR 2007).

The nature of the problems, as well as the cost and effectiveness of possible government interventions, vary considerably across the economy. Hence, the net benefit of intervention to the community, including the costs to business, need to be explicitly calculated — RIA provides for a cost–benefit approach to systematically assess proposed regulations.

Best practice regulatory design

The checklist contained in box C.3 consolidates the best practice regulatory design standards and guiding principles that have been identified by various governments and international bodies involved in regulatory management and reform. This checklist provides criteria by which to assess the quality of regulation.

Box C.3 Checklist for assessing regulatory quality

Regulations that conform to best practice design standards are characterised by the following seven principles and features:

- Minimum necessary to achieve objectives
 - overall benefits to the community justify costs
 - kept simple to avoid unnecessary restrictions
 - targeted at the problem to achieve the objectives
 - not imposing an unnecessary burden on those affected
 - does not restrict competition, unless demonstrated net benefit.
- Not unduly prescriptive
 - Performance and outcomes focused
 - General rather than overly prescriptive.
- Accessible, transparent and accountable
 - readily available to the public
 - easy to understand
 - fairly and consistently enforced
 - flexible enough to deal with special circumstances
 - open to appeal and review.
- Integrated and consistent with other laws
 - addresses a problem not addressed by other regulations
 - recognises existing regulations and international obligations.
- Communicated effectively
 - written in ‘plain language’
 - clear and concise.
- Mindful of the compliance burden imposed
 - proportionate to the problem
 - set at a level that avoids unnecessary costs.
- Enforceable
 - provides the minimum incentives needed for reasonable compliance
 - able to be monitored and policed effectively.

Sources: Argy and Johnson (2003) derived from: OECD (1995); Office of Regulation Reform (Vic) (1996); COAG (2004) — as amended; ORR (1998); and Cabinet Office (UK) (2000).

The costs imposed by regulation are also affected by the way they are implemented, administered, monitored and enforced. While an appropriate level of compliance is essential if regulations are to meet their objectives, this should be achieved with

minimum burdens. Based on work by the OECD, box C.4 identifies some key aspects of good enforcement.

Box C.4 Aspects of ‘smart’ enforcement

- Maximise the potential for voluntary compliance.
 - Avoid unnecessarily complex regulation.
 - Ensure regulation is effectively communicated.
 - Minimise the costs of compliance (in terms of time, money and effort).
 - Ensure regulation fits well with existing market incentives and is supported by cultural norms and civic institutions.
 - Consider providing rewards and incentives for high/voluntary compliance. For example, by reducing the burden of routine inspections and granting penalty discounts when minor lapses occur.
 - Nurture compliance capacity in business, for example, by providing technical advice to help businesses, especially small and medium-sized enterprises, to comply with regulation.
- Maintain an ongoing dialogue, between government and the business community, to ensure that regulators have a good understanding of the types of businesses they are targeting.
- Adequately resource regulatory agencies.
- Use risk analysis to identify targets of possible low compliance.
- Develop a range of enforcement instruments so regulators can respond to different types of non-compliance.
- Monitor compliance trends in order to gauge the effectiveness and efficiency of enforcement activities.

Source: Based on OECD (2000).

Adequate risk analysis

Another aspect of good regulatory practice is adequate risk assessment. A regulation that has been developed without an adequate risk assessment may impose unnecessary burdens on business and the wider community. For example, governments may underestimate the risk in conducting import risk analysis and impose burdens on others, such as from escaped foreign pests. Effectively, this involves imposing spillover costs on people who were neither involved in the decision nor likely to gain from it.

On the other hand, governments may overestimate the risk and thus deny business and consumers access to desired goods or services at possibly cheaper prices. This

imposes a burden on businesses by denying them the opportunity to exploit a commercial opportunity or improve productivity.

From a regulatory perspective, it may either not be feasible to eliminate some risks or not desirable because of other costs that this would impose.¹ Clearly, it is important to identify which risks are significant and to assess the feasibility and costliness of risk reduction. Some guidelines on regulating risk are contained in box C.5

Box C.5 Risk analysis and regulatory policy

It is possible to draw some lessons for government policy from the work by Viscusi which are relevant to this review:

- estimate risks accurately
- assess the risk of the substitute response that a regulation may induce
- avoid blurring risk assessment and risk management
- especially where improvements have already been achieved, focus on whether the costs of any marginal improvements are justified
- the focal point for policy design should be to structure policies to overcome the irrationalities and failures of the market and other private responses, such as the media, rather than to reinforce and institutionalize them
- avoid pre-empting individual choice by opting for limiting technological solutions, although in some cases this will be the best option.

Source: Viscusi (1998).

¹ As Viscusi (1998) points out: ‘Consider, for example, the following risks that increase the annual risk of death by 1/1,000,000. Among the risk exposures that pose a 1/1,000,000 fatality risk are living two days in New York or Boston (air pollution), travelling ten miles by bicycle (accident), eating 40 tablespoons of peanut butter (liver cancer caused by aflatoxin B), living for 150 years within 20 miles of a nuclear power plant (cancer caused by radiation), and one chest X-ray taken in a good hospital (cancer caused by radiation).’

D Regulation review by jurisdiction

Table D.1 Regulation review by jurisdiction

<i>Jurisdiction</i>	<i>Areas targeted for review</i>	<i>Reviews already completed</i>	<i>Areas being reviewed in 2007</i>	<i>Post 2007 reviews</i>
Australian Govt	All sectors	Regulation Task Force – economy wide	Primary sector	<ul style="list-style-type: none"> • manufacturing sector and distributive trades (2008) • social and economic infrastructure services (2009) • business and consumer services (2010) • economy-wide generic regulation (2011)
NSW	All sectors and small business	<p>The IPART Review of Regulatory Burden.</p> <p>The Small Business Regulation Review Taskforce has completed reviews into a number of different sectors.</p>	<p>Stock of existing regulation each year either broadly based or more targeted.</p> <p>The Better Regulation Office is conducting a targeted review into shop trading hours. The Small Business Regulation Review Taskforce is conducting reviews into the professional and business services sector and rental, hiring and real estate sectors.</p>	<p>Ongoing programs of reviews including into areas recommended in the IPART review, targeted reviews conducted by the Better Regulation Office into specific regulatory areas or industries where reducing the regulatory burden will benefit the State's economy and three industry specific reviews each year over the next five years by the Small Business Regulation Review Taskforce.</p>

(Continued next page)

Table D.1 (continued)

<i>Jurisdiction</i>	<i>Areas targeted for review</i>	<i>Reviews already completed</i>	<i>Areas being reviewed in 2007</i>	<i>Post 2007 reviews</i>
Vic	Specific hot spots	Not specified	<p><i>Reducing the Regulatory Burden Project</i> which commits the Victorian Government to cutting the administrative and compliance burden by 25 per cent by 2011, administrative burden offsets for new regulation and a program of internal reviews to identify ways to reduce compliance burdens.</p> <p>Food regulation and the Not-for-Profit regulation is currently being reviewed. There are also departmental reviews into simplifying licensing arrangements, implementing best practice regulatory arrangements, improving IT solutions and removing outdated regulations.</p>	Ongoing
Qld	<p>Specific hot spots</p> <p>Systemic regulatory issues</p> <p>Progressing red tape reduction opportunities</p>	<p>Review of regulatory hotspots and industry specific reviews of tourism, retail and manufacturing, integrated planning legislation, the development assessment system and a review of</p>	<p>Areas of concern to business identified during the 2005-06 reviews.</p> <p>Regulatory impediments to marine infrastructure and aquaculture developments.</p>	Ongoing

(Continued next page)

Table D.1 (continued)

<i>Jurisdiction</i>	<i>Areas targeted for review</i>	<i>Reviews already completed</i>	<i>Areas being reviewed in 2007</i>	<i>Post 2007 reviews</i>
Qld (continued)		legislative/regulatory reforms initiatives – phase 1.	Review of Legislative and Regulatory Reform Initiatives – Phase 2 – <i>Property Agents and Motor Dealers Act 2000</i> .	
WA	Areas of state and national significance	Not specified	Land price related regulation. Ports and wheat exports. Will take reviews of similar legislation in other jurisdictions into account.	
SA	<p>All sectors via departmental action plans to reduce red tape by 25 per cent /\$150m by July 2008.</p> <p>Industry specific reviews by the Competitiveness Council of:</p> <ul style="list-style-type: none"> • cafes and restaurants • motor vehicle retailing and servicing • building construction • fishing and aquaculture • heavy vehicle road transport • wine manufacturing and wine grape growing • metal manufacturing. 	<p>Action plans by departments to reduce red tape across all sectors.</p> <p>Competitiveness Council reviews of cafés and restaurants, and motor vehicle retailing and servicing.</p>	<p>Competitiveness Council reviews of:</p> <ul style="list-style-type: none"> • building construction • fishing and aquaculture • heavy vehicle road transport • wine manufacturing and wine grape growing • metal manufacturing. 	<p>Competitiveness Council reviews of industries to be determined.</p> <p>Ongoing public review of regulatory concerns.</p>

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Table D.1 (continued)

<i>Jurisdiction</i>	<i>Areas targeted for review</i>	<i>Reviews already completed</i>	<i>Areas being reviewed in 2007</i>	<i>Post 2007 reviews</i>
Tas	Model of review yet to be finalised	To be determined	To be determined	
NT	Stock of regulation	Not specified	Annual targeted reviews of ongoing business compliance burdens.	Ongoing
ACT	Not specified	Not specified	Unlawful Games Act including an analysis of policy options and their relative costs and benefits.	Not specified

Source: COAG (2007a) and information provided by state and territory governments.

References

- AAV (Aboriginal Affairs Victoria) 2007, Heritage services overview: Aboriginal heritage legislation in Victoria, Melbourne, <http://www1.dvc.vic.gov.au/aav/heritage/index.htm> (accessed 24 August 2007).
- ABA (Australian Beef Association) 2007, 'Cow-catcher trial proves nothing about NLIS effectiveness, yet places extra regulatory burdens and huge costs on states – warns ABA', *Media Release*, 23 July.
- ABARE (Australian Bureau of Agricultural and Resource Economics) 2007, *Australian Commodities – September quarter 2007*, Volume 14, no. 3, Canberra.
- ACCC (Australian Competition and Consumer Commission) 2007a, Horticulture Code questions and answers, <http://www.accc.gov.au/content/index.phtml.itemId/786800> (accessed 20 June 2007).
- 2007b, 'ACCC decision maintains Agsafe's ability to impose trading sanctions', *News Release*, NR 138/07, 7 June.
- ACERA (Australian Centre of Excellence for Risk Analysis) 2007, About ACERA, <http://www.acera.unimelb.edu.au/> (accessed 19 August 2007).
- ACIL–Tasman 2005, *Marketing Western Australian Wheat, An Analysis of the Impact of the National Wheat Export Monopoly on the Western Australian Wheat Industry*, July.
- 2007a, *Domestic Feed Grains Market and Wheat Exports, An Examination of the Marketing Efficiency in the Domestic Feed Grains Industry and the Impact of Wheat Export Arrangements*, February.
- 2007b, *Water Reform and Industry, Implications of recent water initiatives for the minerals, petroleum, energy, pulp and paper industries*, report prepared for Department of Industry, Tourism and Resources, April.
- AGO (Australian Greenhouse Office) 2005, Update on the Government's response to the Mandatory Renewable Energy Target (MRET) review, <http://www.greenhouse.gov.au/markets/mret/update.html> (accessed 28 August 2007).
- Agriculture and Food Policy Reference Group 2006, *Creating Our Future: Agriculture and Food Policy for the Next Generation*, report to the Minister for Agriculture, Fisheries and Forestry (Corish report), Canberra, February.

AG's (Attorney General's Department) 2007a, Assistance to respondents in native title claims, Canberra, http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_Assistancetorespondentsinnativetitleclaims (accessed 15 August 2007).

— 2007b, 'Control of chemicals of security concern paper attracts widespread comment', *Media Release* 058/2007, 10 April.

— 2007c, Prescribed bodies corporate, Canberra, [http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_Prescribedbodiescorporate\(PBCs\)](http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_Prescribedbodiescorporate(PBCs)) (accessed 24 August 2007).

— 2007d, *Structures and Processes of Prescribed Bodies Corporate*, Steering Committee report, Canberra, [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf/\\$file/c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf/$file/c0000ReporttoGovernmentNativeTitlePrescribedBodiesCorporatePBCs.pdf) (accessed 24 August 2007).

— 2007e, Technical amendments to the Native Title Act, Canberra, http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_TechnicalamendmentstotheNativeTitleAct (accessed 26 June 2007).

AG's and FaCSIA (Attorney-General's Department and Department of Families, Community Services and Indigenous Affairs) 2007, *Submission to the Senate Standing Committee on Legal and Constitutional Affairs: Inquiry into the Native title Amendment Bill 2006*, sub. 1, January.

AHC (Australian Heritage Council) 2007 *Periodic Report: March 2004 – February 2007*, Canberra.

Allen Consulting Group 2007, *Aboriginal Heritage Regulations 2007: Regulatory Impact Statement*, Melbourne, http://www1.dvc.vic.gov.au/aav/heritage_bill/Regulatory_Impact_Statement_Aboriginal_Heritage_Regulations.pdf (accessed 24 August 2007).

ANAO (Australian National Audit Office) 2001, *Managing for Quarantine Effectiveness*, Audit Report no. 47, 2000-01.

— 2005, *Managing for Quarantine Effectiveness — Follow-up*, Audit Report no. 19, 2005-06.

— 2006, *Regulation of Pesticides and Veterinary Medicines*, 7 December.

Animal Health Australia 2007, "'Whole of chain approach' in developing welfare standards', *Media Release*, 5 March.

ANTA (Australian National Training Authority) 2002, *A Licence to Skill, the Implications of Industry Licensing for the Implementation of Training Packages*, Brisbane.

-
- APPEA (Australian Petroleum Production and Exploration Association) 2007, *Platform for Prosperity, Australian Upstream Oil and Gas Industry Strategy*, Canberra.
- Apted, S. and Mazur, K. 2007, *Potential Economic Impacts from the Introduction of GM Canola on Organic Farming in Australia*, ABARE Research Report 07.11 prepared for the Australian Government Department of Agriculture, Fisheries and Forestry, Canberra, May.
- APVMA (Australian Pesticides and Veterinary Medicines Authority) undated, *An Overview of Australia's National System for Managing Agricultural and Veterinary Chemicals*, http://www.apvma.gov.au/about_us/pdf/overview_agvet_national_system.pdf (accessed 2 November 2007).
- Argy, S. and Johnson, M. 2003, *Mechanisms for Improving the Quality of Regulations: Australia in an International Context*, Productivity Commission Staff Working Paper, July.
- ASNO (Australian Safeguards and Non-Proliferation Office) 2006, *Annual Report 200506*, Canberra.
- ATO (Australian Taxation Office) 2006a, *Application for a Licence to Manufacture Petroleum*, ATO.
- 2006b, 'Excise – Fuel Blending', *Fact Sheet*, December.
- 2007, *Meeting the Biodiesel Fuel Standard*, October.
- Australian Government 2006a, *Response to the Agriculture and Food Policy Reference Group Report. Creating Our Future: Agriculture and Food Policy for the Next Generation*, Department of Agriculture, Fisheries and Forestry, October.
- 2006b, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Australian Government's Response*.
- 2007a, *Australia's Climate Change Policy, our Economy, our Environment, our Future*, July 2007.
- 2007b, *Best Practice Regulation Handbook*.
- 2007c, *Fact Sheet — Key Features and Significant Milestones of the Australian Emissions Trading Scheme*, July.
- Australian Government and Queensland Government 2003, *Reef Water Quality Protection Plan: for Catchments Adjacent to the Great Barrier Reef World Heritage Area*.
- 2005, *Implementation of the Reef Water Quality Protection Plan*, report to the Prime Minister and the Premier of Queensland.

-
- Banks Taskforce Report (see Regulation Taskforce 2006).
- Bennet, D. 2006, Supplementary document to the ASPO, Australian Biofuels Working Group Submission to the Senate Inquiry Australia's into future Oil Supplies, February.
- Blair, B. 1998, *Food a Growth Industry, Report of the Food Regulation Review Committee*, Canberra.
- Bracks, S. (Premier of Victoria) 2007, 'Victoria announces review of GM canola moratorium', *Media Release*, 22 May.
- BTRE (Bureau of Transport and Regional Economics) 2007, *Australian Sea Freight, 2004-05*, Information paper 58, Canberra.
- Campbell, I. (Minister for the Environment and Heritage) 2006, *Environment and Heritage Legislation Amendment Bill (No. 1) 2006, Explanatory Memorandum*, House of Representatives.
- Cattle Council of Australia 2007, 'NLIS shows its value as state traceability systems improve', *Media Release*, MR 15/07, 13 July.
- Centrelink 2007a, Business contact, http://centrelink.gov.au/internet/internet.nsf/business/business_contacts.htm (accessed 5 July 2007).
- 2007b, *Less Paperwork for Employers*, Centrelink information paper.
- CGERG (COAG Greenhouse and Energy Reporting Group) 2006, *A National System for Streamlined Greenhouse and Energy Reporting by Business*, draft regulation impact statement.
- COAG (Council of Australian Governments) 2006a, *Communique*, February 2006.
- 2006b, *Communique*, July 2006.
- 2007a, *COAG National Reform Agenda, COAG Regulatory Reform Plan April 2007*.
- 2007b, *Communique*, April 2007.
- Corish Report (see Agriculture and Food Policy Reference Group 2006).
- Costello, P. (Treasurer), 2006, *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006, Explanatory Memorandum*, House of Representatives.
- 2007, 'Productivity Commission report – review of price regulation of airport services, government response', *Media Release*, 30 April.
- and Macfarlane, I. (Minister for Industry, Tourism and Resources) 2007, 'Productivity Commission study of chemicals and plastics regulation', *Media Release*, no. 67, Treasurer, 26 July.

DAFF (Department of Agriculture, Fisheries and Forestry) 2005, *Australian Animal Welfare Strategy*.

— 2006a, *Australian Government Response to the Agriculture and Food Policy Reference Group Report, Creating our Future: Agriculture and Food Policy for the Next Generation* (Peter Corish, Chair), October.

— 2006b, Reform of the import risk analysis process, fact sheet — October 2006, <http://www.daff.gov.au/about/publications/import-risk-analysis-review> (accessed 16 August 2007).

— 2007a, 'AQIS — Imported Food Fact Sheet', DAFF, April.

— 2007b, Further information on livestock export standards, <http://www.daff.gov.au/animal-plant-health/welfare/export-trade/v2-1/more> (accessed 14 September 2007).

— 2007c, *Import Risk Analysis Handbook*, Canberra.

DEFRA 2006 (United Kingdom Department for Environment, Food and Rural Affairs), *Electronic Identification of Sheep and Goats: Commission Report in Connection with Article 9(4) of Regulation (EC) No 21/2004*, UK EID Evidence Report, <http://www.defra.gov.uk/animalh/id-move/sheep-goats/eid/index.htm> (accessed 23 August 2007).

DEH (Department of Environment and Heritage) 2006a, *Analysis of the Financial Costs of including Transfers in the National Pollutant Inventory*.

— 2006b, *Environment Budget Overview 2006-07*.

— 2006c, *Significant Impact Guidelines 1.1 — Matters of National Environmental Significance*.

— 2006d, *Significant Impact Guidelines 1.2 — Actions on, or Impacting upon, Commonwealth Land and Actions by Commonwealth Agencies*.

Department of State Development (Queensland) 2006, Review of hot spots for regulatory reform, http://www.sd.qld.gov.au/dsdweb/v3/guis/templates/content/gui_cue_cntnhtml.cfm?id (accessed 28 May 2007).

DEW (Department of Environment and Water Resources) 2002 (Environment Australia), *Recovery Plan for the Grey Nurse Shark (Carcharias Taurus) in Australia*.

— 2006, *National Pollutant Inventory, Guide*, version 3.2.

— 2007a, *About the EPBC Act, What are the Changes?*, Brochure.

— 2007b, 'Australian Government protects grey nurse sharks', *Media Release* DEW 03/07, 11 May.

-
- 2007c, *Emission Estimation Technique Manual for Intensive Livestock — Beef Cattle*, version 3.1, May.
- 2007d, *Protecting Australia's Future, Environment Budget Overview 2007-08*.
- 2007e, *National Greenhouse and Energy Report Act 2007*, <http://www.greenhouse.gov.au> (accessed 9 October 2007).
- 2007f, *Operation of the Environment Protection and Biodiversity Conservation Act 1999 Annual Report 2006-07*.
- DITR (Department of Industry, Tourism and Resources) 2007, (Draft) *Report on the Consolidation of Regulations under the Petroleum (Submerged Lands) Act 1967*, September, <http://www.industry.gov.au/content/itrinternet/cmscontent.csm?objectID=646659AA-DC3B-13B7-316F15011AF8D06C> (accessed 25 October 2007).
- DOTARS (Department of Transport and Regional Services) 2000, *Review of the Navigation Act 1912, Final Report*.
- 2007, <http://www.dotars.gov.au/roads/highways/reform.aspx> (accessed 18 July 2007).
- EA (Environment Australia) 2001, *Recovery Plan for the Grey Nurse Shark*, Canberra.
- EECO 2007, *Cost Analysis of Reporting National Pollutant Inventory Transfers: Case Studies using the amended NPI NEPM variation*, report to DEW.
- Environment Link (CH Environmental, and JD Court and Associates) 2005, *Review of the National Pollutant Inventory*, final report to the Department of Environment and Heritage.
- Environment Protection Authority Victoria 2006, *Options for Mandatory Reporting and Disclosure of Greenhouse Gas and Other Regulated Emissions*, discussion paper (revised).
- EPHC (Environment Protection and Heritage Council) 2006, *NChEM: A National Framework for Chemicals Management in Australia — Discussion Paper*.
- 2007a, *Climate Change and Water Tops Ministers' Agenda*, Communique, 2 June 2007.
- 2007b, EPHC priority projects — management of chemicals, http://www.ephc.gov.au/ephc/chemicals_mgt.html (accessed 7 August 2007).
- 2007c, *National Framework for Chemicals Environmental Management — NChEM, Chemicals Action Plan for the Environment*.
- 2007d, *Principles for Better Environmental Management of Chemicals, Ministerial Agreement*.

-
- Evans, R. 2007, *The Effects of Groundwater Pumping on Stream Flow in Australia*, technical report, Land and Water Australia, Canberra, <http://www.lwa.gov.au/index.aspx> (accessed June 2007).
- Exports and Infrastructure Taskforce 2005, *Australia's Exports Infrastructure*, report to the Prime Minister, Canberra, May.
- Foster, M. and French, S. 2007, *Market Acceptance of GM Canola*, ABARE Research Report 07.5 prepared for the Australian Government Department of Agriculture, Fisheries and Forestry, Canberra, March.
- Frawley, PT., Makin, L., Nieper, R. and Wilson, B. 1999, *Review of the Export Control Act 1982*.
- Fuel Tax Inquiry Committee (David Trebeck Chair) 2002, *Fuel Tax Inquiry Report*, March.
- Growcom 2007, *Mandatory Horticulture Code of Conduct*, www.growcom.com.au/pdf/code_fact_sheet_280906.pdf (accessed 20 June 2007).
- Hepworth, A. and Vaughan, M. 2007, 'Miners warn of threat of \$150bn worth of projects', *Australian Financial Review*, 18 July, p. 12.
- Holmes Sackett 2007, *The Cost of Bureaucratic Red Tape in Agriculture*, Wagga Wagga, 31 July.
- Howard, J. (Prime Minister) 2007, 'Moving forward on the National Plan for Water Security', *Media Release*, 30 July.
- HRSCTRS (House of Representatives Standing Committee on Transport and Regional Services) 2007, *The Great Freight Task: Is Australia's transport Network up to the Challenge?*, July, Canberra.
- HRSCIR (House of Representatives Standing Committee on Industry and Resources) 2006, *Australia's Uranium – Greenhouse Friendly Fuel for an Energy Hungry World*, <http://www.aph.gov.au/house/committee/isr/uranium/report.htm> (accessed 30 October 2007).
- ICAWG (Interstate Certification Assurance Working Group) 2007, *About interstate certification assurance*, <http://www.ica.gov.au/about.htm> (accessed 22 August 2007).
- Interdepartmental Committee Science Panel 2002, *A Report on the Study of Land Sourced Pollutants and their impacts on Water Quality in and adjacent to the Great Barrier Reef*.
- Irving, M., Arney, J. and Lindner, B. 2000, *National Competition Policy Review of the Wheat Marketing Act 1989*, AFFA, December.

-
- JSCM (Joint Standing Committee on Migration) 2007, *Temporary visas ... permanent benefits*, August, Canberra.
- Kemp, R. 2006, Aboriginal and Torres Strait Islander Heritage Protection Amendment Bill 2005 [2006], Second Reading, *Senate Official Hansard*, No. 7 2006, Tuesday, 8 August 2006.
- Keniry, J. (chair), Bond, M., Caple, I., Gosse, L. and Rogers, M. 2003, *Livestock Export Review*, final report, a report to the Minister for Agriculture, Fisheries and Forestry.
- KPMG 2007, *Options for Mandatory Reporting and Disclosure of Greenhouse Gas and Other Regulated Emissions*, revised discussion paper prepared the Victorian Environment Protection Authority.
- McGauran, The Hon. Peter (Federal Minister for Agriculture, Fisheries and Forestry) 2006, 'Audit endorses National Livestock Identification System', *Media Release DAFF06/192PM*, December.
- 2007, 'Interests of wheat growers prevail', *Media Release*, DAFF07/064pm, 22 May.
- McGrath C. 2006, *Review of the EPBC Act*, paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra.
- MCA (Minerals Council of Australia) 2007, 'Agriculture and minerals industries join Government on regional skills shortages', *Media Release*, 17 July.
- Minister for Agriculture, Fisheries and Forestry 2004, *Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 2004 (No. 1) 2004 No. 286, Explanatory Statement*.
- Ministerial Council on Mineral and Petroleum Resources 2007, *Communique, Summary of Meeting*, 3 August.
- NCC (National Competition Council) 2007, *Tasmanian Railway Network, Application for Declaration of a Service Provided by the Tasmanian Railway Network*, Final Recommendation, 14 August.
- NEPC (National Environment Protection Council) 2006a, *Draft Variation to the National Environment Protection (National Pollutant Inventory) Measure*.
- 2006b, *Draft Variation to the National Environment Protection (National Pollutant Inventory) Measure, Impact Statement*.
- 2006c, *National Environment Protection (Assessment of Site Contamination) Measure Review*, review report.

-
- New South Wales Government 2006, Small business regulation review, <http://www.smallbiz.nsw.gov.au/smallbusiness/Government+Programs> (accessed 28 May 2007).
- NFF (National Farmers' Federation) 2007, Natural resource management, <http://www.nff.org.au/policy/nrm.html> (accessed 29 June 2007).
- NWC (National Water Commission) 2007, 'Stakeholders put their views to the National Water Commission', *Media Release*, 6 July.
- NWI (Intergovernmental Agreement on a National Water Initiative) 2004, 25 June, http://www.nwc.gov.au/nwi/docs/iga_national_water_initiative.pdf (accessed May 2007).
- OBPR (Office of Best Practice Regulation) 2007, *Best Practice Regulation Handbook*, Canberra.
- OECD (Organisation for Economic Cooperation and Development) 2000, *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance*, OECD, Paris.
- 2005, *OECD Guiding Principles for Regulatory Quality and Performance*, OECD.
- Parliamentary Library 2007, *Research Note*, 'Temporary (long stay) Business Visas; Subclass 457', 21 February.
- Pegler, B., Lautenbach, J. and Richards, L. 2007, 'Smoothing the Path — Changes to Commonwealth Offshore Petroleum Legislation', *APPEA Journal* 2007, Part 1, pp. 403–8
- PC (Productivity Commission) 2001, *Review of the National Access Regime*, Report no. 17, AusInfo, Canberra.
- 2003, *Industries, Land Use and Water Quality in the Great Barrier Reef Catchment*, Research Report, Canberra.
- 2004a, *Australian and New Zealand Competition and Consumer Protection Regimes*, Research Report, Canberra.
- 2004b, *Impacts of Native Vegetation and Biodiversity Regulations*, Report no. 29, Melbourne.
- 2004c, *Reform of Building Regulation*, Research Report, Canberra.
- 2004d, *Assessing Environmental Regulatory Arrangements for Aquaculture*, Research Paper, Canberra.
- 2004e, *National Workers' Compensation and Occupational Health and Safety Frameworks*, Report no. 27, Canberra.

-
- 2005a, *Review of National Competition Policy Reforms*, Report no. 33, AusInfo, Canberra.
- 2005b, *The Private Cost Effectiveness of Improving Energy Efficiency*, Report no. 36, Canberra.
- 2006a, *Regulation and its Review 2005-06*, Canberra.
- 2006b, *Review of Price Regulation of Airport Services*, Report no. 40, Canberra.
- 2007, *Productivity Commission Submission to the Prime Ministerial Task Group on Emissions Trading*.
- Pearse, O. undated, 'Cattle Council examination of ABA's NLIS cost summary', Cattle Council of Australia, http://www.cattlefacts.com.au/Issues_nlis_cca.htm (accessed 8 June 2007).
- PIMC (Primary Industries Ministerial Council) 2003, Record and Resolutions, Fourth Meeting, Perth, 2 October.
- Plant Health Australia 2005, 'Emergency Plant Pest Response Deed now in force', *Media Release*, 26 October 2005, <http://www.planthealthaustralia.com.au> (accessed 8 October 2007).
- PMC (Department of the Prime Minister and Cabinet) 2006, *Uranium Mining, Processing and Nuclear Energy – Opportunities for Australia?* report to the Prime Minister by the Uranium Mining, Processing and Nuclear Energy Review Taskforce, December 2006, <http://www.pmc.gov.au/umpner/reports.cfm> (accessed 30 October 2007).
- 2007a, Climate change, http://www.pmc.gov.au/climate_change/index.cfm (accessed 21 August 2007).
- 2007b, Emissions trading, http://www.pmc.gov.au/climate_change/emissions_trading/index.cfm (accessed 21 August 2007).
- PMTGET (Prime Minister's Task Group on Greenhouse Emissions Trading) 2007, *Report of the Task Group on Emissions Trading*.
- PWC (PricewaterhouseCoopers) 2006, *Report of Findings from a Review of the Operation of the National Livestock Identification System*, report prepared for the Department of Agriculture, Fisheries and Forestry, 22 December.
- Regulation Taskforce 2006, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business*, report to the Prime Minister and the Treasurer (Gary Banks, chairman), Canberra, January.

Robb, The Hon. Andrew (Federal Minister for Vocational and Further Education) 2007, 'Mutual Recognition of Electrical Contractors Licences', *Media Release*, 9 October.

SECITASC (Senate Environment, Communications, Information Technology and the Arts Standing Committee) 2007, *Answers to Questions on Notice, Environment and Water Resources, Budget Additional Estimates 2006-07, February 2007*, www.aph.gov.au/Senate/committee/ecita_ctte/estimates/add_0607/ewr/awd.rtf (accessed 25 June 2007).

Senate Select Committee on Superannuation and Financial Services 2001, *Enforcement of the Superannuation Guarantee Charge*, Senate Printing Unit.

Shiell, K. 2006, *Final Summary Report On Priorities for Action from Inventories of Animal Welfare Arrangements*, report prepared for the Department of Agriculture, Fisheries and Forestry.

SSCRRAT (Senate Standing Committee on Rural and Regional Affairs and Transport) 2006, *The Administration by the Department of Agriculture, Fisheries and Forestry of the Citrus Canker Outbreak*.

— 2007, *Administration of the Department of Agriculture, Fisheries and Forestry, Biosecurity Australia and Australian Quarantine and Inspection Service in relation to the Final Import Risk Analysis Report for Apples from New Zealand*.

TAP (Technical Advisory Panel) 1999, *National Pollutant Inventory*, final report to National Environment Protection Council.

Trebeck, D. 2006, 'Water — with particular reference to the ACT and region', address to 5-Club Rotary dinner, Queanbeyan, 22 November, National Water Commission, <http://www.nwc.gov.au/news/speeches/RotarySpeech221106.pdf> (accessed July 2007).

Turnbull, M. (the Hon.) 2007, 'Red tape cut on national greenhouse reporting', *Media Release*, T108/07, 17 July.

— and MacFarlane, I. (the Hon.) 2007, 'New clean energy target', *Media Release*, T204/07, 23 September.

UIC (Uranium Information Centre) 2006. Regulation of Australian uranium mining, Melbourne, <http://www.uic.com.au/mineregulation.htm> (accessed 13 August 2007).

UIF (Uranium Industry Framework Steering Group) 2006, *Report of the Uranium Industry Framework Steering Group*, Canberra, September, http://www.industry.gov.au/assets/documents/itrinternet/Uranium_report20061120135026.pdf (accessed 30 October 2007).

URS Sustainable Development 2006, *National Audit of Regulations Influencing Mining Exploration and Project Approval Processes*, prepared for Minerals Council of Australia, final report, February.

VCEC (Victorian Competition and Efficiency Commission) 2007, *The Victorian Regulatory System*, April.

Viscusi, W. 1998, *Rational Risk Policy: The 1996 Arne Ryde Memorial Lectures*, Oxford University Press, Oxford.

Williams, A., Pop, M. and Watts, B. 2004, *2004 Wheat Marketing Review, Grower's Report*, AFFA, Canberra.