Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses

Cheryl Gibbs, Keely Harris-Adams and Alistair Davidson

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Summary

Rural businesses are highly regulated. They are governed by around 90 Acts administered by the Australian Government Department of Agriculture, as well as those common to all businesses. This represents roughly eight per cent of the total stock of Commonwealth Acts for an industry that contributes around two per cent to Australia’s gross domestic product. In addition, rural businesses are subject to various state and territory government legislation and other policy instruments that affect their operating environment.

In November 2011, the then Australian Government Department of Agriculture, Fisheries and Forestry agreed that ABARES should re-examine and update the Productivity Commission’s (2007) review into regulatory burdens on primary sector businesses to support strategic policy decisions that could enhance productivity. This was to fulfil its corresponding commitment under the Agricultural Productivity Work Plan of the Productivity and Regulatory Reform Committee, a subcommittee of the Primary Industries Standing Committee. In 2007, the Commission found that governments impose a heavy burden of regulation on farmers. It recommended removing or reducing Australian Government regulations that are unnecessarily burdensome, complex or redundant, or are duplicative across portfolios or with state and territory regulation.

This study aims to identify areas of unnecessarily burdensome regulation which, if improved, could raise productivity in Australia’s rural industries. Its remit was limited to a particular set of regulatory concerns affecting agriculture and forestry that: a) participants thought significant enough to raise in an earlier, broad-ranging review by the Productivity Commission (2007) and b) to which the Productivity Commission had proposed a response that the Australian Government (2008) had accepted or noted. Consistent with the Productivity Commission, ABARES adopted a broad definition of ‘regulation’ that encompasses laws and other government-influenced ‘rules’, ranging from Acts of parliament to government-endorsed industry codes. While state and territory governments are primarily responsible for much of agriculture, ABARES did not assess their regulations except where they overlapped with Australian Government regulation. In total, ABARES assessed 32 specific regulatory issues relevant to around 20 broad policy areas.

It is useful to preface the results below by pointing out several things the study is not. In the first instance, it should not be viewed as a ‘report card’ on government performance as its primary purpose is to identify policy areas with potential for improvement. In addition, the study does not assess whether existing policy objectives are necessarily appropriate. Rather, current policy arrangements were largely viewed through the lens of efficiency and effectiveness with their underlying objectives treated as a given. Further, it does not purport to consider the full range of potential regulatory issues currently of concern to agriculture and forestry industries. In re-examining regulatory concerns that were found to be of particular importance by the Productivity Commission in 2007, ABARES has not attempted to assess unnecessary burdens that may have arisen since then.

The findings from this study suggested that potential future action by the Australian Government to improve regulatory arrangements typically fell within three broad categories:

- further action could potentially reduce unnecessary regulatory burdens
- further action could complement state and territory government efforts to reduce unnecessary regulatory burdens
- no further action required at this stage (beyond ongoing commitments).
ABARES found that further Australian Government action could reduce unnecessary regulatory burdens for a quarter (8 out of 32) of the issues investigated. For these, there is merit in the Australian Government considering additional action to improve current arrangements. In doing so, the next step would be to consider the overall costs and benefits involved in committing to further reform activities. The policy issues of interest here are:

- overly prescriptive animal health and welfare requirements of Marine Orders Part 43, relating to the transport of live animals on ships (Chapter 9)
- the lack of clarity about what constitutes a ‘significant impact’ under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (Chapter 11)
- overlap in regulation of live animal imports (Chapter 11)
- building regulations and the energy efficiency of timber (in particular, the incomplete representation of a building’s energy use over its life cycle under current energy efficiency rating schemes) (Chapter 15)
- inconsistent taxation of non-resident and resident workers (Chapter 16)
- inconsistent work health and safety regulation between states and territories (Chapter 17)
- access to agricultural chemicals and veterinary medicines for minor uses (Chapter 18)
- overlap, inconsistency and duplication in agricultural chemical and veterinary medicine regulation across jurisdictions (Chapter 18).

While there is a prima facie case for reform in these areas, it is important to note that further analysis is needed to determine the merit associated with potential regulatory changes. In other words, scope for regulatory improvement does not necessarily justify reform activity. Regulatory reform can be costly and its benefits can vary significantly in magnitude and distribution. The implications of further Australian Government involvement and the likelihood of society realising a net benefit from such involvement require additional consideration.

There is also scope for the Australian Government to consider addressing several cross-jurisdictional issues (4 of 32) by enhancing coordinated action between state and territory governments. While state and territory governments generally have powers to regulate over many matters relevant to rural businesses, the Australian Government often assists in coordinating a national approach, or otherwise supporting their activities. Australian Government involvement typically occurs through the Standing Council on Primary Industries and other intergovernmental bodies. The four issues identified are:

- genetically modified crops being subject to lengthy and inconsistent pathways to market because of state-based moratorium legislation (Chapter 6)
- water property rights that are inconsistently defined between jurisdictions (Chapter 13)
- inconsistency in regulating chemicals of security concern between jurisdictions (Chapter 19)
- inconsistent food regulation between jurisdictions (Chapter 20).
For the majority of issues investigated (20 of 32), ABARES concluded that further action by the Australian Government to reduce unnecessary regulatory burdens was unlikely to significantly improve the productivity of rural businesses. Four broad reasons stood out:

- the regulatory burden is no longer a concern for industry
- major reforms have recently occurred or are planned
- the regulatory burden is solely an issue for state and territory governments
- the regulatory burden is necessary to achieve broader policy objectives.

In addition to satisfying the primary aim of identifying regulatory reform opportunities, the results also pointed to two higher level conclusions: regulatory inconsistencies between states and territories continue to impose regulatory burdens; and there is clear scope to extend this type of work across the broad spectrum of regulation intersecting with agriculture and forestry.

Industry stakeholders believed that interjurisdictional inconsistencies were contributing to regulatory burdens in about a third of the cases examined in this study. Inconsistent regulation imposes burdens on businesses where they must establish and operate systems to comply with multiple jurisdictional requirements. In addition, the uncertainty created by protracted negotiations between governments, although intended to harmonise regulations, can impede investment decisions by rural businesses.

Achieving interjurisdictional consistency can be difficult and time-consuming. In several areas, inconsistency has persisted for decades, despite intergovernmental agreements directed at harmonising regulation. In this context, some have questioned the extent to which consistency should be pursued. Among other factors, they point to differences in operating environments which, in their view, justify different jurisdictional approaches. Notwithstanding, the majority of industry stakeholders consulted during this study generally favoured greater consistency (all other things being equal) and placed a high priority on reform in this area.

Given this, greater effort to reduce unnecessary regulatory inconsistencies is likely to benefit rural businesses operating in multiple jurisdictions. Such efforts could involve a joint assessment to identify overlaps and inconsistencies. Although some state and territory governments are progressing reform agendas, additional insights may be gained from adopting a consistent and coordinated approach across jurisdictions. In addition, investigating how states and territories might offer stronger commitments to time-bound outcomes when negotiating intergovernmental agreements would be beneficial.

As to extending the research begun here, there is clear scope to consider the full spectrum of regulation intersecting with agriculture and forestry in two ways. First, this study has demonstrated the merits of assessing progress following major policy reviews, with a view to identifying the scope to further reduce unnecessary regulatory burdens. Second, it may be worthwhile establishing a program to proactively and routinely assess the efficiency and effectiveness of regulation affecting agriculture and forestry (and fishing). This will assist in maintaining public awareness of upcoming reviews and government accountability for action. It also allows greater time for stakeholders (including government) to conduct supporting research to inform these strategic reviews.
Findings

Further action could directly reduce unnecessary regulatory burdens

Livestock exports – Overly prescriptive requirements of Marine Orders Part 43 [Finding 6]

The scope for the Australian Government to reduce costs imposed by regulation of live animal exports by ship under Marine Orders Part 43, while ensuring that animal health and welfare objectives are achieved, is unclear. Although the Australian Maritime Safety Authority has commenced a review, a detailed, independent review is likely to better assist in identifying reform options.

Environment Protection and Biodiversity Conservation Act – Lack of clarity about what constitutes a ‘significant impact’ [Finding 8]

Although additional advice to stakeholders on the definition of ‘significant impact’ under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the term’s application in general situations has been published since 2007, there appears scope to further improve the provision and uptake of facilities to advise applicants on specific proposed actions.

Environment Protection and Biodiversity Conservation Act – Overlap with biosecurity approval procedures for live animal imports [Finding 9]

There is negligible duplication in the environment and biosecurity risk assessment processes for live animal imports under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the Quarantine Act 1908 (Cth). Combining the two processes would likely impose a net cost on society. However, there is merit in the Department of Agriculture and the Department of the Environment revising their memorandum of understanding on import risk analyses of live animal imports, once relevant changes to biosecurity and environmental legislation have been implemented.

Building regulations and the energy efficiency of timber [Finding 13]

Current state and territory government energy efficiency rating schemes do not account for the energy used over the complete life cycle of a building and its materials. However, measuring and including such energy use information in these schemes is likely to form a complex task requiring further research to determine the nature and magnitude of likely resulting benefits.

Temporary labour – Inconsistent taxation of non-resident and resident workers [Finding 16]

Research directed at understanding the likely costs and benefits of reducing the Pay As You Go tax rate for non-residents to the rate applied to resident workers in the horticultural industry may be useful for underpinning policies designed to alleviate workforce shortages.

Work health and safety – Inconsistent regulation between jurisdictions [Finding 18]

There appears to be scope for the Australian Government to assist in further improving the consistency of work health and safety regulation between states and territories through the Council of Australian Governments. Reviewing the implementation of work health and safety legislation in future, in light of its consequent effect in the respective states and territories, seems prudent.
Agricultural chemicals and veterinary medicines – Access to chemicals for minor uses [Finding 20]

Gaining permission for the minor use of agricultural chemicals and veterinary medicines remains difficult. There is merit in considering the case for further involvement by the Australian Government to support industry initiatives directed at improving access to minor use chemicals, where it is in the public interest.

Agricultural chemicals and veterinary medicines – Overlap, inconsistency and duplication in regulation across jurisdictions [Finding 21]

The Council of Australian Governments is currently developing a national framework for regulating agricultural chemical and veterinary medicine use to minimise overlap, inconsistency and duplication in regulation between jurisdictions.

Further action could complement state and territory government efforts to reduce unnecessary regulatory burdens

Genetically modified crops [Finding 2]

Australia’s regulatory environment governing the path to market of genetically modified food crops continues to impose an unnecessary burden on many agricultural businesses through inconsistent regulation and lengthy decision-making. Although the inconsistencies relate specifically to the moratoria, which are state matters, the Australian Government could play a coordination role in negotiating for a shorter, well-defined regulatory path to market and by providing information on various market considerations, as well as information that could feed into the development of coexistence strategies.

Water property rights [Finding 11]

There appears to be scope for the Australian Government to further coordinate efforts through the Council of Australian Governments to standardise the definition of water property rights within the Murray–Darling Basin.

Chemicals of security concern [Finding 22]

There is scope to reduce the complexity and to improve the consistency of security sensitive ammonium nitrate regulation between jurisdictions. The Australian Government is already playing a coordination role through the Council of Australian Governments.

Food regulation – Inconsistency between jurisdictions [Finding 23]

Further Australian Government involvement in facilitating improvements in the consistency of food regulation between jurisdictions could potentially reduce unnecessary regulatory burdens.
No further action required at this stage

No unnecessary regulatory burden exists

_Horticulture Code of Conduct omissions [Finding 1]_

Although it is beyond the scope of this study to assess whether the purpose of the Horticulture Code of Conduct’s to regulate trade between growers and traders is appropriate, the Code appears to have improved the transparency of transactions between the parties.

_Australian Animal Welfare Strategy [Finding 4]_

The Australian Government does not regulate the welfare of animals destined for the domestic market. Instead, it coordinates stakeholders as they develop regulation through the Australian Animal Welfare Strategy. Although industry raised concerns about slow progress in implementing the Strategy, the Australian Government has limited capacity to intervene directly in matters that are largely the realm of state and territory governments.

_National Pollutant Inventory [Finding 10]_

There is little evidence to suggest the Australian Government should do more to reduce the reporting burden placed on individual intensive agriculture facilities by the National Pollutant Inventory, given current regulatory objectives and positive feedback from peak industry groups.

_Temporary labour – Skill requirements to access the 457 visa program [Finding 15]_

Minimum skill requirements for 457 visa eligibility do not impose an unnecessary regulatory burden on horticultural businesses. The Australian Government uses the 457 visa program to target highly skilled overseas workers, where skill requirements are defined by the Australian and New Zealand Standard Classification of Occupation codes.

_Food regulation – Inconsistency in regulation of domestic and imported food [Finding 24]_

Imported food is subject to the same product standards that apply to food produced in Australia and food standards do not therefore impose an unnecessary burden on rural businesses.

_National Livestock Identification System requirements [Finding 27]_

Assessing the appropriateness of the National Livestock Identification System objective to provide whole-of-life traceability for all livestock in a rapid and accurate manner is beyond the scope of this study. The current regulatory burden appears necessary to comply with given National Traceability Performance Standards.

_Biosecurity and quarantine – Timeliness of import risk analyses [Finding 28]_

It is not clear that the time taken to complete Import Risk Analyses is unnecessarily lengthy. Determining whether it is appropriate to further reduce times taken to complete IRAs is justified would require additional consideration by the Australian Government in consultation with industry.
Biosecurity and quarantine – Uncertainties about the Emergency Plant Pest Response Deed
[Finding 31]

The Emergency Plant Pest Response Deed increases the certainty for plant industries regarding cost-sharing arrangements and their role in decision-making processes during a plant pest emergency. The current review arrangements between Australian, state and territory governments, and Plant Health Australia have enabled their roles to be clarified and refined over time, guided by experience gained through the application of the Deed to plant pest emergencies.

The regulatory burden is no longer a concern for industry

Reef Water Quality Protection Plan [Finding 12]

Following the introduction of the 2009 and the 2013 Reef Water Quality Protection Plans, uncertainty about the burden imposed by future regulatory arrangements no longer significantly concerns stakeholders. There is limited scope to improve the Australian Government’s current regulatory involvement in achieving the goals of the 2009 Reef Water Quality Protection Plan.

Temporary Labour – Work eligibility assessments of overseas visitors by farmers [Finding 14]

The Australian Government requirements for, and process by which agricultural employers assess the work eligibility of overseas visitors do not currently pose an unnecessary burden.

Temporary labour – Centrelink reporting requirements regarding temporary labourers [Finding 17]

Requirements for rural businesses to report information to Centrelink on behalf of former employees no longer appear to impose a significant regulatory burden on employers in the primary sector.

Food regulation – Timeliness in regulatory processes involving Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority [Finding 25]

The delay between the setting of Maximum Reside Limits for chemical use by the Australian Pesticides and Veterinary Medicines Authority and its incorporation in the Australia New Zealand Food Standards Code has been significantly reduced since 2007.

Testing biodiesel produced on farms [Finding 26]

Stakeholders participating in this review no longer consider differing intents of regulatory instruments affecting on-farm biodiesel manufacture to be a significant issue. Notwithstanding, there is currently limited scope for the Australian Government to remove the requirement to test biodiesel produced by farmers for their own use under the existing excise and grant offset arrangements.

Biosecurity and quarantine – Overlap between the Department of Agriculture and APVMA [Finding 29]

The Australian Pesticides and Veterinary Medicines Authority and the Department of Agriculture’s Biological Imports Program have reduced duplication in testing requirements and approval procedures for animal health products since 2007.
Major reforms have recently occurred, or are planned

Wheat marketing [Finding 3]

There is merit in the Australian Government reviewing regulation regarding access to grain export port terminals well in advance of 30 September 2014 and its support for the design of a mandatory industry code to manage access to grain export infrastructure.

Livestock exports – Health and welfare requirements [Finding 5]

Since 2007, regulatory costs to livestock exporters have increased in response to heightened community awareness and concern about animal welfare. However, opportunities to achieve welfare objectives at lower cost may be identified through the current review of the Australian Standards for the Export of Livestock being conducted by Australian, state and territory governments, in conjunction with the Australian Livestock Exporters’ Council, the Australian Livestock Transporters Association, the Australian Veterinary Association and the RSPCA (Australia).

Road transport issues in agriculture [Finding 7]

It is too early for the Australian Government to pursue additional improvements in interjurisdictional consistency with a view to reducing unnecessary burdens associated with differing volumetric loading rules, given recent and ongoing reforms to heavy vehicle regulation. The Productivity Commission has an opportunity to review the economic impact of the new national framework for heavy vehicle regulation by December 2016.

Agricultural chemicals and veterinary medicines – Timeliness and complexity of national chemical registration procedures [Finding 19]

Ongoing reforms to Australian Government regulation of agricultural chemicals and veterinary medicines, and Australian Pesticides and Veterinary Medicines Authority processes are designed to improve the timeliness and reduce the complexity of national chemical registration procedures.

Biosecurity and quarantine – Problems with the Interstate Certification Assurance Scheme [Finding 30]

The recently introduced Intergovernmental Agreement on Biosecurity and the National Plant Biosecurity Strategy offer opportunities to improve the interjurisdictional consistency of biosecurity regulation and reduce the unnecessary burden imposed on businesses trading plants and plant products between jurisdictions.

Drought support [Finding 32]

National drought policy is currently being reformed and this provides a good opportunity to minimise unnecessary regulatory burdens, such as inconsistency and duplication in application processes between jurisdictions that could arise in future.
1 Introduction

Rural businesses are highly regulated. In addition to legislation common to all businesses, rural industries are subject to around 90 Acts administered by the Australian Government Department of Agriculture. This represents eight per cent of the total stock of Commonwealth Acts for an industry that contributes around two per cent to Australia’s gross domestic product. Additionally, regulation of rural industries arises through many state or territory Acts. Further regulatory oversight arises from numerous subordinate legislation and management plans at both jurisdictional levels.

Regulation can lead to unnecessary burdens on businesses. While regulation is necessary for improving economic growth, social welfare and environmental outcomes, it can also impose a range of costs. Where it achieves its objective at least cost to society, it may be justified. Where it does not, an unnecessary regulatory burden may prevail.

Regular and systematic review of legislation is needed to identify and reduce unnecessary regulatory burdens that arise over time. Although the Productivity Commission reviewed the burden of Australian Government regulation on primary industries in 2007, to date, there has been no follow-up research examining whether responses accepted by the Australian Government have improved the operating environment facing rural businesses.

The object of this report is to identify areas of unnecessary Australian Government regulation with scope for improvement that could raise productivity in Australia’s rural industries. More specifically, it assesses progress in policy areas to which the Productivity Commission responded in 2007 and that were accepted or noted by the Australian Government. However, it was beyond the scope of this report to consider recommendations that were rejected, any new sources of regulatory burden, or matters that do not involve the Australian Government.

Background

The Productivity Commission explored regulatory burdens on primary sector businesses in 2007. These were largely identified by industry through submissions, consultations and a series of roundtables. The Commission responded to these concerns in its report, which was released in December 2007. In turn, the Australian Government responded in December 2008. Of the Commission’s 37 responses relating to agriculture and forestry, the Government accepted 22, accepted a further six in principle, and noted three more. (As discussed later, this report does not consider fisheries regulation.)

The Commission (2007) found that, from the perspective of farmers and other primary sector businesses, governments impose a heavy burden of regulation. It recommended removing or reducing Australian Government regulations that are unnecessarily burdensome, complex or redundant, or are duplicative across portfolios or with state and territory regulation. In its view, such reforms have the potential to increase overall productivity and community living standards.

In November 2011, the Department of Agriculture asked ABARES to re-examine and update the Productivity Commission’s review as part of the Agricultural Productivity Work Plan of the Industries Development Committee (now Productivity and Regulatory Reform Committee (PRRC)), a subcommittee of the Primary Industries Standing Committee. The PRRC advises on issues affecting the productivity and competitiveness of Australian agriculture along the supply chain, where a national approach is beneficial. The findings from this study will serve to inform Department of Agriculture and PRRC members more broadly, in making strategic policy decisions that could enhance the productivity of primary industries.
Need to regularly review regulation

The regulatory environment in which rural businesses operate significantly affects their productivity and competitiveness. Governments use regulation to shape incentives that influence how enterprises and people behave and interact to improve economic, social or environmental outcomes (Productivity Commission 2009a). The OECD (2012) considers regulation to include a diverse set of instruments, such as:

- laws, formal and informal orders and subordinate rules issued by all levels of government
- rules issued by nongovernmental or self-regulatory bodies to which governments have delegated regulatory powers.

In agriculture, regulatory intervention can occur in output and input markets. Specifically, regulation can influence the price of goods, or the quality, allocation or use of outputs or inputs. Although successive governments have abolished much of the regulation affecting agricultural outputs (live animal exports being an exception), the regulation of agricultural inputs has generally increased in recent years (such as land management, fertiliser, herbicides, pesticides, genetically modified varieties and stock management).

Unnecessary regulatory burdens can affect the performance of primary sector businesses in three main ways:

- time – spending additional time or incurring delays in complying with regulatory processes
- cost – increasing the direct costs of reporting and meeting other regulatory requirements, and the opportunity cost of using suboptimal technologies or processes
- forgone or delayed opportunities – preventing or delaying innovation adoption that could improve productivity (Productivity Commission 2007).

Reducing unnecessary regulation is an important part of the policy reform process to improve competitiveness and the performance of the economy. Broadly speaking, regulation is prone to stifling innovation and restricting farmers’ ability to optimally manage their businesses. Although regulatory approaches can be an effective means of achieving specific policy objectives, they can simultaneously impose costs on society that render them inefficient.

There are a variety of reasons why it is worthwhile for governments to regularly review their current stock of regulation and monitor past reform agreements. In agriculture, changes to farm operating environments can, over time, alter the balance of key policy dimensions (such as efficiency, effectiveness, equity and sustainability), which may justify modifying policy settings. Many factors can skew the original benefit–cost considerations behind policy decisions or subsequently lead to unintended consequences, such as:

- shifts in societal preferences and attitudes
- emergence of other policy imperatives
- development of more efficient policy instruments
- changes to international policy environments
- changes in markets and technologies
- accumulated interactions between different regulations.
Further, it is not sufficient to rely on processes designed to ensure the flow of new regulation is effective and efficient. In this regard, all Australian, state and territory governments have now introduced or upgraded regulatory impact systems to improve the scrutiny of new regulatory proposals likely to impose a significant burden on businesses (Productivity Commission 2011). However, for the reasons mentioned above, these do not guarantee the stock of regulation remains best practice over time. It is essential to develop processes for regularly reviewing the stock of regulation to ensure it remains ‘fit for purpose’.

A key step in the regulatory review process, which is often overlooked, is to monitor progress in reducing regulatory burdens following formal reform commitments. In many instances, the reform process commences with an independent, public review (by, for example, the Productivity Commission) and finishes with government responding with an agreed schedule of reforms. It is, however, rare for governments to also monitor progress in implementing reforms. This report seeks to close this gap by re-examining and updating the Productivity Commission’s (2007) review, thereby completing the evaluation process (Figure 1).

Figure 1 The regulatory review process

- Regulation introduced
- Regulation reviewed (e.g. PC (2007))
- Government responds to review
- Government action on its response assessed (e.g. This study)
Scope of ABARES’ review

The objective of this review is to identify areas of Australian Government regulation with scope for improvement that could raise productivity in Australia’s rural industries. Specifically, ABARES has assessed policy areas reviewed by the Productivity Commission (2007) in its *Annual Review of Regulatory Burdens on Business: Primary Sector* to gauge progress against the recommendations that the Australian Government accepted or noted. ABARES has examined legislation and other policy documents, completed targeted stakeholder consultation and drawn on existing public submissions to other reviews.

The scope of this review was shaped by a range of factors. First, and consistent with the approach adopted by the Productivity Commission, ABARES has limited its review to areas in which there may be a role for the Australian Government to reduce the regulatory burden, rather than considering regulation from all jurisdictions (Figure 2). While the Australian Constitution leaves state and territory governments primarily responsible for much of agriculture, ABARES did not extend its analysis to assess their regulations except where they overlapped with Australian Government regulation.

Second, ABARES has limited its analysis to issues that stakeholders raised in submissions to the Productivity Commission (2007) review. Identifying and assessing issues that may have emerged since then was beyond the scope of this study.

Third, ABARES has only reviewed issues relevant to agriculture and forestry businesses. Since ABARES’ review forms part of the Department of Agriculture’s contribution to the Productivity and Regulatory Reform Committee’s Agricultural Productivity Work Plan, it necessarily focuses on the Department’s portfolio industries. Regulatory issues facing its other portfolio industries—fishing and aquaculture—have been addressed in several recent reviews, including a comprehensive review of Commonwealth fisheries management legislation by Borthwick (2012).

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**Figure 2 Scope of this review**

<table>
<thead>
<tr>
<th>All potential regulatory burdens on business in the primary sector</th>
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<tbody>
<tr>
<td>Possible areas of improvement</td>
</tr>
<tr>
<td>Australian Government regulation</td>
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<tr>
<td>Issues raised by participants to the PC’s 2007 review</td>
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<tr>
<td>Issues relevant to agriculture &amp; forestry</td>
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<tr>
<td>PC responses agreed or noted by Australian Government</td>
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Last, ABARES has confined its assessment to regulatory issues to which the Productivity Commission (2007) responded and the Australian Government (2008) accepted, accepted in principle or noted in its response.

**Structure of this report**

The report is structured as follows:

- chapter 2 outlines the analytical framework used to explore unnecessary regulatory burdens affecting the agriculture and forestry industries
- chapter 3 reviews the current regulatory landscape for agriculture and forestry industries and highlights ‘high value’ areas for further regulatory reform
- chapter 4 discusses the broader implications of these findings and points to opportunities for future research.

The following chapters provide detailed and updated analyses of specific regulatory burdens, grouped according to the following themes:

- cropping (chapters 5–7)
- livestock (chapters 8–10)
- environment (chapters 11–15)
- labour (chapters 16–17)
- chemicals and fuel (chapters 18–21)
- biosecurity (chapters 22–23)
- industry (drought) support (chapter 24).
2 Analytical Framework

As discussed in Chapter 1, the object of this study is to identify areas of unnecessary Australian Government regulation with scope for improvement, which could raise productivity in Australia’s rural industries. Its remit was limited to policy issues affecting agriculture and forestry to which the Productivity Commission (2007) had responded and, in turn, to which the Australian Government (2008) had accepted or noted. This chapter defines ‘unnecessary regulatory burdens’ and describes the broad analytical approach.

Unnecessary regulatory burdens

ABARES adopted a broad definition of ‘regulation’, consistent with that adopted by the Productivity Commission (2007). The Commission defined regulation as ‘laws or other government-influenced “rules” that affect or control the way people and businesses behave’. In doing so, it considered regulation to include a broad range of policy instruments, such as legislation, quasi-regulation and co-regulation, among others (Box 1).

Box 1 Common types of regulation

- **Subordinate legislation**: rules or instruments that have the force of law, but have been made by an authority to which Parliament has delegated part of its legislative power. These include statutory rules, ordinances, bylaws, disallowable instruments and other subordinate legislation which is not subject to Parliamentary scrutiny.
- **Quasi-regulation**: includes rules, instruments and standards by which government influences business to comply, but that 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**: 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.


Stakeholders and commentators who are concerned with policy development and public debate typically view regulation through multiple ‘lenses’. From a productivity perspective, the most important ones concern whether regulation is effective, efficient and appropriate. The Productivity Commission (2011) defined these characteristics as follows:

- **effective**, where it achieves its objective
- **efficient**, where regulation achieves its objective at least cost to society and therefore, does not impose unnecessary distortions or burdens on the economy
- **appropriate**, where it addresses a real economic, environmental or social concern and actually delivers a net benefit to the community.

An unnecessary regulatory burden can exist where the costs to business of complying with a regulation exceed that necessary to achieve its policy objectives. The corollary here is that, for a given regulation, there is a strong possibility that government could reduce, or eliminate, unnecessary compliance costs without compromising its effectiveness. The Productivity Commission (2007) identified a variety of potential sources, including:

- excessive regulatory coverage
- overlap or inconsistency
• unwieldy approval and licensing processes
• heavy-handed regulators
• poorly targeted measures
• overly complex or prescriptive measures
• excessive reporting requirements
• creation of perverse incentives.

**Broad analytical approach**

ABARES assessed the effectiveness and efficiency of 20 broad areas of regulation that have concerned agriculture and forestry businesses (Box 2). However, it was beyond the study's scope to assess whether the underlying policy objectives were necessarily appropriate. This follows the Productivity Commission's (2007) approach of taking the policy objectives as given, as specified in their terms of reference.

**Box 2 Broad areas of regulation explored in this study**

<table>
<thead>
<tr>
<th>Cropping</th>
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<tbody>
<tr>
<td>- Wheat marketing</td>
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<tr>
<td>- Horticulture Code of Conduct</td>
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<tr>
<td>- Genetically modified crops</td>
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<table>
<thead>
<tr>
<th>Livestock</th>
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<tbody>
<tr>
<td>- Animal welfare</td>
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<tr>
<td>- Livestock exports</td>
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<tr>
<td>- Road transport issues in agriculture</td>
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<thead>
<tr>
<th>Environment</th>
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<tbody>
<tr>
<td>- Environment Protection and Biodiversity Conservation Act</td>
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<tr>
<td>- National Pollutant Inventory</td>
</tr>
<tr>
<td>- Water</td>
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<tr>
<td>- Reef Water Quality Protection Plan</td>
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<tr>
<td>- Forestry</td>
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<tr>
<th>Labour</th>
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<tr>
<td>- Temporary labour</td>
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<td>- Work health and safety</td>
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<tr>
<th>Chemicals</th>
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<tr>
<td>- Agricultural chemicals and veterinary medicines</td>
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<tr>
<td>- Security sensitive chemicals</td>
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<tr>
<td>- Food</td>
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<tr>
<td>- Biodiesel</td>
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<tr>
<th>Biosecurity</th>
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<tr>
<td>- National Livestock Identification System</td>
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<tr>
<td>- Biosecurity and quarantine</td>
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<tr>
<th>Industry support</th>
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<tr>
<td>- Drought support</td>
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</table>
For each issue considered, ABARES followed a systematic process to determine whether there was scope for the Australian Government to reduce an unnecessary regulatory burden. First, ABARES sought to identify the root cause of each issue. This involved considering the regulatory environment (past and present), the factors motivating the regulation's introduction and the specific aspects of its operation that concerned industry.

Second, notwithstanding the Productivity Commission’s findings, ABARES considered it appropriate to check whether each regulatory burden was within scope of this study according to the following criteria.

- Is it ‘unnecessary’, as defined above?
- Is it a result of Australian Government regulation, where regulation is defined in box 1?

Third, ABARES then considered whether there was scope for the Australian Government to improve the effectiveness and efficiency of existing arrangements, given the nature of progress to date and any potential reforms in train.

ABARES drew on a wide range of information sources, including legislation, other policy documents, and the findings and recommendations of previous reviews. It also consulted with government and industry stakeholders. During the initial research phase, ABARES conducted an intradepartmental workshop to ascertain the current state of regulation and receive comment on issues raised by stakeholders in 2007. After considering reviews undertaken post-2007, ABARES consulted relevant government departments and met with select peak industry organisations, particularly those who had participated in the Productivity Commission’s 2007 review (Box 3). Although these stakeholders provided valuable input, many have not had an opportunity to comment on ABARES’ findings.

Box 3 Government and industry organisations consulted by ABARES

<table>
<thead>
<tr>
<th>AgForce Queensland</th>
<th>Animal Health Alliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Beef Association</td>
<td>Australian Pesticides and Veterinary Medicines Authority</td>
</tr>
<tr>
<td>Australian Pork Limited</td>
<td>Australian Property Institute (New South Wales Division)</td>
</tr>
<tr>
<td>CropLife Australia</td>
<td>Department of Agriculture, Fisheries and Forestry (now Department of Agriculture)</td>
</tr>
<tr>
<td>Department of Education, Employment and Workplace Relations (now Department of Employment)</td>
<td>Department of Immigration and Citizenship (now Department of Immigration and Border Protection)</td>
</tr>
<tr>
<td>Department of Sustainability, Environment, Water, Population and Communities (now Department of the Environment)</td>
<td>Great Barrier Reef Marine Park Authority</td>
</tr>
<tr>
<td>Growcom</td>
<td>National Association of Forestry Industries (now Australian Forest Products Association)</td>
</tr>
<tr>
<td>National Farmers’ Federation</td>
<td>Northern Territory Horticultural Association (now Northern Territory Farmers Association)</td>
</tr>
<tr>
<td>NSW Farmers’ Association</td>
<td>Office of the Gene Technology Regulator</td>
</tr>
<tr>
<td>Plant Health Australia</td>
<td>Productivity and Regulatory Reform Committee</td>
</tr>
<tr>
<td>Red Meat Advisory Council Limited</td>
<td>Veterinary Manufacturers &amp; Distributors Association Limited</td>
</tr>
<tr>
<td>Victorian Farmers’ Federation</td>
<td>Virginia Horticulture Centre (now Grow SA)</td>
</tr>
</tbody>
</table>
3 Results

As outlined in Chapter 1, this study aimed to identify areas of Australian Government regulation with scope for improvement. ABARES has focussed on agriculture and forestry policies (20 areas covering 32 regulatory issues) about which the Productivity Commission (2007) had previously made recommendations and that the Australian Government had then accepted or noted (see Chapter 2). After extensively analysing information from a wide range of sources, including targeted stakeholder consultations, ABARES found that potential future action by the Australian Government to improve regulatory arrangements typically fell within three broad categories:

- further action could potentially reduce unnecessary regulatory burdens
- further action could complement state and territory governments efforts to reduce unnecessary regulatory burdens
- no further action required at this stage (beyond ongoing commitments).

Further action could directly reduce unnecessary regulatory burdens

For a quarter of the issues investigated (8 out of 32), potential exists for further Australian Government action to directly reduce unnecessary regulatory burdens (Box 4). Here, the Australian Government has direct responsibility for managing and maintaining the efficiency and effectiveness of the regulatory environment. In addition, there appears sufficient evidence to consider pursuing reforms. Although ABARES did not assess whether particular reforms would likely deliver net benefits, it was evident that the scope for further action could vary considerably: from simply investing in further research necessary to support a prima facie case for change, to considering the merits of amending Commonwealth legislation. Notwithstanding, issues where further Australian Government action could potentially reduce unnecessary regulatory burdens were:

- livestock exports—overly prescriptive requirements of Marine Orders Part 43 (Chapter 9)
- Environment Protection and Biodiversity Conservation Act—lack of clarity about what constitutes a ‘significant impact’ (Chapter 11)
- Environment Protection and Biodiversity Conservation Act— overlap with biosecurity approval procedures for live animal imports (Chapter 11)
- building regulations and the energy efficiency of timber (Chapter 15)
- temporary labour— inconsistent taxation of non-resident and resident workers (Chapter 16)
- work health and safety—inconsistent regulation between jurisdictions (Chapter 17)
- agricultural chemicals and veterinary medicines—access to chemicals for minor uses (Chapter 18)
- agricultural chemical and veterinary medicines—overlap, inconsistency and duplication in regulation across jurisdictions (Chapter 18).

Assessing whether it would be in the public interest to make specific changes to regulatory instruments requires a careful examination of the likely costs and benefits. While ABARES has assessed whether an unnecessary regulatory burden is likely to exist, it has not examined alternative approaches to reduce these burdens. In many cases, further research would be
required to provide an appropriate evidence base to support future reforms. For example, while incorporating life cycle energy requirements into energy efficiency rating schemes may more accurately indicate building energy requirements, it also has the potential to impose compliance costs on businesses. In weighing the merits of further data collection, for example, policy-makers would at least need to consider the additional private and public costs of developing and operating such schemes and the extent to which it is likely to lead to additional emission reductions.

Box 4 Findings: Further action could directly reduce unnecessary regulatory burdens

<table>
<thead>
<tr>
<th>Livestock exports – Overly prescriptive requirements of Marine Orders Part 43</th>
</tr>
</thead>
<tbody>
<tr>
<td>The scope for the Australian Government to reduce costs imposed by regulation of live animal exports by ship under Marine Orders Part 43, while ensuring that animal health and welfare objectives are achieved, is unclear. Although the Australian Maritime Safety Authority has commenced a review, a detailed, independent review is likely to better assist in identifying reform options.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environment Protection and Biodiversity Conservation Act – Lack of clarity about what constitutes a ‘significant impact’</th>
</tr>
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<tbody>
<tr>
<td>Although additional advice to stakeholders on the definition of ‘significant impact’ under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the term’s application in general situations has been published since 2007, there appears scope to further improve the provision and uptake of facilities to advise applicants on specific proposed actions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environment Protection and Biodiversity Conservation Act – Overlap with biosecurity approval procedures for live animal imports</th>
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</thead>
<tbody>
<tr>
<td>There is negligible duplication in the environment and biosecurity risk assessment processes for live animal imports under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the Quarantine Act 1908 (Cth). Combining the two processes would likely impose a net cost on society. However, there is merit in the Department of Agriculture and the Department of the Environment revising their memorandum of understanding on import risk analyses of live animal imports, once relevant changes to biosecurity and environmental legislation have been implemented.</td>
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<table>
<thead>
<tr>
<th>Building regulations and the energy efficiency of timber</th>
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<tbody>
<tr>
<td>Current state and territory government energy efficiency rating schemes do not account for the energy used over the complete life cycle of a building and its materials. However, measuring and including such energy use information in these schemes is likely to form a complex task requiring further research to determine the nature and magnitude of likely resulting benefits.</td>
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<table>
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<tr>
<th>Temporary labour – Inconsistent taxation of non-resident and resident workers</th>
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<tbody>
<tr>
<td>Research directed at understanding the likely costs and benefits of reducing the Pay As You Go tax rate for non-residents to the rate applied to resident workers in the horticultural industry may be useful for underpinning policies designed to alleviate workforce shortages.</td>
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<tr>
<th>Work health and safety – Inconsistent regulation between jurisdictions</th>
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<tbody>
<tr>
<td>There appears to be scope for the Australian Government to assist in further improving the consistency of work health and safety regulation between states and territories through the Council of Australian Governments. Reviewing the implementation of work health and safety legislation in future, in light of its consequent effect in the respective states and territories, seems prudent.</td>
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<table>
<thead>
<tr>
<th>Agricultural chemicals and veterinary medicines – Access to chemicals for minor uses</th>
</tr>
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<tbody>
<tr>
<td>Gaining permission for the minor use of agricultural chemicals and veterinary medicines remains difficult. There is merit in considering the case for further involvement by the Australian Government to support industry initiatives directed at improving access to minor use chemicals, where it is in the public interest.</td>
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<table>
<thead>
<tr>
<th>Agricultural chemicals and veterinary medicines – Overlap, inconsistency and duplication in regulation across jurisdictions</th>
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</thead>
<tbody>
<tr>
<td>The Council of Australian Governments is currently developing a national framework for regulating agricultural chemical and veterinary medicine use to minimise overlap, inconsistency and duplication in regulation between jurisdictions.</td>
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</table>
Further action could complement state and territory government action

There are also areas in which there may be scope for the Australian Government to complement action by state and territory governments to reduce unnecessary regulatory burdens (Box 5). Although the Australian Government may not have Constitutional powers to directly regulate in these areas, it can often play a coordination role or support the action of state and territory governments, typically through the Standing Council on Primary Industries. In this regard, there appears scope for the Australian Government to complement state and territory government action to address the following stakeholder concerns:

- genetically modified crops being subject to lengthy and inconsistent pathways to market because of state-based moratorium legislation (Chapter 6)
- water property rights that are inconsistently defined between jurisdictions (Chapter 13)
- chemicals of security concern—regulatory inconsistency between jurisdictions (Chapter 19)
- food regulation—inconsistency between jurisdictions (Chapter 20).

Box 5 Findings: Further action could complement state & territory government action

<table>
<thead>
<tr>
<th>Genetically modified crops</th>
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<tbody>
<tr>
<td>Australia’s regulatory environment governing the path to market of genetically modified food crops continues to impose an unnecessary burden on many agricultural businesses through inconsistent regulation and lengthy decision-making. Although the inconsistencies relate specifically to the moratoria, which are state matters, the Australian Government could play a coordination role in negotiating for a shorter, well-defined regulatory path to market and by providing information on various market considerations, as well as information that could feed into the development of coexistence strategies.</td>
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<table>
<thead>
<tr>
<th>Water property rights</th>
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<tbody>
<tr>
<td>There appears to be scope for the Australian Government to further coordinate efforts through the Council of Australian Governments to standardise the definition of water property rights within the Murray–Darling Basin.</td>
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<table>
<thead>
<tr>
<th>Chemicals of security concern</th>
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<tbody>
<tr>
<td>There is scope to reduce the complexity and to improve the consistency of security sensitive ammonium nitrate regulation between jurisdictions. The Australian Government is already playing a coordination role through the Council of Australian Governments.</td>
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<table>
<thead>
<tr>
<th>Food regulation – Inconsistency between jurisdictions</th>
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<tbody>
<tr>
<td>Further Australian Government involvement in facilitating improvements in the consistency of food regulation between jurisdictions could potentially reduce unnecessary regulatory burdens.</td>
</tr>
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</table>

No further action required at this stage

ABARES found that for more than half of the issues investigated, further action by the Australian Government to reduce unnecessary regulatory burdens was unlikely to lead to significant productivity improvements. In the main, this was due to the dynamic operating and regulatory environment in which rural businesses typically operate. Three broad reasons were evident:

- no unnecessary regulatory burden exists
- the regulatory burden is no longer a concern for industry
- major reforms have recently occurred, or are planned.
No unnecessary regulatory burden exists

In some instances, it appeared that Australian Government regulation is not causing an unnecessary burden (Box 6). In other words, the regulatory burden imposed on businesses is necessary to achieve broader policy objectives, or is solely an issue for state and territory governments. Taking the policy objectives as given, no unnecessary burden from Australian Government regulation was evident concerning:

- Horticulture Code of Conduct omissions (Chapter 5)
- the Australian Animal Welfare Strategy (Chapter 8)
- the National Pollutant Inventory (Chapter 12)
- temporary labour—skill requirements to access the 457 visa program (Chapter 16)
- food regulation—inconsistency in regulation of domestic and imported food (Chapter 20)
- National Livestock Identification System requirements (Chapter 22)
- biosecurity and quarantine—timeliness of import risk analyses (Chapter 23)
- biosecurity and quarantine—uncertainties about the Emergency Plant Pest Response Deed (Chapter 23).

Box 6 Findings: No unnecessary regulatory burden exists

<table>
<thead>
<tr>
<th>Horticulture Code of Conduct omissions</th>
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<tbody>
<tr>
<td>Although it is beyond the scope of this study to assess whether the purpose of the Horticulture Code of Conduct’s to regulate trade between growers and traders is appropriate, the Code appears to have improved the transparency of transactions between the parties.</td>
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<table>
<thead>
<tr>
<th>Australian Animal Welfare Strategy</th>
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<tbody>
<tr>
<td>The Australian Government does not regulate the welfare of animals destined for the domestic market. Instead, it coordinates stakeholders as they develop regulation through the Australian Animal Welfare Strategy. Although industry raised concerns about slow progress in implementing the Strategy, the Australian Government has limited capacity to intervene directly in matters that are largely the realm of state and territory governments.</td>
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<thead>
<tr>
<th>National Pollutant Inventory</th>
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<tbody>
<tr>
<td>There is little evidence to suggest the Australian Government should do more to reduce the reporting burden placed on individual intensive agriculture facilities by the National Pollutant Inventory, given current regulatory objectives and positive feedback from peak industry groups.</td>
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</table>

<table>
<thead>
<tr>
<th>Temporary labour – Skill requirements to access the 457 visa program</th>
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<tbody>
<tr>
<td>Minimum skill requirements for 457 visa eligibility do not impose an unnecessary regulatory burden on horticultural businesses. The Australian Government uses the 457 visa program to target highly skilled overseas workers, where skill requirements are defined by the Australian and New Zealand Standard Classification of Occupation codes.</td>
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<tr>
<th>Food regulation – Inconsistency in regulation of domestic and imported food</th>
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<tbody>
<tr>
<td>Imported food is subject to the same product standards that apply to food produced in Australia and food standards do not therefore impose an unnecessary burden on rural businesses.</td>
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<table>
<thead>
<tr>
<th>National Livestock Identification System requirements</th>
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<tbody>
<tr>
<td>Assessing the appropriateness of the National Livestock Identification System objective to provide whole-of-life traceability for all livestock in a rapid and accurate manner is beyond the scope of this study. The current regulatory burden appears necessary to comply with given National Traceability Performance Standards.</td>
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<thead>
<tr>
<th>Biosecurity and quarantine – Timeliness of import risk analyses</th>
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<tbody>
<tr>
<td>It is not clear that the time taken to complete Import Risk Analyses is unnecessarily lengthy. Determining whether it is appropriate to further reduce times taken to complete IRAs is justified would require additional consideration by the Australian Government in consultation with industry.</td>
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<thead>
<tr>
<th>Biosecurity and quarantine – Uncertainties about the Emergency Plant Pest Response Deed</th>
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<tbody>
<tr>
<td>The Emergency Plant Pest Response Deed increases the certainty for plant industries regarding cost-sharing arrangements and their role in decision-making processes during a plant pest emergency. The current review arrangements between Australian, state and territory governments, and Plant Health Australia have enabled their roles to be clarified and refined over time, guided by experience gained through the application of the Deed to plant pest emergencies.</td>
</tr>
</tbody>
</table>
The regulatory burden is no longer a concern for industry

In other instances, ABARES found that stakeholders no longer considered the regulation to pose a significant burden on their industry (Box 7). In some cases, Australian Government action since 2007 appears to have significantly reduced unnecessary burdens on primary sector businesses to the point where they are no longer of concern. Although not necessarily ruling out further reform initiatives, there is not a compelling case for further Australian Government action regarding:

- the Reef Water Quality Protection Plan (Chapter 14)
- temporary labour—work eligibility assessments of overseas visitors by farmers (Chapter 16)
- food regulation—timeliness in regulatory processes involving Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority (Chapter 20)
- biosecurity and quarantine—overlap between the Department of Agriculture (formerly AQIS/Biosecurity Australia) and the Australian Pesticides and Veterinary Medicines Authority (Chapter 23).

In other cases, regulatory burdens have disappeared following changes beyond the farm operating environment (Box 7). There seems little benefit from additional Australian Government action on these matters at this juncture. ABARES found this with regard to:

- temporary labour—Centrelink reporting requirements regarding temporary labourers (Chapter 16)
- testing biodiesel produced on farms (Chapter 21).

Box 7 Findings: The regulatory burden is no longer a concern for industry

<table>
<thead>
<tr>
<th>Reef Water Quality Protection Plan</th>
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<tbody>
<tr>
<td>Following the introduction of the 2009 and the 2013 Reef Water Quality Protection Plans, uncertainty about the burden imposed by future regulatory arrangements no longer significantly concerns stakeholders. There is limited scope to improve the Australian Government’s current regulatory involvement in achieving the goals of the 2009 Reef Water Quality Protection Plan.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Temporary Labour – Work eligibility assessments of overseas visitors by farmers</th>
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</thead>
<tbody>
<tr>
<td>The Australian Government requirements for, and process by which agricultural employers assess the work eligibility of overseas visitors do not currently pose an unnecessary burden.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Food regulation – Timeliness in regulatory processes involving Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority</th>
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</thead>
<tbody>
<tr>
<td>The delay between the setting of Maximum Residue Limits for chemical use by the Australian Pesticides and Veterinary Medicines Authority and its incorporation in the Australia New Zealand Food Standards Code has been significantly reduced since 2007.</td>
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</table>

<table>
<thead>
<tr>
<th>Biosecurity and quarantine – Overlap between the Department of Agriculture and APVMA</th>
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</thead>
<tbody>
<tr>
<td>The Australian Pesticides and Veterinary Medicines Authority and the Department of Agriculture’s Biological Imports Program have reduced duplication in testing requirements and approval procedures for animal health products since 2007.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Temporary labour – Centrelink reporting requirements regarding temporary labourers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements for rural businesses to report information to Centrelink on behalf of former employees no longer appear to impose a significant regulatory burden on employers in the primary sector.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Testing biodiesel produced on farms</th>
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</thead>
<tbody>
<tr>
<td>Stakeholders participating in this review no longer consider differing intents of regulatory instruments affecting on-farm biodiesel manufacture to be a significant issue. Notwithstanding, there is currently limited scope for the Australian Government to remove the requirement to test biodiesel produced by farmers for their own use under the existing excise and grant offset arrangements.</td>
</tr>
</tbody>
</table>
Major reforms have recently occurred, or are planned

Where governments have recently undertaken major reforms or are planning to do so, there may be no additional role for the Australian Government at this stage (Box 8). Although reviewing the efficiency and effectiveness of these reforms could be beneficial in future (once sufficient time has passed for changes to have taken effect), it is too early to fully consider their impact. These reforms have been substantial, typically involving new Commonwealth legislation or significant changes to the way the Australian Government coordinates national policy responses. In this regard, reforms are currently underway to the regulatory frameworks for:

- wheat marketing (Chapter 7)
- livestock exports—health and welfare requirements (Chapter 9)
- road transport issues in agriculture (Chapter 10)
- drought support (Chapter 24).

In addition to these policy areas, the Australian Government is planning major reforms to legislation underpinning agricultural and veterinary (agvet) chemical use and Australia’s biosecurity system. In the former case, the reforms may reduce the unnecessary regulatory burden imposed by lengthy and complex national agvet chemical registration procedures (Chapter 18), as perceived by stakeholders. In the latter, the reforms may reduce regulatory burdens resulting from problems with the Interstate Certification Assurance Scheme (Chapter 23).

Box 8 Findings: Major reforms have recently occurred, or are planned

<table>
<thead>
<tr>
<th>Wheat marketing</th>
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<tbody>
<tr>
<td>There is merit in the Australian Government reviewing regulation regarding access to grain export port terminals well in advance of 30 September 2014 and its support for the design of a mandatory industry code to manage access to grain export infrastructure.</td>
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</table>

<table>
<thead>
<tr>
<th>Livestock exports – Health and welfare requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Since 2007, regulatory costs to livestock exporters have increased in response to heightened community awareness and concern about animal welfare. However, opportunities to achieve welfare objectives at lower cost may be identified through the current review of the Australian Standards for the Export of Livestock being conducted by Australian, state and territory governments, in conjunction with the Australian Livestock Exporters’ Council, the Australian Livestock Transporters Association, the Australian Veterinary Association and the RSPCA (Australia).</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Road transport issues in agriculture</th>
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<tbody>
<tr>
<td>It is too early for the Australian Government to pursue additional improvements in interjurisdictional consistency with a view to reducing unnecessary burdens associated with differing volumetric loading rules, given recent and ongoing reforms to heavy vehicle regulation. The Productivity Commission has an opportunity to review the economic impact of the new national framework for heavy vehicle regulation by December 2016.</td>
</tr>
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<thead>
<tr>
<th>Drought support</th>
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<tbody>
<tr>
<td>National drought policy is currently being reformed and this provides a good opportunity to minimise unnecessary regulatory burdens, such as inconsistency and duplication in application processes between jurisdictions that could arise in future.</td>
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<table>
<thead>
<tr>
<th>Agricultural chemicals and veterinary medicines – Timeliness and complexity of national chemical registration procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing reforms to Australian Government regulation of agricultural chemicals and veterinary medicines, and Australian Pesticides and Veterinary Medicines Authority processes are designed to improve the timeliness and reduce the complexity of national chemical registration procedures.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Biosecurity and quarantine – Problems with the Interstate Certification Assurance Scheme</th>
</tr>
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<tbody>
<tr>
<td>The recently introduced Intergovernmental Agreement on Biosecurity and the National Plant Biosecurity Strategy offer opportunities to improve the interjurisdictional consistency of biosecurity regulation and reduce the unnecessary burden imposed on businesses trading plants and plant products between jurisdictions.</td>
</tr>
</tbody>
</table>
4 Discussion

Reducing unnecessary regulation is an important part of the policy reform process. Among other things, it can improve the competitiveness of export industries and the performance of the economy more widely. Moreover, while a regulatory instrument may effectively and efficiently achieve its objective when established, this may change over time with shifts in societal preferences, technology or international policies, for example. To improve the effectiveness and efficiency of regulation in achieving its objectives, ABARES has identified regulatory areas with scope to enhance the productivity of Australia’s rural industries. More specifically, it investigated the potential for the Australian Government to play a role in improving 32 regulatory arrangements within 20 policy areas.

Chapter 3 summarises the scope for additional government action, including where further direct Australian Government action may be of benefit. The detail on all regulatory issues analysed can be found in chapters 5 to 24 of this report, including background information and the scope for further reducing unnecessary burdens. In summary, there are eight regulatory issues in which the Australian Government could potentially play a stronger role, although it would first need to establish the net benefits of additional involvement.

Beyond identifying specific areas of Australian Government regulation potentially suitable for reform, ABARES has also commented on harmonising state and territory regulation and identified areas suitable for further research.

Harmonising state and territory legislation

Although Australian Government regulation was involved in all issues analysed, the findings highlighted potential gains from greater harmonisation of state and territory government regulation (4 out of 32 issues). State and territory governments are responsible for many agriculture and forestry matters of national significance. However, regulatory inconsistency imposes burdens on businesses operating in multiple jurisdictions as they need to comply with multiple regulatory regimes. Indeed, industry stakeholders believed that interjurisdictional inconsistencies were contributing to regulatory burdens in about a third of the cases examined in this study.

More recently, the National Farmers’ Federation (2013) also emphasised the importance of regulatory consistency between states to reducing the compliance burden imposed on farmers. The Australian Government can play a role in coordinating and supporting greater interjurisdictional consistency where the Constitution limits its direct involvement, but a national approach is preferable.

However, interjurisdictional consistency can be elusive. In some areas, despite signed agreements to harmonise systems, inconsistencies have persisted for decades. Although the underlying reasons are complex, the Productivity Commission (2006) has noted that the benefits and shortcomings of Australia’s federal system. While it has many advantages (such as dispersing power to encourage more responsive government and better matching citizen’s preferences through diversity in service provision), there are also disadvantages (such as higher transaction costs from diverse and fragmented regulation).

For example, progress toward harmonising food and animal welfare regulation has been slow, despite ongoing intergovernmental efforts. In the case of heavy vehicle regulation, recent progress has been made toward increasing the consistency of primary legislation across states.
and territories. However, this is the result of negotiations over many years and the detail of subordinate legislation remains to be determined. As a result, there is still scope for regulatory inconsistencies to emerge despite uniform adoption of the model Heavy Vehicle National Law by state and territory governments.

Protracted negotiations between governments can also create regulatory uncertainty about the timing and operational consequences of reforms, further adding to the burden. Regulatory uncertainty has a detrimental effect on productivity to the extent it reduces the incentive for businesses to make long-term investment decisions. Many commentators have discussed how it raises the minimum rate of return (hurdle rate) that investors would otherwise require (Dixit & Pindyck 1994, Fitzgerald 2001, Coyne & Hauserer 2008). Two policies illustrate the lengthy timelines that can be involved.

- The Australian Animal Welfare Strategy remains subject to significant uncertainty since it was endorsed by PIMC (now Standing Council on Primary Industries) in 2004. In reviewing the strategy, Gemmell (2010) found that activities to promote regulatory harmonisation had progressed 'slower than hoped'. In 2012, PISC established a high level animal welfare committee, which agreed to review current processes to streamline future action.

- Nationally uniform work health and safety standards have been a goal since the mid-1980s, when the Australian Government formed the National Occupational Health and Safety Commission. However, the persistence of legislative differences and the scope to further improve consistency was recognised more than 20 years later by the Australian Government when it initiated a National Review into Model OHS Laws in 2008 (Stewart-Crompton et al. 2008).

Persistent inconsistencies point to a key limitation of many intergovernmental agreements—non-binding timelines for outcomes. Two reasons are immediately apparent. First, while agreements signify a commitment by jurisdictions to implement joint decisions, it may be inappropriate for them to commit resources to negotiating action plans in advance, given sizeable information gaps and uncertainty about potential outcomes. Second, individual jurisdictions generally place a premium on maintaining funding flexibility to rebalance policy priorities in the future.

By way of illustration, although the recently negotiated Intergovernmental Agreement on Biosecurity timebounds milestones of individual work plans, it does not impose the same strictures for completing the entire action plan. Given examples where jurisdictions overseeing ‘slow progress’ have, long after, agreed to more demanding action plans (such as workplace health and safety reforms), there are likely to be benefits gained from exploring how parties can offer stronger commitments upfront.

There is also potential for state and territory governments to participate in a joint, coordinated assessment of unnecessary regulatory burdens across all jurisdictions. Under the Constitution, state and territory governments are responsible for legislating on many issues affecting businesses along the agriculture value chain (see Table 1). Although some state and territory governments independently progress reform agendas, they may gain additional insights from participating in a joint exercise.
Table 1 Agriculture value chain and the impact of regulations

<table>
<thead>
<tr>
<th>Key Australian Government involvement/regulation</th>
<th>Key stages of agricultural cycle</th>
<th>Key state/territory government involvement/regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Aboriginal land rights/native title environmental protection and biodiversity conservation</td>
<td>Acquisition of arable land</td>
<td>- land use and planning regulation - Aboriginal land rights/native title</td>
</tr>
<tr>
<td>- 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</td>
<td>Preparation of land</td>
<td>- 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</td>
</tr>
<tr>
<td>- chemical and pesticide supply and registration - access to drought support - fuel tax regulation - national pollutant inventory - biosecurity regulation - immigration regulation - water access and regulation - research and development funding and support</td>
<td>Farming - cropping - animal husbandry</td>
<td>- 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 - chemical and pesticide use</td>
</tr>
<tr>
<td>- export certificates - industrial relation regulations - immigration regulation - environmental regulation - industrial relations regulation - national pollutant inventory - national land transport regulatory frameworks - shipping and maritime safety laws - international maritime codes and conventions - competition laws/access regimes - animal welfare</td>
<td>On-farm processing</td>
<td>- building regulations - machinery operations - certification and labelling - industrial relations regulation - OHS regulation</td>
</tr>
<tr>
<td>- marketing legislation (mandatory codes and acquisition) - food safety regulation - quarantine regulation - export controls - export incentives - WTO obligations - market access and trade agreements - animal welfare</td>
<td>Transport and logistics</td>
<td>- transport regulations - government owned public/private transport infrastructure - access regimes</td>
</tr>
<tr>
<td>- interstate certification arrangements - taxation</td>
<td>Marketing - boards - customers</td>
<td>- interstate certification arrangements - taxation</td>
</tr>
</tbody>
</table>

One possible approach to a joint assessment is to first focus on identifying areas where there are overlaps and inconsistencies between Australian Government regulations and/or state and territory regulations. This could be a precursor to considering the merits of a more detailed study. Judgements about what regulatory instruments are ineffective or inequitable requires in-depth knowledge of state-based regulation, necessitating close interjurisdictional collaboration to generate insights. Such an initiative would need to account for statutory 5-year reviews and determine an appropriate scope (in terms of regulatory areas or particular industries, for example).

Notwithstanding, some stakeholders consulted during the course of this study have questioned the extent to which interjurisdictional consistency should be pursued. In particular, some have highlighted that variation in regulation across regions can be beneficial, where operating environments differ. For example, ‘local productivity initiatives’ have been retained in the new Heavy Vehicle National Law, in recognition that regulatory objectives can be achieved and productivity improved by departing from the national law where local conditions pose a low safety risk. In addition, others have highlighted the merits of a federal, rather than a unitary, system of government, where legislative responsibilities are dispersed. Implementing different policies across jurisdictions can provide an opportunity to innovate and learn from the experiences of others (Productivity Commission & Forum of Federations 2012). Nonetheless, all other things being equal, the bulk of stakeholder views received during this study favoured greater interjurisdictional consistency.

Further research

Clear scope for extending the work begun in this study lies in exploring unnecessary regulatory burdens that have arisen since the Productivity Commission’s review in 2007. While ABARES was tasked with re-evaluating unnecessary burdens raised by stakeholders in 2007, it is likely that new burdens have emerged since then. As listed in chapter 1, there are multiple reasons why regulation can become inefficient and ineffective over time. As a result, there is merit in periodically reviewing the regulatory burdens imposed on industry.

In this vein, establishing a strategic program to proactively and routinely assess the efficiency and effectiveness of regulation affecting primary sector businesses may be worthwhile. Periodic review is important to ensure policy settings do not unnecessarily constrain innovation and productivity growth. Although some regulation operates with built-in review schedules, this is not always the case, nor does it necessarily provide scope to consider regulatory interactions within the policy environment as a whole. Scheduling periodic reviews could be a useful means by which to identify new or emerging issues that may impose unnecessary regulatory burdens.

In conducting future reviews, two approaches are worth considering. On the one hand, public inquiries can invite stakeholder feedback across a broad spectrum of regulation. For example, Minister Ludwig announced in May 2013 that the Productivity Commission would review the impact of regulatory burdens across the food supply chain (DAFF 2013). On the other hand, targeted investigations of particular regulatory instruments are relatively less costly and, with appropriate scheduling, can serve to maintain regular stakeholder engagement.

In addition, there are three further observations worth considering prior to conducting regulatory reviews.

- Independent and transparent reviews are likely to generate greater insights. Reviews conducted independently of a regulator can avoid perceived conflicts of interest, and build greater public confidence in the review process and the veracity of its findings. In part,
ABARES’ independent findings from this study have built on a transparent review conducted by the Productivity Commission (2007).

- Unnecessary burdens can also arise from the cumulative effect and interaction of regulation on business operations. Reviewing the stock of regulation may be particularly beneficial for primary sector businesses, as they operate in a highly regulated environment. This may be the case where jointly complying with separate regulatory instruments may be impossible or highly impractical. For example, rest period requirements for heavy vehicle drivers to reduce driver fatigue may not align with feed and water time limits for livestock under animal welfare regulation.

- Maintaining public awareness of upcoming reviews will allow greater time for stakeholders (including government) to conduct supporting research that might inform these reviews. Compiling and maintaining a list of scheduled review dates may also assist in reducing duplicative review efforts and directing future research.

Although the study short-listed areas with a prima facie case for reform, further analysis is necessary to determine the merit associated with potential regulatory changes. In other words, scope for regulatory improvement does not necessarily justify reform activity. Regulatory reform can be costly, in terms of compiling an evidence base, considering alternative policy responses, seeking to avoid unintended outcomes, consulting with stakeholders, drafting new regulatory instruments, implementing changes—and the benefits of reform can vary significantly in magnitude and distribution. While ABARES examined existing regulation in light of the unnecessary costs imposed on rural businesses and the scope for further improvement, the implications of possible further Australian Government involvement and the likelihood that it will result in a net benefit to society requires additional consideration. Further investigating such issues will be valuable for government as it determines future work plans.

In addition, and beyond the focus on costly unnecessary burdens, it is also useful to consider ways to derive greater benefit from existing regulation. For example, although there appears limited scope to further reduce the burden imposed by National Pollution Inventory (NPI) reporting requirements, it may be possible to gain greater benefit from the data collected. This might flow from, for example, increased awareness among policymakers and the community of the availability of NPI data to improve environmental policy and heighten the accountability of firms for their emissions. In addition, industry is exploring ways to automate various animal husbandry activities using electronic identification tags for cattle, which are required under the National Livestock Identification System.
5 Horticulture Code of Conduct

In 2007, the Australian Government introduced the Horticulture Code of Conduct to improve trading relationships between growers and traders. Formally referred to as the Trade Practices (Horticulture Code of Conduct) Regulations 2006, the Code is a mandatory set of regulations governing wholesale trade of fresh horticultural produce. Its purpose is to regulate trade between growers and traders to ensure these transactions are clear and transparent, and to provide a dispute resolution process.

In its submission to the Productivity Commission (2007) review, the Northern Territory Horticultural Association (NTHA 2007) expressed concern on two accounts: that the Code did not cover all supply chain actors; and that it unduly limited some established market practices. Notwithstanding that assessing the Code’s objectives (rather than any attendant regulatory burdens) is outside the scope of this study, the Code appears to have improved communication, and clarified roles and responsibilities along the supply chain.

Background and context

The Australian Government introduced the Code using powers under the Consumer and Competition Act 2010 (Cth) (formerly the Trade Practices Act 1974) to prescribe regulations for mandatory or voluntary industry codes. Motivating its introduction was a lack of clarity and transparency in wholesale horticultural transactions and industry’s failure to agree on a voluntary code (CIE 2005). The Code is administered by the Commonwealth Minister for Agriculture, but enforced by the Australian Competition and Consumer Commission (ACCC).

The Code’s purview is specific. Although horticulture growers can sell to all businesses along the supply chain (traders, retailers, processors and exporters), it was not considered necessary to regulate the industry beyond wholesale trade of fresh produce between growers and traders (see Box 9). More specifically, the Code requires traders to make their terms of trade publicly available to improve the clarity and transparency of transactions between parties. In addition, trade must occur as outlined under a ‘horticulture produce agreement’ and traders must provide transaction information to growers in writing.

Previously, the lack of written contracts and trade information between growers and traders meant that it was frequently unclear whether a trader was acting as a merchant or an agent (CIE 2005). In its submission to the Productivity Commission’s (2007) review, Growcom (2007a) stated that:

This situation basically meant that growers could easily find themselves at the whim of their wholesaler with little option other than to accept unfair prices, poor trading terms and inconsistent business practices.

Although the Code’s introduction was broadly supported by many horticulture growers (NTHA 2007, Growcom 2007a), the Northern Territory Horticultural Association (2007) also contended there were some notable omissions. The Productivity Commission (2007) responded by noting that the Code had only recently been implemented and a review was scheduled for 2009. In the mean time, the ACCC held a public inquiry into aspects of the grocery industry, including the Code, and made 13 recommendations to improve the Code (ACCC 2008).
Inclusions and exclusions under the Horticulture Code of Conduct

The issues addressed by the Code are confined to the grower-wholesaler relationship. This is because other supply chain actors are not wholesale intermediaries and because their trading terms are mostly clear and transparent (Trade Practices (Horticulture Code of Conduct) Regulations 2006 Explanatory Statement). The Code defines a grower as someone who grows horticultural produce for sale and a trader (or wholesaler) as someone who acts as an agent or a merchant. As an agent, a trader sells produce on behalf of a grower in return for a commission or fee. As a merchant, a trader purchases horticultural produce for resale, but not for their own retail sale or for export.

As indicated above, the Code makes several exclusions. In particular, it does not cover retailers who purchase horticultural produce from growers or traders for their own retail sale. Also excluded are exporters who purchase produce to sell in overseas markets as well as food processors who transform produce into secondary products.

Included under the Code is a pack house (or packing house or packing shed) preparing horticultural produce for resale when it is a separate legal entity to growers (including as a growers’ cooperative) and acts as a trader. However, the Code does not apply where the pack house is the same legal entity as the grower until the produce is sold from the pack house to a trader.

The Code also covers contract terms and conditions, in particular, pooling and price averaging. Under certain conditions, the Code permits pooling of produce, where produce is combined from multiple growers. However, it does not permit price averaging, where each grower receives the average price from the sale or across the pool when the produce is sold. The Code stipulates that a contract must specify the price received by growers, rather than the method used to calculate a price.

In response to the Productivity Commission (2007) review, the Australian Government (2008) stated it would work with the Horticulture Code of Conduct Committee to consider the ACCC’s recommendations. The Horticulture Code of Conduct Committee was convened by the then Minister for Agriculture, Fisheries and Forestry to consult industry and review the ACCC’s recommendations (HCCC 2009). The concerns raised by the NTHA were:

- the exclusion of retailers, exporters and food processors
- the exclusion of buyers’ agents
- a lack of coverage of grower-owned packing houses
- the exclusion of price averaging while allowing pooling of grower’s fruit (Box 10).

However, insofar as the NTHA’s concerns relate to the ambit of the Code rather than any burden it might be causing, assessing them is beyond the scope of this project. Section 2(a) of the Code specifies that its purpose is ‘to regulate trade in horticulture produce between growers and traders’. Nevertheless, in many respects, the recommendations proposed by the ACCC and HCCC and discussed in Box 10 are largely congruent.
Box 10 Horticulture Code of Conduct concerns raised by the NTHA (2007)

**Retailers, exporters and food processors**

The NTHA maintained that any party with which growers trade should be included under the Code, including retailers, exporters and food processors. They believed that excluding parties from trade regulation may create an anti-competitive trading environment. In this regard, the Association pointed to the inclusion of wholesalers under the Code as assisting to remove unethical and unprofessional conduct.

The Code did not target transactions between growers and retailers (including major supermarket chains), processors and exporters because they do not act as wholesale intermediaries and trade is usually under clear terms. In its Regulation Impact Statement preceding the Code’s introduction, the CIE (2005) asserted that retailers provide clear contractual terms and a high degree of transparency.

In contrast, the ACCC (2008) recommended the Code be extended to cover retailers, processors and exporters. It found that written contracts rarely governed transactions between growers and retailers and, when they did, the terms often lacked clarity. In its view, extending the Code would remedy this. It would also remove ambiguities that may arise when growers seek to determine whether the Code applies to exporters and processors. In part, ambiguities and confusion arise due to the inconsistent application of the Code across the myriad of arrangements that exist along the horticulture supply chain.

The HCCC (2009) also recommended regulating ‘first point of sale’ transactions between horticulture growers and retailers, exporters and processors to standardise trading relationships across the industry. However, the horticulture industry was divided on the issue. On the one hand, the majority of grower and wholesaler participants supported the recommendation. On the other hand, retailers, processors and exporters not operating under the Code contended it could significantly increase compliance costs and limit accepted business practices. Notwithstanding its in-principle recommendation, the HCCC (2009) conceded that government should undertake research to quantify the costs of expanding the Code.

**Buyer’s agents**

The NTHA was also concerned that the Code excluded some buyer’s agents. While the Code included seller’s agents working for growers, it believed that growers dealing with agents, who worked on behalf of buyers, could affect the prices growers received. In many instances, growers provide produce to retailers through consolidators, also known throughout the industry as aggregators, intermediaries, service providers or retailer’s agents (ACCC 2008).

The Code does cover some buyers’ agents, depending on the nature of the transaction. Buyers’ agents may be included if they are acting on behalf of a trader (wholesaler) such that the transaction takes place between the grower and the trader. However, if an agent is acting on behalf of a retailer, the transaction is between the grower and a retailer, and is therefore exempt from the Code.

Although the ACCC (2008) acknowledged the issue, it did not recommend regulating buyer’s agents specifically. Rather, it believed the solution lay in extending the Code to cover transactions between growers and retailers (and exporters or processors), as previously mentioned. In forming its view, the ACCC (2008) concluded that major supermarket chains did not currently engage consolidators as their legal agents and, more broadly, many growers were satisfied with their direct supply arrangements with retailers. Nevertheless, it found that some growers remained unclear of their rights and obligations. (This issue was not addressed by the Horticulture Code of Conduct Committee.)

**Grower-owned packing houses**

A third concern related to the Code’s incomplete coverage of grower-owned pack houses. The NTHA argued that although the Code covered grower-owned pack houses that offered marketing services, growers operating in these environments could still be exposed to various trading issues when dealing with the next stage of the supply chain—wholesale traders.

The Code covers grower-owned packing houses only if they are a separate legal entity to the grower and act as an agent or merchant (see box 9). In such instances, the Code applies to the initial transaction between the grower and the grower-owned packing house, but not to the transaction between the packing house and a trader.
In its inquiry into the competitiveness of retail prices for standard groceries, the ACCC (2008) recommended amending the Code to exclude transactions between a grower and a cooperative/packing house, in which that grower has a significant interest. It intended this additional flexibility to cover two common scenarios: growers selling their produce to cooperative/packing houses and the latter marketing growers produce. However, the Horticulture Code of Conduct Committee (2009) opposed the ACCC’s recommendation, arguing that it would weaken the Code and counter its intended purpose. The Committee also concluded that the need for such an amendment as a means to re-establish pooling and price averaging practices would be unnecessary, were its recommendation adopted.

Price averaging
The NTHA was concerned about the impacts on small producers of prohibiting price averaging under produce agreements. While the Code permitted produce pooling, it did not permit price averaging. In the NTHA’s view, pooling of produce from remote regions to supply central markets was integral to success, and this necessitated price averaging.

The ACCC (2008) and the Horticulture Code of Conduct Committee (2009) both recommended amending the Code to permit price averaging. The ACCC (2008) found that produce pooling and price averaging is a common practice in the horticultural industry and contributes to growers’ risk management strategies. While the practice can distort market signals, particularly for produce quality, its view was that prohibiting it reduces growers’ ability to manage risk and supply through grower cooperatives and packing houses. Both agencies took the view that the risk management benefits of the practice outweighed the costs, though the practice could be adjusted to account for differences in produce quality (ACCC 2008, HCCC 2009).


ABARES assessment
Submissions to the Productivity Commission (2007) review may have reflected uncertainty at that time, regarding the Code’s effect on the supply chain—it had only been operating for a matter of months. Recent consultations indicated that industry is now more familiar with the Code and is no longer significantly concerned. Although assessing omissions from the Code is beyond the scope of this study, the Code appears to have improved communication, and clarified the roles and responsibilities of participants along the supply chain.

Nevertheless, the then Minister for Agriculture, Fisheries and Forestry considered it necessary for the Productivity Commission to review food supply chain regulations to identify priority areas for reform, as outlined in the National Food Plan (DAFF 2013). If this proceeds under the new government, it will provide an opportunity for stakeholders to raise issues they may have with the Horticulture Code of Conduct.

Finding 1
Although it is beyond the scope of this study to assess whether the purpose of the Horticulture Code of Conduct’s to regulate trade between growers and traders is appropriate, the Code appears to have improved the transparency of transactions between the parties.
6 Genetically modified crops

A key issue for many farmers participating in the Productivity Commission’s 2007 review of regulatory burdens was the introduction of legislation by some states preventing them from growing genetically modified (GM) food crops. While some states and territories allow farmers to adopt GM food crops (along with cotton and some flower species), others have legislated to delay or prevent their adoption. The Victorian Farmers’ Federation, which participated in the Commission’s review, contended that the moratoria prevented them from accessing the latest crop technologies and reduced the commercial incentive for research companies to invest in developing advanced crop varieties (Productivity Commission 2007, VFF 2007).

The Productivity Commission (2007) did not view this issue as a burden imposed by Australian Government regulation. It concluded the Australian Government could take little action in matters that are essentially state responsibilities, a position accepted by the Australian Government (2008).

Nevertheless, the Australian Government could potentially play a role in addressing farmers’ concerns in two areas by: 1) by negotiating a consistent approval path to market, to provide technology developers with a more certain investment environment; and 2) improving the timeliness of state decisions to commercialise GM crops by providing supporting research.

Background and context

In Australia, wider adoption of genetically modified (GM) crops and pastures could lift agricultural productivity. Proponents have identified a range of benefits, principally higher yields, lower energy use and scope to use less costly agricultural chemicals (House of Representatives 2000). In the case of herbicide tolerant GM canola (the only recognised GM food crop commercially released in Australia), typical herbicide regimes have less environmental impact than those for conventional canola.

A variety of potential risks associated with developing and commercialising GM crops has seen Australian governments regulate their use. Viewed from a functional perspective, Australia’s legislative environment comprises two parts:

- a national system comprising the Australian Government’s Gene Technology Act 2000 (Cth) (the Act) and corresponding state and territory legislation which is essentially identical. These arrangements aim to protect the health and safety of people and the environment from risks posed by, or as a result of, specified activities with genetically modified organisms (GMOs) such as developing, breeding, growing and transporting. The Act defines these activities collectively as ‘dealings’. The Gene Technology Regulator (GTR), an independent statutory office holder, administers the Act and corresponding state and territory legislation, and makes decisions about the development and use of GMOs.

- state-specific legislation enabling the imposition of moratoria on growing particular GM crops commercially, generally to preserve the identity of GM and non-GM crops within particular market segments. States have introduced moratoria under a policy principle issued by the then Gene Technology Ministerial Council (GTMC, now the Legislative and Governance Forum on Gene Technology), whose powers derive from the Act. Policy principles are legislative instruments under the Legislative Instruments Act 2003 (Cth), that is, they are legislative in character and tabled in each house of the Australian Parliament.
The Act does not empower the GTR to consider any social or economic dimensions when making decisions, a point relevant to later discussion. During the development of the Act, stakeholders could not agree on the role that non-scientific factors should play in what had been a science-based domain (Weier & Loke 2007). However, there was strong support for a regulatory system that relied on scientific input to consider matters of human health and the environment.

An intergovernmental agreement (IGA), the Gene Technology Agreement, commits each state and territory to enact corresponding legislation, in effect, to adopt the Act. State and territory involvement was required because the Commonwealth does not have constitutional power to regulate all dealings with gene technologies (Ludlow 2004, Tranter 2003). The constitutional basis of the Act is stated under section 13 to be the corporations power, the trade and commerce power and powers ancillary thereto. However, these may not have the power to cover dealings with GMOs by certain individuals, state bureaucracies and universities (House of Representatives 2000; Tranter 2003).

The original intent of the Act and the IGA was to achieve national consistency. Ludlow (2004) contends that it was generally agreed that a centrally-controlled scheme was better than eight potentially different state schemes in addition to a Commonwealth scheme. And within the Act itself, Tranter (2003) points to the Governor General’s powers to ‘prescribe’ state laws (Div. 4, s. 16), which would allow the Governor General to render state laws ineffective were they inconsistent with the Act.

Notwithstanding, the ‘national system’ has also been instrumental in giving states explicit powers to independently regulate some specified activities. The IGA established the Gene Technology Ministerial Council (GTMC) to oversee and provide policy input into the implementation and operation of the national legislative system (Statutory Review Panel 2006). Among other functions, the GTMC could issue policy principles governing the operation of the system and the work of the GTR. In 2003, the GTMC issued its first (and, to date, only) policy principle, the Gene Technology (Recognition of Designated Areas) Principle 2003, which allowed the states to preserve the identity of GM or non-GM crops (or both) for marketing purposes under section 21(1) of the Act. Some states have used this right to apply moratoria on the commercial cultivation of GM crops.

Thus, while the national system covers health, safety and environmental aspects consistently (through the GTR), commercialisation and marketing arrangements of GM crops vary between states. South Australia, Tasmania and the Australian Capital Territory prohibit all GM food crop production. New South Wales and Western Australia have issued orders allowing the commercial cultivation of GM canola while Victoria allowed its moratorium to expire.

**Past reviews have concluded that moratoria affect agriculture**

Issues relating to GM crops were raised during the Productivity Commission’s 2007 review of regulatory burdens on businesses in the primary sector. Some participants contended that Australia needed a nationally consistent framework that regulates gene technologies and products thereof rigorously, scientifically and transparently in all respects—the inference being that the moratoria introduce inconsistency into an otherwise uniform system. In their view, the moratoria were preventing them from accessing the latest farm technologies (which the GTR had approved) and reducing the commercial incentive for research companies to invest in developing advanced crop varieties (Productivity Commission 2007, VFF 2007). Identical issues have been raised in other reviews (Box 11). While these issues still prevail in some states, subsequent lifting of moratoria by other states years later raises questions of timeliness in decision-making.
Overview of recent reviews of Australia’s gene technology legislation

Although the Act enjoys broad stakeholder support insofar as it focuses on human health and safety, and the environment, recent reviews have concluded that regulatory inconsistency (that is, state moratoria) continues to impede potential productivity gains. This issue has been raised by several recent reviews, namely: the Statutory Review Panel (2006), the Productivity Commission (2007) review of regulatory burdens and the Allen Consulting Group (2011) review of the Act.

The major issue raised in the Statutory Review in relation to the IGA was the extent to which State moratoria on the growing of GM crops had undermined a nationally consistent framework. The Review concluded moratoria were negatively affecting the agricultural and research sectors by halting the path to market for GM food crops that had been approved for commercial release by the GTR. The Panel made two recommendations aimed at restoring consistency across the national scheme:

- Rec. 9.1: The Review recommends that the Commonwealth and States through the GTMC reconfirm their commitment to a nationally consistent scheme for gene technology and include a nationally consistent transparent approach to market considerations as soon as practicable.
- Rec. 9.2: The Review recommends that the Commonwealth and States work together to develop a national framework for co-existence for non-GM and GM crops to address market considerations.

Following the 2006 Review, all jurisdictions reaffirmed their commitment to a nationally consistent scheme for gene technology, except to the extent that it related to market considerations. More specifically, Queensland, Tasmania, Western Australia and South Australia did not agree to a nationally consistent, transparent approach to market considerations (part of rec. 9.1). In addition, Tasmania and Western Australia did not agree to recommendation 9.2 (Australian, State & Territory Governments 2006), suggesting these states had no wish to develop such a national coexistence framework at that time.

The 2011 review of the Act (Allen Consulting 2011) also concluded that there continue to be variations in the implementation of Australia’s regulation of gene technology and attendant concerns relating to the moratoria. Allen Consulting (2011, rec. 5) recommended that: ‘Those jurisdictions with GM moratoria that have not been reviewed in the last three years commit to reviewing them by the end of 2014.’ The Australian, state and territory governments are yet to respond to the 2011 Review.

The Productivity Commission (2007) concluded there was little action to be taken by the Australian Government. It had not received any complaints about the national GTR assessment framework and saw no case for proposing changes to it. Although the Commission suggested the States consider requiring a more thorough impact analysis and risk assessment before making a decision on GM crops already approved by the GTR, it did not see a clear role for the Australian Government to act in this respect:

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 (Productivity Commission 2007, p. 145).

The Australian Government accepted the Commission’s assessment, reiterating that:

The Commonwealth Government’s policy is to support the existing national framework for management and regulation of gene technology. Decisions about the future of the moratoria are a matter for state and territory governments (Australian Government 2008, p. 33).

Extent of progress in addressing the issues

Although the regulatory environment governing commercial GM cropping has changed little since the Productivity Commission’s (2007) review, there have been two notable developments:

- some states have lifted moratoria on GM canola
- industry has developed a coexistence strategy for GM and non-GM crops.
Three states that had moratoria in place now permit commercial production of GM canola (see Table 2). GM canola was approved for commercial release in New South Wales in 2008 and in Western Australia in 2010. The Victorian moratorium on GM canola was allowed to lapse in 2008 following the Nossal Review (2007). The default position in Victoria is that all GTR-approved GM food crops may be grown commercially unless an order prohibiting their cultivation is made. However, given these moratoria lasted for years, questions could be raised about whether future decisions regarding commercial release could be made in shorter time frames.

Table 2 Duration of moratoria over commercial cultivation of GM food crops

<table>
<thead>
<tr>
<th>State or territory</th>
<th>Moratorium imposed</th>
<th>Imposed</th>
<th>Last review announced</th>
<th>Lifted / extended</th>
<th>Duration from last review (days)</th>
<th>Duration of moratorium (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Capital Territory</td>
<td>All GM food crops</td>
<td>10 Jul 2004&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td>Still in force&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Specified GM food crops</td>
<td>25 Jun 2003&lt;sup&gt;b&lt;/sup&gt;</td>
<td>16 Jul 2007&lt;sup&gt;c&lt;/sup&gt;</td>
<td>Lifted 14 Mar 2008 on GM canola&lt;sup&gt;d&lt;/sup&gt;</td>
<td>242</td>
<td>1724</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>None</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Queensland</td>
<td>None</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Australia</td>
<td>All GM food crops</td>
<td>29 Apr 2004&lt;sup&gt;e&lt;/sup&gt;</td>
<td>28 Jun 2007&lt;sup&gt;f&lt;/sup&gt;</td>
<td>Extended 28 April 2008 until 1 Sep 2019&lt;sup&gt;g&lt;/sup&gt;</td>
<td>305</td>
<td>Still in force</td>
</tr>
<tr>
<td>Tasmania</td>
<td>All GM crops</td>
<td>16 Nov 2004&lt;sup&gt;h&lt;/sup&gt;</td>
<td>25 Jun 2013&lt;sup&gt;i&lt;/sup&gt;</td>
<td>Extended 20 May 2009 until Nov 2014&lt;sup&gt;j&lt;/sup&gt;</td>
<td>Report due end 2013</td>
<td>Still in force</td>
</tr>
<tr>
<td>Victoria</td>
<td>GM canola</td>
<td>11 May 2004&lt;sup&gt;k&lt;/sup&gt;</td>
<td>22 May 2007&lt;sup&gt;m&lt;/sup&gt;</td>
<td>Lifted 29 Feb 2008&lt;sup&gt;l&lt;/sup&gt;</td>
<td>283</td>
<td>1389</td>
</tr>
<tr>
<td>Western Australia</td>
<td>All GM crops</td>
<td>22 Mar 2004&lt;sup&gt;n&lt;/sup&gt;</td>
<td>16 Jul 2009&lt;sup&gt;o&lt;/sup&gt;</td>
<td>Lifted 25 Jan 2010 on GM canola&lt;sup&gt;p&lt;/sup&gt;</td>
<td>193</td>
<td>2135</td>
</tr>
</tbody>
</table>

Sources: <sup>a</sup> Gene Technology (GM Crop Moratorium) Act 2004 (ACT), <sup>b</sup> Gene Technology (GM Crop Moratorium) Act 2003 (NSW), <sup>c</sup> NSW DPI 2007, <sup>d</sup> NSW DPI 2008, <sup>e</sup> Genetically Modified Crops Management Regulations 2008 (SA) v. 17 April 2008, <sup>f</sup> Genetically Modified Crop Advisory Committee 2007, <sup>g</sup> Genetically Modified Crops Management Regulations 2008 (SA) v. 28 April 2008, <sup>h</sup> Parliament of Tasmania Joint Select Committee 2008, <sup>i</sup> Tasmanian Government DPPIPWE 2013, <sup>j</sup> Tasmanian Government PIW 2008, <sup>k</sup> Control of Genetically Modified Crops Act 2004 (Vic), <sup>l</sup> Independent Review Panel 2007, <sup>m</sup> Calcutt 2009, <sup>n</sup> Western Australian Government Gazette No. 14, 29 January 2010, <sup>o</sup> Victorian Department of Agriculture, Fish and Energy. Note: Excludes GM cotton and GM ornamental flowers.

Prior to the moratoria being lifted, the Australian, state and territory governments were jointly developing a National Framework to Develop Coexistence Strategies for GM and Non-GM Crops (Mewett et al. 2008). The framework provided a nationally consistent, non-legislative basis for developing industry-specific, market-driven strategies. It was based on the principle of industry management overseen by government for those states that have endorsed the use of GM crops. Although the GTMC and the Primary Industries Ministerial Council (now Standing Council on Primary Industries) have both noted the framework (PIMC 2008; Mewett et al. 2008), production of GM canola commenced before it was finalised, under industry-initiated arrangements.
In 2008, major stakeholders in the grains industry developed and endorsed a strategy to ensure choice between GM and non-GM crops along the supply chain (market choice), as outlined in the document *Delivering market choice with GM canola* (Grain Trade Australia and Australian Oilseeds Federation 2009a). A key component of the strategy involves training supply chain participants in industry codes of practice, and best agricultural or manufacturing practice. The object was to build industry capacity to ‘provide the necessary certainty and confidence to supply chain participants, consumers and governments that GM canola and its products will be managed to meet market and customer requirements’.

Underpinning the co-existence strategy are two quality standards for marketing canola crops: CS01 and CS01-A. The Australian canola industry has historically recognised one grade of canola (CS01), which all canola must meet (GM and non-GM). Following the lifting of restrictions on the commercial production of GM canola in NSW and Victoria, Grain Trade Australia and the Australian Oilseeds Federation introduced a second for declared non-GM canola (CS01-A).

All quality and trade parameters for CS01-A are identical to CS01, but with the additional requirement that any adventitious presence of material from licensed GM crops must not exceed 0.9 per cent, the same threshold applied in Europe (Regulation (EC) No 1829/2003 of The European Parliament). Industry has released a report indicating that the market choice protocols adopted by industry in 2008 were effective and no revision of the protocols was required at that time (Grain Trade Australia & Australian Oilseeds Federation 2009b).

**Scope for improving the regulatory arrangements**

Stakeholders have expressed a range of views concerning how the current arrangements could be improved (Statutory Review Panel 2006). For the Victorian Farmers’ Federation, which was consulted in the course of this study, the immediacy of the issue abated following the lifting of the ban on GM canola in Victoria. From their perspective, further consideration of GM policy is unlikely to occur before another commercial release, in their view, most probably in another country.

Given the persistence of the broader issue and the currency of existing Australian, state and territory government policy objectives, scope for reducing the regulatory burden on agricultural businesses largely lies in improving the consistency of the national system and the timeliness of state decision-making. However, there are opportunities for the Australian Government to consider potential roles in addressing these issues.

**Consistency**

The main issue concerning participants to the Productivity Commission’s review was the imposition of state moratoria which, in their view, delayed commercial cultivation and eroded national regulatory consistency. Insofar as some states have elected to deal with perceived risks to markets by imposing moratoria on growing GM crops, the consistency of the national scheme is challenged (Tranter 2003). The varying extent to which the states have controlled commercial releases raises the possibility of efficiency gains through a uniform approach. Certainly the differing approaches raise questions about the efficiency of the national system as a whole, let alone whether each approach is individually optimal and in the best interest of each state.

As noted above, there have been calls to improve the consistency of the arrangements for many years, implying there is likely to be scope for improvement. In allowing states to designate GM or non-GM areas, the uniformity of Australia’s GMO regulation has, in Ludlow’s view, been ‘destroyed’. The independent review of the Act (Statutory Review Panel 2006) also pointed to the extent to which state moratoria on the growing of GM crops had undermined the nationally consistent framework which the IGA was intended to support.
The costs of a multifarious national system were recognised early on by policy-makers designing the scheme (House of Representatives 2000). Significant concerns included the additional costs to governments administering the scheme and businesses complying with different jurisdictional requirements (such as transporting GM crops across state boundaries). For example, technology developers would incur additional costs where they have to consult with, and apply to, each state. In addition, inconsistent decision-making could, in their view, have broader consequences to the extent it eroded community confidence in the quality of government regulation to safely manage GMOs.

The current state and territory regulation of market issues associated with GMOs is counter to many other areas of government regulation where policy-makers have been moving towards reducing business cost burdens by harmonising regulation across jurisdictions. Policy areas that have been, or are being, investigated include: workplace health and safety; national occupational licensing; road and rail transport; and environmental approvals (Productivity Commission 2012a).

**Timeliness in decision-making**

There is potentially scope for states to improve their timeliness in approving the commercial cultivation of GM food crops. While acknowledging that GM canola was the first GM food crop grown in Australia, the duration of the moratoria on GM canola varied substantially between states that ultimately approved its release: from 1388 days in Victoria to 2135 days in Western Australia (Table 2).

Reducing the delay between GTR approval and approval for cultivation from the state governments is an important issue because there are many GM crops currently being trialled in Australia, many of which are food crops (Table 3). Earlier access to new technologies can be productivity-enhancing insofar as it enables innovative farmers to realise the benefits from adoption sooner. Given that past timelines for approvals by states have numbered years, the potential benefits could be significant.

Under the current arrangements, there are three factors that constrain states’ ability to reduce assessment times.

- **The ad hoc regulatory path to market potentially lengthens assessment times.** The reasons behind the different state approaches are complex, but they largely reflect different responses to risk (Ludlow 2004). In the future, comprehensive, timely information on the benefits and costs of immediate release and the value of the option to delay commercial release of GM crops could expedite states and territories’ decision-making on whether or not they should approve the commercial release of GM crops.

- **Individual states may have little incentive to shorten overall assessment periods.** The benefits to a state pursuing a first mover advantage may be offset by other states ‘free riding’ off their supporting research and assessment processes.

- **The current path to market is largely linear,** with individual approval steps completed in sequence (Figure 3). In the case of GM canola, four years passed between the GTR approving commercial release and the first state allowing commercial cultivation. A delay of four years represents a significant burden that could have been partly avoided with timely supporting research.

The Australian Government is exploring the path to market issue in conjunction with the states, in response to declining productivity growth in some agricultural industries. In particular, the Department of Agriculture is leading a project focussed on developing a national biotechnology strategy under the PISC Productivity and Regulatory Reform Committee Agricultural
Productivity work plan. Specifically, the strategy seeks to address constraints to the adoption of biotechnology in agriculture and to outline a clear path to market for emerging biotechnology applications. The Department of Agriculture is scheduled to complete this initiative by late 2014.

### Table 3 Licences issued by OGTR for trialling new types of GM crops (as at 7 Aug 2013)

<table>
<thead>
<tr>
<th>Crop and trait</th>
<th>Developer</th>
<th>Licence¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banana genetically modified for disease resistance</td>
<td>QUT</td>
<td>DIR 079/2007</td>
</tr>
<tr>
<td>—— genetically modified for enhanced nutrition</td>
<td>QUT</td>
<td>DIR 076/2007</td>
</tr>
<tr>
<td>—— genetically modified for enhanced nutrition</td>
<td>QUT</td>
<td>DIR 109</td>
</tr>
<tr>
<td>—— genetically modified for disease resistance</td>
<td>QUT</td>
<td>DIR 107</td>
</tr>
<tr>
<td>Cotton genetically modified for insect resistance and herbicide tolerance</td>
<td>Monsanto Australia Ltd</td>
<td>DIR 120</td>
</tr>
<tr>
<td>Lupin genetically modified for herbicide tolerance</td>
<td>UWA</td>
<td>DIR 117</td>
</tr>
<tr>
<td>Papaya genetically modified to delay fruit ripening and to test the expression of the introduced genes</td>
<td>UQ</td>
<td>DIR 026/2002</td>
</tr>
<tr>
<td>Perennial ryegrass and tall fescue genetically modified for improved forage qualities</td>
<td>VicDPI</td>
<td>DIR 082/2007</td>
</tr>
<tr>
<td>Pineapple plants modified for blackheart reduction and to delay flowering</td>
<td>QDPI</td>
<td>DIR 028/2002</td>
</tr>
<tr>
<td>Safflower, genetically modified for increased levels of oleic acid</td>
<td>CSIRO</td>
<td>DIR 121</td>
</tr>
<tr>
<td>Sugarcane, genetically modified, expressing sucrose isomerase</td>
<td>UQ</td>
<td>DIR 051/2004</td>
</tr>
<tr>
<td>—— genetically modified for herbicide tolerance</td>
<td>BSES Limited</td>
<td>DIR 096</td>
</tr>
<tr>
<td>—— genetically modified for altered plant growth, enhanced drought tolerance, enhanced nitrogen use efficiency, altered sucrose accumulation, and improved cellulosic ethanol production from sugarcane biomass</td>
<td>BSES Limited</td>
<td>DIR 095</td>
</tr>
<tr>
<td>—— genetically modified for altered sugar production</td>
<td>UQ</td>
<td>DIR 078/2007</td>
</tr>
<tr>
<td>—— genetically modified with altered plant architecture, enhanced water or improved nitrogen use efficiency</td>
<td>BSES Limited</td>
<td>DIR 070/2006</td>
</tr>
<tr>
<td>Wheat genetically modified for altered grain composition</td>
<td>CSIRO</td>
<td>DIR 092</td>
</tr>
<tr>
<td>—— genetically modified for drought tolerance</td>
<td>VicDPI</td>
<td>DIR 080/2007</td>
</tr>
<tr>
<td>—— genetically modified for drought tolerance</td>
<td>VicDPI</td>
<td>DIR 071/2006</td>
</tr>
<tr>
<td>Wheat and barley genetically modified for altered grain composition or nutrient utilisation efficiency</td>
<td>CSIRO</td>
<td>DIR 116</td>
</tr>
<tr>
<td>—— genetically modified for altered grain composition and nutrient utilisation efficiency</td>
<td>CSIRO</td>
<td>DIR 112</td>
</tr>
<tr>
<td>—— genetically modified for altered grain composition, nutrient utilisation efficiency, disease resistance or stress tolerance</td>
<td>CSIRO</td>
<td>DIR 111</td>
</tr>
<tr>
<td>—— genetically modified for abiotic stress tolerance</td>
<td>The University of Adelaide</td>
<td>DIR 102</td>
</tr>
<tr>
<td>—— genetically modified for altered grain composition or nutrient utilisation efficiency</td>
<td>CSIRO</td>
<td>DIR 099</td>
</tr>
<tr>
<td>—— genetically modified for enhanced nutrient utilisation efficiency</td>
<td>CSIRO</td>
<td>DIR 094</td>
</tr>
<tr>
<td>—— genetically modified for altered starch composition</td>
<td>CSIRO</td>
<td>DIR 093</td>
</tr>
<tr>
<td>—— genetically modified for enhanced tolerance to abiotic stresses or increased beta glucan</td>
<td>The University of Adelaide</td>
<td>DIR 077/2007</td>
</tr>
<tr>
<td>White clover genetically modified to resist infection by alfalfa mosaic virus</td>
<td>VicDPI</td>
<td>DIR 089/2008</td>
</tr>
<tr>
<td>—— genetically modified to resist infection by alfalfa mosaic virus</td>
<td>VicDPI</td>
<td>DIR 047/2003</td>
</tr>
</tbody>
</table>


Note: a QDPI (Queensland Department of Primary Industries), QUT (Queensland University of Technology), UQ (The University of Queensland), VicDPI (Victorian Department of Primary Industries). b Some licences are still current even though field trials have finished. Most licences for field trials require that the trial site be monitored for several seasons to ensure that no viable GMO remain at the site.
ABARES assessment

Broadly speaking, the regulatory path to market for GM food crops in Australia has changed little since the Productivity Commission’s 2007 review. While there is strong support for the overarching legislative framework, issues remain regarding the seemingly ad hoc process for approving commercial releases. In addition, it is not clear whether all parties have formally agreed that the National Framework to Develop Coexistence Strategies for GM and Non-GM Crops should necessarily shape future coexistence strategies. Given the considerable number of GM crops that could be commercialised in the future (Table 3), there is some imperative to institute greater clarity and efficiency across the national system.

While the Australian Government cannot impose consistency over state government decision-making, and the moratoria in particular, it could continue to negotiate for a shorter, well-defined regulatory path to market by providing information that would assist states to advance decision-making time frames. This would provide technology developers with a more certain investment environment. In addition, were governments able to expedite applications for commercial release by conducting some decision-making in parallel, there is a strong possibility this could lead to farmers adopting GMOs more quickly. The types of information the Australian Government could provide include supporting research on:

- the potential benefits to Australian producers and consumers from introducing new GM crops
• the potential impacts on Australia's current export markets from introducing new GM crops, including the existence or otherwise of premiums or discounts

• the nature and state of GM regulatory systems in potential export markets (market access information)

• various determinants that are likely to feed into the development of coexistence strategies for upcoming releases of new GM crop types. Identifying GM crops that may reach a commercial release stage could be predicted by looking at current field trials (Table 3) of new GM crop types and liaising with relevant technology developers and industry groups.

Finding 2

Australia's regulatory environment governing the path to market of genetically modified food crops continues to impose an unnecessary burden on many agricultural businesses through inconsistent regulation and lengthy decision-making. Although the inconsistencies relate specifically to the moratoria, which are state matters, the Australian Government could play a coordination role in negotiating for a shorter, well-defined regulatory path to market and by providing information on various market considerations, as well as information that could feed into the development of coexistence strategies.
7 Wheat Marketing

Until recently, Australia's bulk wheat exports had been highly regulated. Under 'single desk' marketing arrangements, AWB International had held a monopoly power to veto competing exports for around 60 years. In 2007, the Productivity Commission (2007) advocated reviewing the *Wheat Marketing Act 1989* (Cth) in accordance with National Competition Policy principles. Following successive reviews and concerns about AWB International's dealings with Iraq, the Australian Government abolished single desk arrangements, but introduced new regulation to ease the transition to a more competitive environment. The *Wheat Export Marketing Act 2008* (Cth), introduced in July 2008, required that bulk wheat exporters be accredited and that port infrastructure owners pass an access test to demonstrate that infrastructure can be used by competing exporters. Although amendments to the *Wheat Export Marketing Act 2008* (Cth) in 2012 have since removed the accreditation requirements, there is potential for the access test to pose an unnecessary burden if retained over the long term. While the access test appears appropriate for the moment, there would be merit in reviewing regulation regarding access to grain export port terminals prior to 1 October 2014 to inform scheduled regulatory changes.

**Background and context**

Although the single desk had its origins during the First and Second World Wars, it was in 1948 that the Australian Wheat Board (AWB) was first established as a peacetime body to market wheat and provide price stability. Changes to agricultural policy and broader economic reforms over recent decades have seen agricultural marketing in Australia gradually deregulated. While the domestic wheat market and non-bulk wheat exports were deregulated in 1989 and 1999 respectively, AWB's monopoly over bulk wheat exports remained the last area of government-mandated control. (Botterill (2010) provides an overview of wheat marketing policy in Australia.)

Participants to the Productivity Commission's (2007) review raised concerns about whether retaining single desk arrangements for Australia’s bulk wheat exports was in the public interest. Over time, increasing concerns regarding three issues had emerged as topics for debate: restrained innovation in marketing, grain supply chain costs and single desk price premiums. A turning point was an earlier review of the *Wheat Marketing Act 1989* (Cth) which received evidence that the single desk arrangements were stifling innovation in marketing, as well as in identifying and developing marketing opportunities (Irving et al. 2000). It also received conflicting arguments regarding effects on the capacity for vertical integration and the potential for cost savings along the grain supply chain. And although AWBI claimed to earn substantial price premiums earned for growers, no clear evidence of this was provided to the review. Irving et al. (2000) concluded that introducing greater competition into export wheat marketing was likely to deliver net benefits to growers and the Australian public.

Further independent reviews increased pressure for change. A Productivity Commission (2005a) review, the Regulation Task Force (2006) and the Productivity Commission's (2007) review of regulatory burdens all recommended reviewing the *Wheat Marketing Act 1989* (Cth) in accordance with stringent National Competition Policy principles. Such a review would assess and balance the costs and benefits of the single desk on competition, and consider alternative means for achieving the same result, including non-legislative approaches (COAG 1995).

**Extent of progress in reforming bulk wheat export arrangements**

In recent years, the Australian Government has made considerable progress in reforming Australia's wheat export marketing arrangements. The key issue surrounding wheat exports was laid to rest following the termination of single desk arrangements in 2008 (Box 12).
Subsequently, the \textit{Wheat Export Marketing Act 2008} (Cth) was introduced to enable competition among exporters (Burke 2008). This became the principal legislation governing the bulk export of wheat from Australia and established Wheat Export Australia (WEA), an Australian Government agency tasked with formulating and administering the Scheme.

\textbf{Box 12 The transition from a single desk to a competitive bulk wheat export market}

While various aspects of the Australian wheat market had been deregulated over time, the single desk retained veto power over the ability for competitors to export wheat in bulk until 2006. Amid concerns about AWBI’s dealings with Iraq, this power was transferred to the then Minister for Agriculture, Fisheries and Forestry. While this did not automatically imply a removal of the single desk, Minister Burke (2007) stipulated that, in future, an entity operating the monopoly on bulk wheat exports would ‘have to have complete legal separation from AWB Ltd’. The single desk was formally abolished soon after, when the Australian Government repealed the \textit{Wheat Marketing Act 1989} (Cth) and replaced it with the \textit{Wheat Export Marketing Act 2008} (Cth), effective from 1 July 2008. The new Act aims to promote the development of a bulk wheat export marketing industry that is efficient, competitive and advances the needs of wheat growers (s. 3).

The \textit{Wheat Export Marketing Act 2008} (Cth) introduced measures to ease the transition from single desk arrangements to a more competitive bulk wheat export market. The Act required bulk wheat exporters to be accredited by WEA and, for those that own, operate, or control port terminal facilities, to pass an access test. Although later abolished, accreditation aimed to reassure growers that exporters were reputable and able to make their payments (although accreditation did not offer any financial guarantees). The Act also required bulk exporters to provide detailed information to support accreditation applications, and complete Annual Export and Compliance Reports.

The port access test, which is still operating, aims to ensure that all exporters have fair and transparent access to port infrastructure. It requires exporters with port infrastructure to demonstrate they are providing other exporters with reasonable access to wheat handling and storage infrastructure. Initially, the WEA was given the responsibility of regulating access to port terminal facilities ‘to avoid regional monopolies unfairly controlling infrastructure necessary to export wheat in bulk quantities’ (Burke 2008, p. 31). Specifically, infrastructure providers must comply with continuous disclosure rules which require daily port operation schedules and information on procedures for gaining port access to be published by terminal service providers.

In 2009, the Australian Government asked the Productivity Commission to examine the operation and effectiveness of Australia’s wheat export marketing arrangements. The Productivity Commission (2010) considered the move to greater export competition to have occurred smoothly. It found the wheat industry had performed well under the \textit{Wheat Export Marketing Act 2008} (Cth) and that Australian growers have the flexibility to choose from a range of bulk exporters. However, it concluded that the benefits of exporter accreditation and the access test would diminish over time, leaving only the costs (for example, they could hinder adaptation to new export marketing conditions and entrench barriers to market entry). As a result, exporter accreditation and the access test had the potential to impose an increasing regulatory burden on industry over time. Subsequently, the Commission (2010) recommended that accreditation requirements be abolished on 30 September 2011 (reco. 4.1). While it deemed the port access test appropriate during the transition period, the access test could potentially pose an unnecessary regulatory burden if retained over the long term. Hence, the Productivity Commission (2010) recommended retaining the requirement for grain port terminal operators to pass the access test as a condition for exporting bulk wheat until 30 September 2014, after which it should be abolished (reco. 5.2).
In response, the Australian Government (2011) agreed that the Wheat Export Accreditation Scheme 2008 should be abolished, but that this should occur on 30 September 2012, one year later than recommended. The Australian Government (2011) also agreed to abolish the port access test requirements on 30 September 2014.

In March 2012, the Wheat Export Marketing Amendment Bill 2012 was introduced to Parliament to implement the Australian Government’s response to the Productivity Commission (2010) review of wheat export marketing arrangements. The Wheat Export Marketing Amendment Act 2012 (Cth) came into force in December 2012 and, in doing so, abolished the Wheat Export Accreditation Scheme and Wheat Exports Australia. The Australian Competition and Consumer Commission is now responsible for monitoring port terminal access undertakings and compliance with continuous disclosure rules. The legislative amendments also provided for the retention of the access test until 30 September 2014. The access test will then be abolished if a mandatory industry code of conduct has been established to manage access to grain export infrastructure.

Scope for improving regulatory arrangements

The scope for the Australian Government to improve existing regulation lies with ensuring it removes the port access test as soon as appropriate. The Productivity Commission (2010) considered that, following the legislated cessation of the access test in 2014, regulation of port infrastructure access would be sufficient under Part IIIA of the new Competition and Consumer Act 2010 (Cth) (formerly the Trade Practices Act). The Commission (2010) also noted that, ideally, port terminal operators would supplement continuous disclosure rules with a voluntary code of conduct from 1 October 2014. However, under the Wheat Export Marketing Amendment Act 2012 (Cth) (s. 2), the port access test may not be abolished if the Minister has not approved a mandatory industry code of conduct before 1 October 2014.

Continuing the access test beyond that necessary to ease the transition to new marketing arrangements could impose an unnecessary regulatory burden on bulk wheat exporters (Productivity Commission 2010). Over the long term, the access test has the potential to significantly hamper, rather than promote, ‘an efficient and profitable bulk wheat export marketing industry’, which is an objective of the Wheat Export Marketing Act 2008 (Cth) (s. 3). This is because the test may serve as a disincentive to invest in infrastructure. For example, companies may deliberately build smaller facilities to limit prospective use by third parties. In addition, potential investors may choose not to invest in rival infrastructure to the extent they believe that regulation ensures favourable terms of access to existing infrastructure.

ABARES assessment

The Australian Government has made considerable progress in improving wheat industry efficiency by enabling competition among bulk wheat exporters. However, allowing the port access test to remain in place beyond a transitional period could potentially impose an unnecessary burden on bulk wheat exporters. There is merit in reviewing access to grain export port terminals well in advance of the scheduled legislative changes on 30 September 2014, to ensure an adequate evidence base to determine optimal arrangements. In addition, the Australian Government could consider whether its support for the design of a mandatory industry code to manage access to grain export infrastructure is appropriate.

Finding 3

There is merit in the Australian Government reviewing regulation regarding access to grain export port terminals well in advance of 30 September 2014 and its support for the design of a mandatory industry code to manage access to grain export infrastructure.
8 Australian Animal Welfare Strategy

State and territory governments codify societal expectations regarding minimum standards of animal welfare through their own legislation. However under the Australian Animal Welfare Strategy (AAWS), which the then Primary Industries Ministerial Council (now Standing Council on Primary Industries) endorsed in 2004, the Australian Government has coordinated the development of a framework to harmonise legislation across the jurisdictions. Although the Australian Government does not directly impose any regulatory burden on business through the AAWS, participants to the Productivity Commission (2007) review raised concerns regarding the AAWS’s slow progress in achieving uniform national regulation and standards (Red Meat Industry 2007). Since then, the Australian, state and territory governments and industry have reviewed and updated the AAWS and developed a National Implementation Plan for 2010-2014 (DAFF 2010). Other issues specific to live animal exports and domestic livestock transport are discussed later in this report.

Responsibility for animal welfare is spread across the three tiers of government. State and territory governments are primarily responsible for animal welfare, which includes:

- preparing and enforcing animal welfare legislation and policies that apply to all land within Australia’s territorial boundaries
- providing appropriate institutional frameworks and programs, and informing the public about them.

In part, this has involved delegating responsibility for the management of companion animals to Local Governments.

In domestic animal welfare issues, the Australian Government is limited to a coordination role. The Constitution provides few Commonwealth powers that could encompass animal welfare, with those relating to international trade (s. 51(i)) and international treaties (s. 51(xxix)) being exceptions (DAFF 2007). Through the AAWS, the Australian Government leads, coordinates and contributes funding to various animal welfare programs (Animal Health Australia 2011). However, it does not seek to create or implement regulation through the AAWS.

One of the Strategy’s objectives is to promote the development and application of clear, contemporary and consistent animal welfare laws, policies and arrangements across states and territories (Box 13). Inconsistent animal welfare arrangements can increase costs for primary sector businesses that operate across borders, as they seek to comply with multiple regulatory regimes. It can also increase their costs to establish or operate national quality assurance schemes and training programs.

The AAWS provides a framework through which key stakeholders, including state and territory governments, are able to develop matching animal welfare legislation, codes of practice and best practice guidelines (DAFF 2010). More specifically, it aims to assist stakeholders develop national structures and arrangements for animal welfare, and provide practical support for broad consultation processes to influence animal welfare policy development. Regulation of animal welfare remains the responsibility of state and territory governments and is co-ordinated nationally by agreement through the Standing Council on Primary Industries.

While stakeholders to the 2007 Productivity Commission review raised concerns about the AAWS’s slow progress, the Australian Government has limited capacity to intervene directly in
matters that are largely the realm of the states and territories. The Productivity Commission (2007) concluded that ‘there appears to be scope to more quickly develop and implement animal welfare standards under the Australian Animal Welfare Strategy’. However, many factors beyond the Australian Government’s reach determine progress under the AAWS, including immediate priorities of state and territory governments. In addition, the AAWS will not directly produce any animal welfare regulation. Rather, it is the means by which the Australian Government coordinates stakeholders, as they proceed to develop and implement nationally consistent animal welfare standards.

Nevertheless, the Primary Industries Standing Committee established a high level animal welfare committee in 2012 to apply strategic leadership to national animal welfare issues. One of the committee’s priorities is to guide the timely development of national cattle and sheep standards and guidelines. In addition, the committee has agreed that the current approach to developing standards requires review to streamline future action.

**Finding 4**

The Australian Government does not regulate the welfare of animals destined for the domestic market. Instead, it coordinates stakeholders as they develop regulation through the Australian Animal Welfare Strategy. Although industry raised concerns about slow progress in implementing the Strategy, the Australian Government has limited capacity to intervene directly in matters that are largely the realm of state and territory governments.

**Box 13 The Australian Animal Welfare Strategy**

The Australian Animal Welfare Strategy (AAWS) provides a national framework to identify animal welfare priorities, coordinate stakeholder action and improve consistency across all animal use sectors. The AAWS was first endorsed by the then Primary Industries Ministerial Council (now Standing Council on Primary Industries) in 2004, but was revised in 2010. The 2010 Strategy aims ‘to deliver sustainable improvements to the welfare of all animals’, via four specific goals:

1) the welfare needs of animals are understood and met
2) national systems deliver consistent animal welfare outcomes and give priority to ongoing improvements
3) people make ethical decisions regarding animal welfare, supported by knowledge and skills
4) Australia is actively engaged in international partnerships and developments to improve animal welfare.

Underpinning the AAWS is the international definition of animal welfare, which it adopted from the World Organisation for Animal Health (OIE). The OIE (2012) defined animal welfare as ‘how an animal is coping with the conditions in which it lives’ and described what a good state of welfare entails.

The Strategy was jointly developed by the Australian Government, state and territory governments, industry and the community. However, state and territory governments have primary responsibility for implementing and enforcing animal welfare policies and legislation developed through the AAWS. Broadly speaking, the input and action of stakeholders across all industry sectors and all levels of government is required to achieve the Strategy’s objectives.

In 2008-09, the AAWS underwent review (Gemmell 2010) to identify opportunities for improvement. In response to review recommendations, the revised AAWS and National Implementation Plan 2010-14 includes improvements to program administration, transparency and stakeholder engagement (Animal Health Australia 2011). In particular, the National Implementation Plan now more clearly describes target timeframes, expected benefits and measures of success to enable effective program management and monitoring.
Livestock exports

Over several decades, Australia’s livestock export industry has evolved from being largely self-regulated to operating under considerable government regulation. Now, legislation at all levels of government (Commonwealth, state and territory, and local) interact with industry standards and codes of practice to form Australia’s regulatory framework for exporting livestock. Under the Constitution, the Australian Government has responsibility for livestock exports where they relate to trade and international relations. In response to community concerns about animal welfare, the Australian Government regulates the export of feeder and slaughter livestock under the Exporter Supply Chain Assurance System. However, state and territory governments are responsible for preparing and enforcing legislation to protect animal welfare within Australia.

Participants to the Productivity Commission’s (2007) review raised various concerns about the burden of livestock export regulation on business, in particular:

- overly complex and poorly targeted health and welfare requirements
- overly prescriptive requirements of Marine Orders Part 43.

Health and welfare requirements of livestock for export

Background and context

While state and territory governments are responsible for preparing and enforcing legislation to protect animal welfare within Australia, the Australian Government can legislate for the protection of animal welfare where it relates to the commercial export of live animals. Given its constitutional (s. 51(i)) responsibilities for international trade and commerce, the Australian Government regulates livestock exports to maintain market access by ensuring that consignments meet importing country requirements (Farmer 2011). The Department of Agriculture is responsible for administering the Export Control Act 1982 (Cth), the Australian Meat and Livestock Industry Act 1997 (Cth) and their subordinate legislation.

The Australian Government requires livestock exporters to hold a licence and comply with the Australian Standards for the Export of Livestock (ASEL) before granting permission to export livestock (Australian Government 2012a). The standards outline basic animal health and welfare requirements along the livestock export chain, including: sourcing animals, land transport, pre-export holding within Australia, vessel preparation and loading, and during the voyage up to disembarkation in the importing country (DAFF 2012a). The ASEL is based on the principle that sourcing livestock that are fit to travel is ‘critical to successful health and welfare outcomes during export’ (DAFF 2011a). In addition, the ASEL requires that livestock exports meet relevant state/territory and importing country requirements (DAFF 2011a). It also reflects aspects of the national Model Codes of Practice for the Welfare of Animals for various livestock species (DAFF 2011a).

Participants to the Productivity Commission’s (2007) review contended that regulation of livestock exports is overly complex and poorly targeted to meet animal health and welfare objectives. For example, the Red Meat Industry (2007) claimed that compliance costs had risen significantly following increased regulation and monitoring. In addition, the South Australian Government (2007) questioned whether increased regulation had improved animal welfare.
The Productivity Commission (2007) responded by proposing an independent evaluation of regulations that the Department of Agriculture administers, which arose from an earlier review (Keniry et al. 2003). The Australian Government (2008) agreed, in principle, but emphasised the importance of community concern and ongoing improvements to animal health and welfare outcomes.

**Extent of progress in addressing the issue**

Since 2007, the cost that livestock export regulation imposes on primary sector businesses has increased. Monitoring and enforcement costs are borne directly by exporters, as the Department of Agriculture delivers services such as inspection of live animals for export and issues livestock export licences on a cost-recovery basis. In particular, compliance monitoring has increased and businesses must pay for and adhere to additional animal handling requirements and administrative processes. With the introduction of requirements under the Exporter Supply Chain Assurance System (ESCAS), Australia is the only country requiring exporters to ensure specific animal welfare outcomes for livestock exports after arrival in the importing country (DAFF 2012b).

Heightened community expectations regarding the welfare of live animals for export throughout the supply chain have led the Australian Government to introduce additional regulation to the live export sector. In recent years, well-publicised animal welfare incidents and greater community awareness of overseas animal handling and slaughtering practices have affected the regulatory environment for livestock export (Box 14). This has spurred the Australian Government’s efforts to improve animal welfare outcomes in the live export sector and hastened the process of regulatory review and improvement.

**Box 14 Recent events affecting the regulatory environment for live animal exporters**

On 31 May 2011, the then Minister for Agriculture, Fisheries and Forestry announced the Independent Review into Australia’s livestock export trade (Farmer Review). This followed the airing on 30 May 2011 of footage filmed in Indonesian abattoirs on the ABC’s Four Corners program that showed mistreatment of cattle. On 8 June 2011, Minister Ludwig also suspended exports of all livestock for slaughter to Indonesia. The Farmer Review was announced in light of ‘the Australian Government’s wish to see a sustainable trade and to have assurance of animal welfare necessary to the acceptance of that trade by the Australian community’ (Farmer 2011 p. 1).

The ESCAS was progressively introduced to Australia’s live animal export markets following the suspension of live cattle exports to Indonesia. On 6 July 2011, the then Minister for Agriculture, Fisheries and Forestry announced the resumption of live cattle (for slaughter and feeder) exports to Indonesia where adherence to international animal welfare standards could be ensured throughout the supply chain. Under the Australian Meat and Live-Stock Industry (Export of Live-Stock to the Republic of Indonesia) Order 2011 (No. 2), exporters were required to ensure that livestock would be transported, handled and slaughtered according to the World Organisation for Animal Health (OIE) standards. This was formalised in ESCAS, which was progressively applied to all markets that import Australian livestock for feeder or slaughter purposes. As of 31 December 2012, all markets that receive Australian livestock for slaughter are required to comply with the new regulatory framework.

ESCAS aims to ensure animal welfare outcomes are achieved through control and traceability along the supply chain. It was introduced through changes to subordinate legislation under the Export Control Act 1982 (Cth) and the Australian Meat and Live-stock Industry Act 1997 (Cth). Under ESCAS, Australian businesses seeking permission to export livestock must supply evidence that:
animals will be handled and processed to the point of slaughter according to the internationally accepted requirements for animal welfare established by the OIE

they can control and monitor the movement of animals in their supply chain

their supply chain is independently audited to ensure that it complies with regulation (Australian Government 2012a).

In addition to the direct costs, increased regulation can potentially impose indirect costs on Australian exporters by reducing demand by overseas buyers, to the extent that it imposes obligations on them. For example, some may be unwilling to comply with whole-of-supply-chain animal welfare regulation because of the costs involved in changing their animal handling practices (Gleeson et al. 2012).

The limited authority of the Australian Government over industry practices in other countries has affected the extent of improvements in animal welfare outcomes for live exports. Animal welfare concerns primarily relate to the handling of animals overseas, but the Australian Government cannot exert legal jurisdiction in a foreign country, or regulate on matters of overseas compliance and enforcement (Farmer 2011). Farmer (2011) found that action toward extending Australia’s jurisdiction overseas would not only be legally complex, but also may raise sovereignty concerns for foreign governments. DAFF (2012c) (now the Department of Agriculture) suggested these difficulties may be overcome and compliance with ESCAS ensured by:

- vertically integrating the supply chain
- negotiating formal commercial arrangements between the exporter and other supply chain participants.

While the introduction of additional regulation has overshadowed efforts to reduce unnecessary regulatory burdens, some progress has been made through the Export Certification Reform Package (ECRP) announced by the Australian Government in 2009. The ECRP led to the establishment of six Ministerial Taskforces, composed of industry representatives of six major export commodities, including live animals. Animal welfare was a reform priority of the Task Force set up under the package to review and streamline the process for exporting live animals. The Department of Agriculture is currently implementing projects, in consultation with industry that aim to improve the efficiency and cost-effectiveness of export certification and inspection services. In 2010, the Task Force defined points along the live export supply chain that pose a risk to animal welfare and devised a plan to make those most responsible for addressing these risks accountable (DAFF 2012d).

A comprehensive review of the Australian Standards for the Export of Livestock is currently being undertaken by the ASEL Review Steering Committee, in line with the Australian Government’s response to the Independent Review of Australia’s Livestock Export Trade (Farmer 2011, reco. 6). Although the standards were reviewed in 2008 and early in 2011, Farmer (2011) recommended that an additional, more comprehensive review of the ASEL be undertaken, including: scope, clarity and accountability, flexibility, sanctions and review procedures. The Australian Government agreed and established a Steering Committee to undertake the review. The Committee includes representatives of the Australian Veterinary Association, the Australian Livestock Exporter’s Council, the Australian Livestock Transporters Association, the RSPCA and each state and territory government involved in the livestock export trade. The review is scheduled to be completed and the new standards implemented in 2014.
Scope for further improving regulatory arrangements

Thus far, there appears to be scope to further improve arrangements by reducing the complexity of live animal export regulation, particularly the ASEL. However, the extent of Australian Government action needed to reduce unnecessary burdens is not yet clear. On the one hand, new regulation directed at achieving better animal welfare outcomes might necessitate an increase in the compliance burden. On the other hand, the current ASEL review could lead to a reduction of the unnecessary burden resulting from ambiguous compliance requirements.

While the Productivity Commission (2007) suggested that less burdensome self-regulatory options be considered when reviewing livestock export regulation, the Australian Government (2008) does not support a return to industry self-regulation. Regarding live exports, the then Minister for Agriculture, Fisheries and Forestry (Ludwig 2011) stated that prior regulatory efforts, including self-regulation, had not improved animal welfare outcomes far enough or fast enough. As a result, Minister Ludwig (2011) concluded that:

Self regulation for this industry has been a failure. This failure has required the government to step in and regulate the conduct of the industry throughout the supply chain from the paddock in Australia to processing in international facilities.

Nonetheless, the Farmer Review identified some areas for additional improvement to live export regulation. In particular, Farmer (2011) suggested the ASEL could be made less complex by improving the clarity of wording and delegating responsibilities for achieving animal welfare outcomes. For example, stakeholders found some wording unclear and some standards poorly defined, making interpretation difficult and increasing the likelihood of receiving inconsistent advice (Farmer 2011). Stakeholders also considered some standards to be impossible or difficult to enforce. Farmer (2011) stated that standards need to be clear, consistent, verifiable and essential, which was defined as being causally related with mortality or otherwise scientifically based. In this regard, the current, comprehensive review of the ASEL has the potential to lead to improved regulatory arrangements.

ABARES assessment

Since 2007, regulatory costs to livestock exporters have increased in response to heightened community awareness and concern about animal welfare. The imposition of additional regulation of the supply chain has imposed greater compliance costs. In addition, it has the potential to reduce access to foreign markets, as well as imposing adjustment costs on exporters. These costs must be balanced against the benefit society derives from realising animal welfare standards beyond those required by importing countries. While examining the efficiency of live animal export regulation is outside the scope of this study, the Terms of Reference for a Review of the Australian Standards for the Export of Livestock provides scope for the Steering Committee to improve the clarity and ease of interpretation of the Standards.

Finding 5

Since 2007, regulatory costs to livestock exporters have increased in response to heightened community awareness and concern about animal welfare. However, opportunities to achieve welfare objectives at lower cost may be identified through the current review of the Australian Standards for the Export of Livestock being conducted by Australian, state and territory governments, in conjunction with the Australian Livestock Exporters’ Council, the Australian Livestock Transporters Association, the Australian Veterinary Association and the RSPCA (Australia).
Overly prescriptive requirements of Marine Orders Part 43

Background and context

Part 43 of the *Australian Commonwealth Marine Orders* aims to outline safety requirements and provide for the certification of ships that carry livestock as cargo (s. 1.1). It also ensures Australia’s compliance with its obligations as a signatory to various international agreements, notably the *International Convention for the Prevention of Pollution from Ships* (MARPOL). The Marine Orders describe the technical requirements that ensure compliance with the *Navigation Act 2012* (Cth), among other legislation. Part 43 of the Marine Orders is administered by the Australian Maritime Safety Authority (AMSA) and details the requirements for ship fit-out, water and fodder supplies, ventilation and livestock loading densities. It contains specific provisions for reporting mortalities on ships to AMSA, as part of end-of-voyage reports that must be completed by masters of ships.

Participants to the Productivity Commission’s (2007) review considered the regulation of live animal exports by ship to be overly prescriptive, particularly Marine Orders Part 43. In response, the Commission proposed an independent review of the Orders by 2010, in light of the Orders’ purpose to ensure that Australia fulfils its obligations under international treaties. Specifically, it envisaged the review would assess the extent to which the Order’s objectives were achieved and at what cost, compared to alternatives, including industry self-regulation. The Australian Government (2008) agreed in principle, but emphasised the value derived from good animal health and welfare by the Australian community. Hence, the Australian Government (2008) did not consider self-regulation an effective nor practical option for the livestock shipping sector.

Extent of progress in addressing the issue

Since 2007, limited progress has been made toward addressing potentially over-prescriptive requirements of the Marine Orders Part 43. No amendment to the Orders has occurred since 2006. Although the Australian Government supported an *independent* review of the Orders, such a review has not eventuated. Farmer (2011) conducted an independent review of Australia’s livestock export trade, but he did not address the Marine Orders Part 43 in detail. As a result, there has been limited independent advice as to whether: 1) the regulatory objectives are being achieved, 2) the costs of current specifications under the Orders are necessary to achieve the animal health and welfare objectives of domestic and international regulation, and 3) there is potential for cost-effective regulatory improvement.

Instead, the national regulator under the *Navigation Act 2012* (Cth)—the Australian Maritime Safety Authority—will review the standards for shipping and carriage of livestock under Marine Orders Part 43 (Australian Maritime Safety Authority 2012). The review is currently underway and the revised standards are expected to commence on 1 January 2014.

Scope for further improving regulatory arrangements

The full scope for further improving regulatory arrangements remains unclear, as a comprehensive and independent review of the Marine Orders Part 43 has not been undertaken. The Productivity Commission (2005b) stated that independent and transparent review processes are critical to achieving good outcomes, particularly on contentious issues; preventing backsliding by decision-makers; and promoting public understanding of the rationale for reform. Without such specific review and assessment, it is difficult to ascertain whether existing technical requirements are overly prescriptive or whether they are necessary to ensure the maintenance of good animal health and welfare.
In this regard, a transparent review process may promote public confidence in the standards for shipping and carriage of livestock under Marine Orders Part 43. The Productivity Commission (2007) raised questions about AMSA’s compliance with requirements for regulation impact statements during past amendments to the Marine Orders Part 43 and related regulation, and linked this to their lack of independence from the process. Consultation with industry representatives during the course of this study indicated that the red meat industry remains unconvinced about the need for increasingly burdensome regulation, which is particularly relevant to the conduct of upcoming amendments to the Orders. Although AMSA’s current review of the Orders involves public consultation to solicit comment on proposed changes, a review conducted independently of those affected is preferable.

**ABARES assessment**

It remains unclear whether the Marine Orders Part 43 is overly prescriptive, as an independent and detailed review of the legislative instrument has not been undertaken. Although some effort has been directed toward assessing the benefits and costs of current requirements and the potential for regulatory improvement by AMSA, it has lacked the level of detail, impartiality and transparency advocated by the Productivity Commission (2007). Both elements would better inform decision-makers and guide efforts to amend the Orders in a way that is most beneficial to Australian society.

**Finding 6**

The scope for the Australian Government to reduce costs imposed by regulation of live animal exports by ship under Marine Orders Part 43, while ensuring that animal health and welfare objectives are achieved, is unclear. Although the Australian Maritime Safety Authority has commenced a review, a detailed, independent review is likely to better assist in identifying reform options.
10 Road transport issues in agriculture

In the past, states and territories have adopted separate approaches to regulating heavy vehicles. Participants to the Productivity Commission's 2007 review raised concerns regarding regulatory inconsistency for heavy vehicles that unnecessarily increased the cost of operating in multiple jurisdictions. Since then, much progress has and is currently being made towards improving consistency through the development of a national approach to heavy vehicle regulation and a single national regulator. As significant reform to national heavy vehicle regulation is currently underway and attendant changes have not had time to take effect, the scope for further improvement cannot be determined at this point. However, the Productivity Commission is scheduled to review the economic impact of the new national framework for heavy vehicle regulation by 2016.

Background and context

Road transport regulation includes measures covering the registration, operation and charging of vehicles, and the licensing of drivers. It serves to address a range of issues relating to road safety and road wear, including by regulating vehicles (weights, dimensions, standards and designs) and speed limits. State and territory governments are responsible for these matters as the Australian Government has no such power under the Constitution.

Increased harmonisation of state-based heavy vehicle regulation since the mid-1970s has, among other things, significantly improved heavy vehicle productivity (BITRE 2011). In earlier years, the Australian, state and territory governments regulated many aspects of road transport in isolation. Disparate approaches led to uncertainty and duplication which imposed unnecessary costs and reduced incentives for businesses to invest and operate in the national transport environment (COAG Reform Council 2011a). The past wave of reforms culminated in the development of national model legislation in 1995 to provide a uniform approach to road transport regulation (BITRE 2011). Despite recent reforms, significant jurisdictional differences have remained. These are, in part, a product of the national model legislation process, which allows states and territories to implement the model law inconsistently.

The main issue raised by participants to the Productivity Commission's (2007) review related to inconsistent heavy vehicle regulation between jurisdictions, in particular, volumetric loading. Although they also raised two other key concerns, these are beyond the scope of this review (Box 15). Intergovernmental inconsistency can increase the cost to businesses operating across multiple jurisdictions. The inability to use volumetric livestock and grain loading in New South Wales in the past, which Queensland and Victoria permitted, is an example of such a cost. Volumetric loading refers to loading by space, rather than by weight.

Extent of progress in addressing issue

Governments have made considerable progress toward reducing inconsistent heavy vehicle regulation since the Productivity Commission’s review in 2007. COAG formally commenced its heavy vehicle reform program in 2008, with the signing of National Partnership Agreement to Deliver a Seamless National Economy (Box 16); the goal being to ‘deliver more consistent regulation across jurisdictions’ (COAG 2008a). More specifically, COAG aims to establish a national heavy vehicle regulator (NHVR) responsible for all vehicles over 4.5 gross tonnes (COAG 2012a). This follows the then Department of Infrastructure, Transport, Regional Development and Local Government’s (2009) finding that uniform legislation administered by a single national regulator is likely to deliver greater net benefits than alternative arrangements.
Submissions to the Productivity Commission (2007) Annual review of regulatory burdens on business: Primary Sector raised a variety of transport issues relating to agriculture. The Commission identified the following matters that particularly concerned stakeholders:
1) differences in volumetric loading rules among jurisdictions
2) overly prescriptive mass and dimension regulations
3) costs imposed on businesses by the chain of responsibility and fatigue management rules in relation to heavy vehicles.

Only the first issue falls within the scope of this review, because the Commission (2007) found the second had largely been addressed and considered the regulatory costs imposed under the third to be ‘unavoidable if health and safety objectives are to be observed’.

**Overly prescriptive mass and dimension regulations**
In its review, the Productivity Commission (2007) concluded that stakeholder concerns about overly prescriptive mass and dimension regulations for heavy vehicles had ‘been addressed with the Performance Based Standards (PBS) developed by the National Transport Commission and approved by all transport ministers in 2007’.

Since then, further progress has been made by the Standing Council on Transport and Infrastructure (and its predecessors) in approving amendments to the Standards to give the PBS Review Panel greater discretion and flexibility when assessing heavy vehicle designs. This approval followed a period during which it monitored the effect of the Standards and considered industry and jurisdictional concerns (ATC 2008). Australia’s transport ministers have also approved changes to the PBS scheme, which will come into effect when most states and territories have enacted nationally consistent laws. These changes followed a review of the PBS commissioned by the Australian Transport Council (2009), which recommended improvements and informed a regulatory impact statement considering options for implementing these improvements. The PBS scheme will move to a national framework, using the forthcoming Heavy Vehicle National Law which includes mass, dimension and loading requirements, heavy vehicle standards, registration, compliance and enforcement. The NHVR will be responsible for administering the new legislation and implementing changes, such as:
- moving to a national system for vehicle assessment and access decisions for PBS vehicles using the NHVR (previously operators negotiated access with each road manager)
- offering the option for manufacturer self-certification, so that third parties are not required to certify each vehicle (NTC 2012).

**Fatigue management and chain of responsibility regulation**
While some participants to the Productivity Commission review raised concerns that fatigue and chain of responsibility regulations were overly prescriptive, burdensome and inappropriate for the agriculture sector, the National Transport Council (Productivity Commission 2007 p. 87) viewed the regulations as necessary, stating that:
*Providing some form of ‘exemption’ for agriculture is potentially unsafe ... The complexity of fatigue reform escalates with potential risk ... The regulations are designed around risk, the size of the business is not relevant.*

While regulation surrounding fatigue management may impose a significant burden on businesses, in light of the NTC’s comments, the Productivity Commission (2007) considered the costs imposed to be necessary to achieve health and safety objectives, and current arrangements to do so efficiently.


In 2011, the first national heavy vehicle bill was agreed by federal and state transport ministers within the COAG Standing Council on Transport and Infrastructure (SCoTI) (previously the Australian Transport Council). It was subsequently introduced to the Queensland Parliament. SCoTI (2011, p. 2) claimed that proposed heavy vehicle reforms will:

*... provide major productivity gains for the economy and will reduce the compliance burden on our transport industry by ending 110 years of duplication and multiple fees ... Heavy vehicle operators will no longer have nine separate regulatory regimes to deal with.*

The aims of the Heavy Vehicle National Law are, broadly speaking, to:
- reduce compliance burdens for business
- reduce inconsistencies and duplication in regulation across states and territories.
The proposed laws also suggest a single legislative drafting process in all states and territories to reduce minor variation in legislation between jurisdictions.

**Box 16: Key events in national heavy vehicle reform since 2008**

<table>
<thead>
<tr>
<th><strong>March 2008</strong></th>
<th>COAG signs the National Partnership Agreement to Deliver a Seamless National Economy.</th>
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<tbody>
<tr>
<td><strong>September 2008</strong></td>
<td>Hon. Julia Gillard MP proposes the development of a Regulatory Impact Statement (RIS) regarding a possible single national heavy vehicle regulation, registration and licensing system.</td>
</tr>
<tr>
<td><strong>May 2009</strong></td>
<td>The then Australian Government Department of Infrastructure, Transport, Regional Development and Local Government develops a RIS based on a framework for a national system proposed by the Australian Transport Council (ATC), which includes the introduction of a national heavy vehicle regulator.</td>
</tr>
<tr>
<td><strong>July 2009</strong></td>
<td>COAG agrees to establish a single national system of laws for heavy vehicles based on existing model laws developed by the National Transport Commission and the states and territories.</td>
</tr>
</tbody>
</table>
| **February 2010** | COAG agrees that:  
- Queensland, as the host jurisdiction, will be the first state to introduce the new national heavy vehicle laws and will be the corporate base for a new National Heavy Vehicle Regulator proposed by the Department of Infrastructure, Transport, Regional Development and Local Government in 2009  
- all jurisdictions will pass legislation to ensure the national laws, as enacted by Queensland, are effectively applied as laws in their own jurisdiction. |
| **August 2011** | COAG signs an Intergovernmental Agreement on Heavy Vehicle Regulatory Reform to establish an independent national heavy vehicle regulator. While Western Australia did not sign the Intergovernmental Agreement, they expressed support for the reform (NHVR Project Office 2011). |
| **November 2011** | The federal and state transport ministers within the Standing Council on Transport and Infrastructure (previously the ATC) unanimously agree to the first national heavy vehicle bill. |
| **August 2012** | The *Heavy Vehicle National Law Act 2012* (Qld) is passed by the Queensland Parliament. |
| **January 2013** | The National Heavy Vehicle Regulator opens for business, initially managing:  
- accreditations under the National Heavy Vehicle Accreditation Scheme  
- design and vehicle approvals under the Performance-Based Standards Scheme. |
| **February 2013** | Queensland Parliament passes the *Heavy Vehicle National Law Amendment Act 2012* (Qld), leading the way for consistent laws to be adopted in other states and territories. |

Source: Adapted from NHVR (2013a)

As a result, numerous aspects of state and territory legislation have been consolidated into the *Heavy Vehicle National Law Act 2012* (Qld), which was passed in August 2012. Other jurisdictions are now expected to pass enabling legislation that applies the Queensland law locally (with the exception of Western Australia, which will pass mirror legislation (Palaszczuk 2011)). In February 2013, the *Heavy Vehicle National Law Amendment Act 2012* (Qld), also passed through Queensland Parliament to address outstanding issues raised by stakeholders through technical amendments and policy refinements. The NHVR began operating in January 2013 and currently administers the National Heavy Vehicle Accreditation Scheme and the Performance-Based Standards Scheme. When most states and territories have implemented the national laws in their jurisdictions, the NHVR will administer these laws nationally and offer a larger range of services and information (NHVR 2013b).

Multiple agencies are currently engaged in developing the Heavy Vehicle National Law and establishing the NHVR. In particular, the NHVR Project Office is managing the development and implementation of the new national system, while the National Transport Commission (NTC) is working on the legal aspects of harmonising heavy vehicle regulation. The NTC has identified around 368 variations that require resolution, many of which will be resolved by the use of a
single legislative drafting approach following the introduction of the Heavy Vehicle National Law. The NTC are also consolidating existing legislation, finalising the Heavy Vehicle National Law and resolving outstanding policy issues to support the NHVR’s establishment.

**Scope for improving regulatory arrangements**

In light of recent and forthcoming changes to the regulatory arrangements for heavy vehicles, further adjustments to volumetric loading rules may not be warranted at this point. As the development and implementation of nationally consistent state and territory transport legislation is still underway, it is too early to gauge its success. Once the relevant legislation has been enacted across the jurisdictions and has had sufficient time to take effect, areas for further improvement may be identified. The Productivity Commission is scheduled to complete a review of the overall impact of national heavy vehicle regulation by December 2016 and this is likely to shed light on the scope for further improvement to heavy vehicle regulation. In addition, the broad view of the peak industry groups consulted as part of this study (Agforce, NFF, VFF, NSW Farmers’ Association) was that it was too early to assess the effects of the current reform process.

Nonetheless, one aspect of the regulatory environment that will require appropriate balancing over time is the trade-off between interjurisdictional consistency and efficiency objectives. Despite an overarching focus on national regulatory consistency, it is intended that some local variation will remain. Under the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform, COAG agreed that states and territories can maintain existing local productivity initiatives (LPIs). LPIs are local regulations or operational practices that depart from national laws to allow more efficient or sustainable freight methods to suit local conditions. They seek to reduce unnecessary regulatory burden and promote productivity without compromising safety or damaging road infrastructure (NHVR 2013c). This approach is consistent with the Productivity Commission (2007), which recognised that a nationally consistent approach may warrant some regulatory differences between regions where differences in the risk environment exist. Each state and territory will retain responsibility for approving access to road infrastructure, through arrangement with the NHVR. Although volumetric loading schemes are among the provisions currently listed as jurisdictional LPIs, the NHVR will annually review LPIs to reduce inconsistency where possible.

**ABARES assessment**

Further involvement by the Australian Government to promote interjurisdictional consistency relating to heavy vehicle transport regulation beyond that already in motion, may not be warranted at this juncture. It is not currently possible to evaluate the scope for further improvement to regulatory arrangements, as recent reform to heavy vehicle regulation has not yet had time to take effect. However, the Productivity Commission is scheduled to complete a review of the overall impact of national heavy vehicle regulation by December 2016. Such a review may identify areas for further improvement. The scheduled Productivity Commission review is a key milestone in COAG’s implementation plan for competition reform, under the National Partnership Agreement to Deliver a Seamless National Economy (COAG 2012).

**Finding 7**

It is too early for the Australian Government to pursue additional improvements in interjurisdictional consistency with a view to reducing unnecessary burdens associated with differing volumetric loading rules, given recent and ongoing reforms to heavy vehicle regulation. The Productivity Commission has an opportunity to review the economic impact of the new national framework for heavy vehicle regulation by December 2016.
11 Environment Protection and Biodiversity Conservation Act

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is the primary legal framework through which the Australian Government aims to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage sites. The EPBC Act applies to eight matters of national environmental significance:

- world heritage sites
- national heritage places
- wetlands of international importance
- nationally threatened species and ecological communities
- migratory species
- Commonwealth marine areas
- the Great Barrier Reef Marine Park
- nuclear actions (DSEWPaC 2010).

In protecting and managing significant Australian environmental assets, the Australian Government has a role in assessing activities likely to have a significant impact on such assets through the EPBC Act process. If a proposed action (including on private land) is likely to have a ‘significant impact’, the action must be referred to the Australian Government environment minister to determine whether approval is required under the EPBC Act. If the minister decides that approval is required, a detailed environmental assessment of the action must be conducted to determine whether approval will be granted, and under what conditions (if any).

Participants to the Productivity Commission’s 2007 review raised various concerns about the burden imposed by the EPBC Act on agricultural businesses. The Commission (2007) addressed the following issues:

- lack of clarity about what constitutes a ‘significant impact’
- overlap between the EPBC Act and other approval procedures.

**Lack of clarity about what constitutes a ‘significant impact’**

**Background and context**

Under the EPBC Act, actions that could result in a ‘significant impact’ on matters of national environmental significance must be referred for assessment. DEWHA (2009 p. 3)(now the Department of the Environment) define a significant impact as ‘an impact which is important, notable, or of consequence, having regard to its context or intensity’. Relevant considerations when determining the significance of the impact are:

- the sensitivity, value and quality of the environment that is impacted
- the intensity, duration, magnitude and geographic extent of the impacts (DEWHA 2009).
In submissions to the Productivity Commission's (2007) review, the Victorian Farmers Federation (VFF 2007) and Growcom (2007a) raised concerns about the ambiguity of the term 'significant impact' and stated that farmers faced considerable uncertainty about the process by which proposed actions were assessed. In particular, VFF (2007) noted that despite its importance, the Act or regulations did not define the term 'significant impact'.

In the view of the VFF, uncertainty surrounding approvals makes the process unwieldy, which imposes regulatory burdens in at least three ways. First, a farmer would need to spend more time or resources discovering how the regulator interprets the Act and what constitutes a 'significant impact' in practice. Second, a farmer may forgo profitable business activities that would be permissible under the Act in the mistaken belief that they would not be approved, or because the process of gaining formal approval is too arduous. Third, a farmer may unnecessarily incur the cost of referring an action because they were unaware that the regulator would interpret the action's impact as 'significant'.

Government secondments to industry can play a role in alleviating such burdens. Several submissions noted an officer from the (now) Department of the Environment had been seconded to the National Farmers' Federation (NFF) to provide information 'on-the-ground', including information on the EPBC Act. Since 2002, this officer has provided advice to individual businesses about what actions are likely to require referral for assessment. Growcom (2007b) called for an expansion of this initiative, noting that the NFF did not represent industries such as horticulture. This may indicate that the availability of the liaison officer to provide advice to farmers outside the NFF is not well known.

The Productivity Commission (2007) acknowledged prior efforts by the then Department of the Environment, Water, Heritage and the Arts to clarify the meaning of 'significant impact' and proposed that it continue to explore additional means of communicating with businesses regarding this issue.

**Extent of progress in addressing the issue**

While the Australian Government (2008) accepted the Commission's response and outlined efforts directed at clarifying the definition of 'significant impact', some uncertainty among industry remains. Policy Statement 1.1 on the Department of the Environment's website provides guidance regarding the interpretation of 'significant impact' (DEWHA 2009) and the current version of this document provides criteria against which to assess impacts on matters of national environmental significance. However, the decision about whether an action will have a significant impact on a matter of national environmental significance is situation-specific and general guidelines can provide only limited assistance.

Although the Australian Government (2008) indicated that it was seeking further industry-based approaches to informing landholders, the NFF (2013) recently expressed concern that many farmers remain unaware of how to comply with the EPBC Act. The Environment Liaison officer seconded to NFF continues to provide specific, practical advice to primary sector businesses, including advice to farmers regarding water use regulation under the EPBC Act, in light of recent legislative changes. However, there is uncertainty about the continuation of funding for this service into the future.

**Scope for further improving regulatory arrangements**

There appears to be scope for the Australian Government to further improve regulatory arrangements by reducing unnecessary compliance and administrative costs. For example, the
NFF (2013) called for additional government action to reduce the confusion faced by industry regarding actions that may cause a significant impact.

One way in which this may be achieved is through greater awareness of the information and advice available to all farmers through the environment liaison officer seconded to the NFF. The officer’s role is little advertised beyond the NFF website and there may be scope for the Department of the Environment to promote awareness of this resource among non-NFF members. This could occur, for example, through the rural press and other media accessed by farmers. Alternatively, an additional officer could be employed to engage with non-NFF organisations, such as Growcom or state farmer federations, who could inform their membership of this resource.

Another option to potentially reduce administrative costs faced by businesses is to consider introducing an avenue for quick, informal appraisal of proposals to indicate whether an action is likely to require referral. This could reduce costs for primary sector businesses, if it reduces unnecessary referrals where an action will not be approved or will not create a significant impact.

**ABARES assessment**

While the Department of the Environment has made some effort toward clarifying the definition of ‘significant impact’ under the EPBC Act, there appears to be scope for further improvement. The cost of complying with regulatory requirements could be further reduced by increasing awareness of the NFF liaison officer’s services to a wider range of farmers, seconding additional officers to other farmer organisations, or introducing a quick and informal service for pre-appraising proposed actions. This may reduce uncertainty for farmers and the administrative cost of unnecessary referrals for primary sector businesses and for the Department of the Environment.

**Finding 8**

Although additional advice to stakeholders on the definition of ‘significant impact’ under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the term’s application in general situations has been published since 2007, there appears scope to further improve the provision and uptake of facilities to advise applicants on specific proposed actions.

**Overlap with biosecurity approval procedures for live animal imports**

**Background and context**

Live animal imports require approval under two separate processes to manage potential biosecurity and environmental risks. First, approval under the EPBC Act requires the Department of the Environment to assess whether importation poses a significant risk to the environment, that is, the harm an animal itself could directly cause. The Department of the Environment records animals whose environmental risk has been assessed and import approved on a schedule to the EPBC Act, known as the **List of Specimens taken to be Suitable for Live Import**. (Animals listed in Part 2 of the **List** also require a permit from the Department of the Environment prior to import.)

Prospective importers of animals not listed on the ‘Live Import List’, typically importers of zoo and laboratory species, need to apply to the Department of the Environment for the species to be added to the list. Decisions on whether to amend the live import list are generally made in 6–12
months. Applications to amend the list to include an agricultural animal are rare because the process has been operating for many years and such animals are likely to have been assessed in the past.

Second, the Quarantine Proclamation 1998 (Cth) requires the Director of Animal and Plant Quarantine to consider quarantine risk prior to granting permission to import. The Department of Agriculture (now incorporating Biosecurity Australia) assesses whether the importation of a live animal poses an unacceptable biosecurity risk because of diseases or pests that may accompany it (DAFF 2011b). The Import Risk Assessment Handbook 2011 (DAFF 2011b) defines biosecurity as relating to the protection of human, animal or plant health or life, and the environment. Thus, the Department of Agriculture’s remit is broader than just agriculture, fishing and forestry.

Where the Department of Agriculture has already assessed the biosecurity risk, applications for permission to import a live animal proceed quickly, generally within 10 business days. Where the biosecurity risk has not been assessed, the Department of Agriculture may need to conduct an Import Risk Analysis, which involves:

- identifying pests and diseases of biosecurity concern that the animal could carry
- assessing the likelihood any such pests or diseases could enter, establish or spread
- assessing the harm that could result (DAFF 2011b).

Given both agencies’ shared responsibility for the environment, on 11 October 2002, a Memorandum of Understanding (MoU) on import risk analyses was agreed between the Department of Agriculture (now incorporating Biosecurity Australia) and the Department of the Environment (formerly Environment Australia). Its purpose was to encourage cooperation on matters of biosecurity and live import policy. More specifically, it clearly defined the roles and responsibilities of both parties in assessing the different risks to the environment posed by live animal imports. In 2004, the Australian Government responded to the Joint Committee of Public Accounts and Audit’s Review of Australia’s Quarantine Function (JCPAA 2003) that the MoU had been ‘operating satisfactorily since it was implemented’ (DAFF 2004).

Notwithstanding, the Productivity Commission (2007) proposed that both agencies consider whether the Department of Agriculture should be accredited for environmental risk approvals for live animals under the EPBC Act. While acknowledging that assessments of environmental and biosecurity risk are distinct tasks, it pointed out that removing process-related overlaps can reduce administrative costs imposed on businesses. The Australian Government (2008) agreed, noting that a (then) forthcoming review of the EPBC Act (Hawke 2009) would also consider this issue.

**Extent of progress in addressing the issue**

In recent years, two other inquiries have also supported combining aspects of the assessment processes into a single system. Beale et al. (2008) recommended specific administrative arrangements, including that Import Risk Analyses conducted by the Department of Agriculture meet the requirements of the EPBC Act. Hawke (2009) suggested the proposed revision of the biosecurity legislation could formalise combined assessments. However, neither review fully explored the extent to which assessment processes overlapped in practice.
Scope for further improving regulatory arrangements

The Department of Agriculture and the Department of the Environment have considered pursuing a single approval process for live animal imports that incorporates both environmental and biosecurity risk assessments; however, scope to streamline the current arrangements is limited.

- The benefit to industry of consolidating the two processes is seemingly trivial, as the additional cost of applying to two agencies is negligible. The Department of Agriculture simply requires a letter stating the animal species and country of export.

- The cost saving to government appears negligible, as neither department duplicates risk assessments concerning the environment. The Department of Agriculture only considers biosecurity risks and the Department of the Environment only considers non-biosecurity risks. In addition, there is little need for the two agencies to share information because of the marked differences in risks they assess.

Significantly, stakeholders did not raise concerns about an administrative overlap in submissions to the Productivity Commission's 2007 inquiry, nor during consultations as part of this study.

However, the Australian Government (2008) noted that DEWHA (now the Department of the Environment) had commenced preliminary work on updating the MoU for discussion with Biosecurity Australia (now incorporated within the Department of Agriculture). Insofar as the MoU remains active, there is merit in updating the MoU in the future, to account for changes made as a result of recent and ongoing reform to the EPBC Act and proposed changes to Australia's biosecurity legislation. This would encourage continuing efforts to:

- eliminate unnecessary duplication of administration and risk assessment activities between parties

- promote mutual assistance and the exchange of information between parties for the purposes of fulfilling their respective responsibilities.

ABARES assessment

The consolidation of import risk assessment processes for live animals would likely impose a net cost on society. The benefits to industry (agricultural and zoological) as a whole and the cost savings to government appear small. In addition, the government could incur non-trivial costs in establishing and transitioning to a new system.

Nevertheless, legislative changes since the MoU was developed in 2002 suggest there is merit in updating the MoU in the future. Given that the Department of the Environment is currently implementing improvements under the EPBC Act and the Department of Agriculture is currently pursuing reform of Australia's biosecurity legislation, updating the MoU would best be conducted after they have implemented all changes to import risk assessments for live animals.

Finding 9

There is negligible duplication in the environment and biosecurity risk assessment processes for live animal imports under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the Quarantine Act 1908 (Cth). Combining the two processes would likely impose a net cost on society. However, there is merit in the Department of Agriculture and the Department of the Environment revising their memorandum of understanding on import risk analyses of live animal imports, once relevant changes to biosecurity and environmental legislation have been implemented.
12 National Pollutant Inventory

In 1998, the Australian, state and territory governments agreed to the National Environment Protection (National Pollutant Inventory) Measure (1998). This established the National Pollutant Inventory (NPI), an internet database that disseminates information on pollutant emissions and transfers. Individual industrial facilities are required to provide the NPI with annual estimates of pollution and transfers. Participants to the Productivity Commission (2007) review raised concerns about the potentially excessive burden that such reporting had placed on intensive agriculture businesses. The Commission suggested examining alternative cost-effective methods of obtaining data which could, for example, rely on greater involvement by industry organisations. Beyond this, however, there is limited scope for the Australian Government to further reduce the NPI reporting burden.

Background and context

The National Environment Protection Council (NEPC) established the NPI under the National Environment Protection Measure (NEPM) which, in turn, was established under the National Environment Protection Council Act 1994 (Cth) and mirror legislation in other jurisdictions. The NPI serves to meet the broad objectives of the NEPM (s. 5), namely to: improve environmental quality; reduce the impact of hazardous waste on the environment; and improve the sustainability of resource use.

The broad goals of the NPI are to collect and disseminate information to policymakers, the community and industry that would not otherwise be collected or made freely available (NEPM s. 6). More specifically, the NPI publishes information on the emission and transfer of pollutants from individual facilities to the environment, according to industry and geographical location (NEPM s. 7). The NPI contains data on 93 substances that may affect human health or the environment (DSEWPaC 2012a). Emissions to air, land and water, and the transfer or movement of these substances on or off-site are published.

State and territory governments implement the NPI, in cooperation with the Australian Government, through their respective environment protection authorities. They are responsible for collecting and verifying data reported by their constituents, and enforcing reporting compliance within their jurisdiction. The Australian Government plays several roles, including providing coordination and technical expertise to the states and territories. The Department of the Environment inspects emission and transfer data collected by the states and territories and is responsible for publishing these data on the NPI website. It also ensures the currency of emissions estimation technique manuals for each industry, with assistance from the state and territory governments.

Within agriculture, the NPI predominantly requires emissions and transfer data from poultry farms, piggeries and beef cattle feedlots. The information required to complete an NPI report for specific intensive livestock facilities includes: stock numbers, fuel use and the amount of water that flowed from waste water storage to surface water. In contrast, the NPI does not require farmers to report diffuse emissions or transfers from tree growing, aquaculture, horticulture and extensive livestock grazing. While these estimates are necessary for a comprehensive national picture, they are difficult to measure accurately at the farm level. Instead, state and territory environment protection agencies provide aggregate estimates of diffuse emissions for publication in the NPI (DSEWPaC 2012b).
Several stakeholder groups have questioned the necessity of the NPI to impose the reporting burden on individual farmers, rather than industry groups (see Box 17). In 2011-12:

- 517 agriculture, forestry and fishing facilities reported emitting pollutants
- 34 different substances were reported to have been emitted and three substances transferred from all agricultural industries (DSEWPaC 2012c).

Box 17 Productivity Commission and Australian Government responses regarding National Pollutant Inventory reporting requirements for individual farmers

Several submissions to the Productivity Commission's (2007) review of regulatory burdens expressed concern about the burdensome nature of reporting requirements under the National Pollutant Inventory. For individual farmers engaged in intensive agricultural operations, this burden arose from large amounts of time spent calculating emissions and navigating complicated data lodgement processes. The NSW Farmers' Association (2007) suggested that some of the reporting burden could be shifted to industry groups.

Following its assessment, Productivity Commission (2007) responded that:

Reforms through the Environment Protection and Heritage Council (EPHC) are progressing to reduce the compliance burden on individual farmers in intensive agricultural operations resulting from the reporting requirements in the National Pollution Inventory (NPI) National Environmental Protection Measure (NEPM). 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. (Response 3.7)

The Australian Government (2008) accepted this response in principle, stating that:

A determination made by the NPI Implementation Working Group (IWG) in 2007 was distributed to all intensive agriculture industry associations in response to concerns raised regarding the provision of contact details of owner-occupier facilities for public disclosure on the NPI web site. The NPI IWG comprises representatives from all states and territories as well as the Commonwealth Government. The current NPI NEPM requires the facility occupier to lodge their report with the respective state or territory department or agency. The new arrangement allows an industry association to be the contact for an individual facility. Currently, there is one example (WA Chicken Broilers Association) that populates a NPI report for each of their members. The report is then sent to the facility occupier for signing and submission to the NPI. The IWG has also revised the NPI guidance material for these sectors which provides simplified reporting forms to estimate emissions. DEWHA consulted with the relevant associations when undertaking these improvements.

Extent of progress in reducing unnecessary burden of NPI reporting

Since the release of the Productivity Commission review (2007), the Australian Government has acted to reduce the NPI’s reporting burden, including simplifying the process by which emissions and transfers are calculated and reported back to state and territory governments. For example, the Australian Government has updated manuals and developed a web-based reporting system. Many emission estimation technique manuals have been updated in recent years to ensure that estimates reflect the current technology and production processes used in each industry.

In addition, a national online reporting system was implemented in 2007, through which farmers can submit emissions and transfer data to their state or territory environment protection agency. The online system can pre-populate data based on previous reports and provide access to calculation tools that simplify emission estimation. The NEPC annual reports highlight such improvements by publishing stakeholder feedback and evaluating the effectiveness of NPI implementation activities in each jurisdiction.
Since its introduction in 1998, the NEPC has varied the NPI NEPM twice. In 2007, the NEPC enhanced its capacity as a tool for environmental management and cleaner production. This variation incorporated transfers into the NPI, as well as greenhouse gas emissions over the short term (pending the establishment of a national greenhouse gas and energy reporting mechanism). The NEPM was varied again in 2008 to remove greenhouse gas and energy reporting, and minimise overlap and potential confusion for reporting industries, in response to the National Greenhouse and Energy Reporting Act 2007 (Cth).

While including transfers into the NPI increased reporting requirements, the additional burden on intensive agriculture operations appears small. In the first instance, the NEPC (2006), in its impact statement regarding the NPI NEPM variation, asserted that the benefits of transfer data could be gained while minimising additional costs through the use of the existing NPI reporting system. A case study of the poultry and pig farming industries has also concluded that, under normal operations, these facilities would not be subject to mandatory transfers reporting (EECO 2007). Since then, only two mandatory transfers have been reported by agricultural operations and no more than 15 voluntary transfers have been reported in any one year.

Moreover, some reporting costs are likely to decrease over time as facilities become more familiar with NPI reporting processes, such as time spent calculating emissions and lodging forms. State and territory governments have provided training for users of the online reporting system and associated calculation tools. This is often industry-specific and ranges from one-on-one support to large group sessions, depending on the level of assistance required.

**Scope for improving regulatory arrangements**

For a variety of reasons, there is little evidence to suggest the Australian Government should be doing more to reduce reporting burdens, given current regulatory objectives and improvements achieved thus far. Peak industry groups who raised this issue in 2007 have indicated to ABARES that they no longer consider the issue significant. In addition, no unnecessary regulatory burdens on industry pertaining to the Australian Government’s implementation of the NPI have been raised in recent NEPC annual reports (NEPC 2010, 2011, 2012). NEPC annual reports evaluate the effectiveness of implementation activities, which increases transparency and encourages continual improvement in each jurisdiction. Although more specific improvements to reporting processes, training and support for reporters may be possible, state and territory governments have primary carriage of these activities.

Nevertheless, the Australian Government can continue to maintain pressure to reduce the unnecessary reporting burden by supporting regular reviews of reporting thresholds. These were reviewed in 2005 (Environment Link 2005), with technical advice on suggested changes published in 2006 (Technical Advisory Panel 2006). The NEPM is subject to a comprehensive review at least every five years (NEPM s. 33) which, among other things, can consider the NEPM’s effectiveness and reporting thresholds. A change in reporting thresholds would change the reporting burden on farmers collectively. For example, raising thresholds would lower the number of farmers required to report. In their response to the Productivity Commission review, the Australian Government (2008) stated that the next review of the substance reporting list and thresholds was scheduled for 2012 (see Box 18).

In addition to government initiatives, greater involvement by industry groups may also serve to reduce the reporting burden on individual operations. The Department of the Environment does not hold any concerns about such an approach, so long as data accuracy is maintained and individual facilities are consulted about their reports before submission (Jason Choi [DSEWPaC], pers. comm. 7 June 2012). For example, the Western Australian Broiler Growers Association has
managed NPI reporting on behalf of individual facilities by maintaining a complete list of meat chicken farms and their chicken numbers (Australian Government 2008). Adopting a collective approach is an issue for producers to discuss with their industry organisation. It does not require direct government involvement.

**Box 18 Productivity Commission and Australian Government responses regarding National Pollutant Inventory reporting requirements for ammonia emissions**

The Red Meat Industry, which represents a number of beef feedlot operators and red meat processing plants, expressed concern about the NPI reporting threshold for ammonia emissions in their submission to the Productivity Commission’s (2007) review of regulatory burdens. In their view, the current threshold can be reached by a small beef cattle feedlot, thereby creating an unnecessary reporting burden for such operations.

Following its assessment, the Productivity Commission (2007, p. 62) responded that: The EPHC should review the reporting thresholds for all NPI substances by 2009 (Response 3.8).

The Australian Government did not accept this response, stating that: The PC specifically raised the issue of ammonia reporting thresholds and there was no strong argument or recommendation in the Final Report: Review of the National Pollutant Inventory (Environment Link 2005) to review the threshold for ammonia. The NPI NEPM was varied in 2007 in response to the Environment Link Review which made a number of significant changes to the program. There was broad agreement that thresholds should not be modified by most respondents to this report and full public consultation was undertaken. The NPI NEPM variation involved full public consultation and the development of a comprehensive Regulatory Impact Statement (RIS) as part of the variation process. As part of the overall review of the NPI and the subsequent National Environment Protection Council decision to vary the NPI NEPM in June 2007, it was determined that further comprehensive reviews of the NPI should be undertaken every five years. The next review of the NPI will be scheduled in 2012 and will focus on the existing substance list.

**ABARES assessment**

Since the release of the Productivity Commission (2007) review, the Australian Government has overseen a reduction in the burden associated with NPI reporting. Improved emission estimation aids and reporting tools have all contributed. In addition, some reporting costs, especially those associated with the online system, are likely to have decreased over time as users become more familiar with the software and reporting processes. The requirement for some intensive agricultural operations to report pollutant emissions does not appear to be a significant source of unnecessary regulatory burden in the primary sector.

The scope for further Australian Government efforts to reduce the reporting burden for primary industries appears limited under the current arrangements. The legislated reviews of reporting thresholds at least every five years have the potential to reduce the unnecessary reporting burden. Although beyond the Australian Government’s remit, greater involvement by industry groups may also reduce the reporting burden on individual intensive agriculture facilities.

Nevertheless, there may be scope to improve the benefits resulting from data collection. Although beyond the focus of this review, the benefits may be enhanced by improving awareness of NPI data availability among policymakers so that it can be used to better target environmental policy. Further benefits may be gained by exploring and clarifying additional ways in which administrative data can be used by policymakers in practice (Productivity Commission 2013).

**Finding 10**

There is little evidence to suggest the Australian Government should do more to reduce the reporting burden placed on individual intensive agriculture facilities by the National Pollutant Inventory, given current regulatory objectives and positive feedback from peak industry groups.
13 Water property rights

Historically, state governments have been responsible for regulating water resources, which has led to individual jurisdictions managing water systems spanning multiple states. In 2007, stakeholders raised regulatory inconsistency between states as a source of unnecessary regulatory burden (Productivity Commission 2007). While there is little evidence of progress toward greater consistency in water regulation between jurisdictions since then, there may be scope for improvement. In the first instance, the recent introduction of the Murray-Darling Basin Plan may go some way toward improving consistency between Basin states through its system-wide approach to water management. In addition, there is scope to standardise the definition of water property rights between jurisdictions to achieve a more cohesive Basin-wide system for regulating water trade.

Background and context

Historically, state and territory governments have been primarily responsible for regulating water resources within their boundaries. Much of this has related to allocation issues between water users which, in the Murray-Darling Basin, have arisen since the beginning of settlement (Musgrave 2008). Against this backdrop, state governments have long been involved in managing water infrastructure and, since the 1980s, in addressing environmental and sustainability issues as well. In recent times, Basin governments have, in some areas, reduced their regulatory involvement, in particular, by creating water markets to allocate water to its highest value use.

The Constitution does not generally provide the Australian Government with legislative powers over Australia’s water resources. Section 100 specifies that ‘the Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.’ As a consequence, disparate state-based management models have emerged (Gray 2012).

Notwithstanding, the Constitution does give the Australian Government the authority to legislate with respect to interstate trade (s.51(i)) and on matters relating to ‘external affairs’ (s. 51(xxix)). In several legal cases, notably that between the Commonwealth and Tasmania in 1983 over the proposed Gordon River dam, the High Court has held that the external affairs power allows the Commonwealth to legislate to fulfil any of Australia’s international obligations (Saunders 2000). This power has allowed the Commonwealth to influence management of the Murray-Darling Basin where it intersects with Australia’s obligations under the Biodiversity Convention and the Ramsar Convention, among others (Water Act 2007 (Cth), s. 21 (1,2,3)). In recent times, this has allowed the Minister to unilaterally direct changes under the Water Act, where the states could not reach a consensus on Basin reform.

In addition, the Australian Government has a role in influencing water regulation under the 2004 Intergovernmental Agreement on a National Water Initiative (NWI). Under the NWI, the Australian, state and territory governments agreed on a set of actions to achieve a more cohesive approach to the way water is managed, priced and traded. The NWI also established the National Water Commission, whose role is ‘to provide advice on national water issues and, in particular, to assist with the effective implementation of the National Water Initiative Agreement.

Participants to the Productivity Commission’s (2007) review raised the issue that inconsistency in water access regulation across jurisdictions was resulting in unnecessarily high costs to rural businesses (Australian Property Institute NSW Division & Australian Spatial Information Business
Trade may be hampered by interjurisdictional differences in the legal definition of water property rights, which increase the uncertainty involved in purchasing water rights from other states. For example, the legislation governing water entitlements varies in unit of measurement, duration and security between jurisdictions (ACIL Tasman & Freehills 2004).

In addition, inconsistencies can add to the administrative burden faced by businesses by, for example, extending the time spent ensuring compliance and waiting for state authorities to process applications to trade water across state borders (COAG Reform Council 2011b). Delays can also result in lost water use opportunities at critical decision points (National Water Commission 2011b). (The Productivity Commission (2007) also considered other stakeholder concerns, which do not fall within the scope of this review.)

**Extent of progress in improving consistency in water regulation between jurisdictions**

There is little evidence to suggest progress toward greater consistency in water regulation between jurisdictions has been made. Consultation with the Australian Property Institute (NSW Division) during the course of this study indicated there has been little change to regulation since 2007 that has improved consistency in the definition of water property rights.

Some indication of progress could potentially be gained from observing trends in the length of time taken to process interstate trade applications. Shorter times may indicate improvements. This information has been published by the NWC in their Annual Water Market Reports since 2007-08, in response to service standards adopted by COAG and the Natural Resource Management Ministerial Council. However, changes in the way data are published make it difficult to compare performance between years on a consistent basis. For example, NSW provided data on the proportion of total interstate allocation trade that met service standards in 2008-09, but in later years separated trade with SA from that with Victoria and Queensland. In addition, the introduction of 'stop the clock' provisions have made performance measures difficult to interpret, with uncertainty about whether non-government delays in processing have been incorporated into the data presented.

In the future, it is possible that improvements to regulatory consistency may flow from the recently introduced Basin Plan, as required under the Water Act. The Act describes the Plan as a legislative instrument that provides for integrated water management and allows water to reach its most productive use through an efficient Basin-wide water trading system (s. 20). The Plan was produced by the Australian and various state governments, a key aspect being consistent regulation across the Basin. For example, it sets out water trading rules that ‘aim to provide consistent water markets in the Basin’ (MDBA 2011). In addition, the Plan removes the possibility of several arbitrary restrictions on water trade (chapter 12.2.1.A,B), some of which may be a source of regulatory inconsistency between states.

**Scope for further improvement**

There appears scope for further improving the consistency of water trade regulation across jurisdictions. The National Water Commission has reported that pricing and institutional reforms directed at encouraging more efficient water use have been inconsistently implemented across Australia. In their view, ‘there remain continuing examples of policy or government interventions that have weakened or reversed reforms’ (NWC 2011a).

In particular, a nationally-consistent definition of water property rights has not yet been achieved. While such definitional change would need to be introduced through legislation in each state and territory, there is likely to be a role for the Australian Government as it chairs
COAG to encourage the removal of inconsistencies between jurisdictions. The Australian Government could also encourage activities to standardise the definition of water property rights between jurisdictions.

In addition, there may be scope for interjurisdictional differences in administrative arrangements to be reduced. The NWC’s Annual Water Market Reports show that service standards for interstate trade have not been met every year or in every state. Greater consistency could simplify the administration of interstate water trade. It may also decrease the time spent by rural businesses ensuring compliance with multiple regulatory regimes and reduce the occurrence of applicant errors that further delay processing.

The NWC has an ongoing role to promote the NWI’s objective of a nationally-compatible market and regulatory system for managing Australia’s water resources. In the past, its regular assessments of progress in implementing the NWI have been a key means to hold state governments accountable (DSEWPaC 2011). The COAG review (Rosalky 2011) affirmed this role, concluding that the NWC is best placed to continue assessing and auditing reform activities under the NWI.

The introduction of the Basin Plan has also affected the regulatory environment in Australia, although it is difficult to evaluate its effect and thus scope for further improvement at present. With the integrated Basin-wide water management required under the Plan, it is anticipated that some regulatory inconsistency between states will be removed, as all jurisdictions aim to achieve a common objective.

**ABARES assessment**

Increased Australian Government coordination of water management across the Murray–Darling Basin has been a significant change to a historically state-based area of regulation. However, there is little evidence to suggest progress toward harmonising water property rights across jurisdictions.

There remains scope to standardise the definition of water property rights across jurisdictions and improve performance reporting. Although state (and territory) governments are responsible for regulating water resources within their boundaries, the Australian Government can support the implementation of nationally-consistent regulatory arrangements through its involvement in COAG. Standardising performance reporting over time would also be useful in assessing the achievement of service standards and increasing the accountability of administrators as they seek to improve regulatory consistency between jurisdictions.

**Finding 11**

There appears to be scope for the Australian Government to further coordinate efforts through the Council of Australian Governments to standardise the definition of water property rights within the Murray–Darling Basin.
Agriculture and other land use activities in catchment areas adjacent to the Great Barrier Reef are a major source of pollutants affecting inner reefs and seagrass areas. In 2003, the Australian and Queensland Governments jointly initiated the Reef Water Quality Protection Plan, which aimed to address pollution from broadscale land use (The State of Queensland & Commonwealth of Australia 2003). The 2003 Plan focused on engaging landholders to voluntarily adopt their industry’s best management practices to minimise the entry of pollutants, predominantly nutrients, chemicals and sediment. However, an early report on the Plan’s progress concluded that many stakeholders were either ‘unaware of the significance of more innovative engagement-based approaches to policy delivery, or prefer more traditional modes of regulation and subsidy-based policy delivery’ (Howard Partners 2005, p. 209). Consistent with recommendations proposed by Howard Partners (2005), the Productivity Commission (2007) considered that government should immediately act to engage more effectively with industry. This was expected to avoid the need to consider a more heavy-handed regulatory approach, which industry deemed unnecessary. Since then, the Australian Government has focused on supporting industry to improve land management practices through the Reef Rescue package, which has eased concerns about the potential for increased regulation by the Australian Government.

**Background and context**

The 2003 Plan was endorsed by the Great Barrier Reef Ministerial Council, following reports highlighting the decline in water quality entering the Reef (GBRMPA 2001, GBRPICSP 2002, Productivity Commission 2003). The Plan aimed to halt and reverse water quality decline within ten years, largely by relying on voluntary practice change. More particularly, the Plan stated that changes in land management practices depend on landholders understanding the impact of their activities, and their duty of care to the land and the environment (The State of Queensland & Commonwealth of Australia 2003).

The Plan’s fundamental reliance on suasive means to stimulate improvements in management practices without adequately communicating its importance was unsuccessful in arresting reef water quality decline. As a result, the increased potential for the Australian and/or Queensland Governments to regulate activities became an issue for industry. While the 2003 Plan reserved the right to introduce regulation, Growcom (2007a) considered this unnecessary and raised the issue in their submission to the Productivity Commission (2007) (see Box 19).

**Extent of progress in addressing the issue**

Satisfactory progress in improving farm management practices has occurred since government became more engaged in influencing industry’s response to declining reef water quality. In achieving this progress, the 2009 and more recently, the 2013 updates to the Reef Water Quality Protection Plan have been pivotal. The 2009 Plan featured a ‘carrot and stick’ approach involving the Australian Government’s provision of financial incentives and the Queensland Government’s introduction of minimum land management standards (The State of Queensland & Commonwealth of Australia 2009). In light of the progress achieved under the 2009 Plan, the 2013 Plan maintained a similar approach but refined its nominal targets, in line with improved scientific information. As such, Australian Government involvement in Reef management has focused on supporting the efforts of agricultural businesses surrounding the Reef to achieve better environmental outcomes, rather than increasing the regulation applicable to the primary sector.
A major component of the Australian Government’s involvement in the 2009 Plan was funding directed at changing land management practices through the Reef Rescue package. In this vein, the Australian Government announced the provision of an additional $200 million in funding on 24 April 2013 to extend the Reef Rescue program until 2018. To date, Reef Rescue initiatives have included funding for practical farm research through industry partnerships and grants to boost the adoption of improved land management practices. The Australian Government also committed to achieving 5-year targets for the reduction of nutrient, chemical and sediment discharge from agricultural land, and for land management practice improvement under the 2009 and 2013 Plans.

Box 19 Productivity Commission and Australian Government responses regarding the Reef Water Quality Protection Plan

In their submission to the Productivity Commission’s (2007) review of regulatory burdens, Growcom (2007a) expressed concern about the lack of industry input into the Plan’s development. This was despite industry being responsible for carrying out planned actions and receiving much of the criticism about reef water quality impacts. As a number of the Plan’s key actions went undelivered and progress stalled, industry became concerned that government would resort to a regulatory approach. Growcom considered this an inferior approach, instead endorsing self-management and industry-led approaches.

Following its assessment, the Productivity Commission (2007, p. 76) responded that:
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 (RWQPP) concerning consultation and communication, and the development of more effective partnerships (Response 3.12).

In response, the Australian Government (2008, p. 16) noted the Commission’s assessment and considered that:
... there is now an opportunity for government and key stakeholders to work together to agree an updated and more strategic RWQPP. The revised plan should build on achievements to date and commit to new long-term goals, objectives and target. The Great Barrier Reef Ministerial Council will meet early in 2009 to consider an updated RWQPP. The Commonwealth Government has introduced Reef Rescue which works with farmers to reduce runoff and improve water quality through voluntary incentive-based measures.

For its part, the Queensland Government is responsible for most regulation regarding the Great Barrier Reef. It has enacted a considerable body of legislation under the 2009 Plan aimed at curbing activities that affect reef water quality. For example, the Great Barrier Reef Protection Amendment Act 2009 (Qld) provides a regulatory structure to reduce agriculture’s impact on the Great Barrier Reef and achieve targets under agreements between the Australian and the Queensland Governments (Queensland Parliament 2009). This Act introduced minimum land management standards and mandated that landholders restrict chemical use, in addition to keeping records of soil test results and the overall use of fertilisers, soil conditioners and herbicides. Queensland legislation also requires some sugarcane growers and graziers to prepare Environmental Risk Management Plans for implementation over a stated term, with subsequent annual reporting of progress toward the plan’s targets. While assessing the impact of Queensland regulation on landholders is outside the scope of this study, the Queensland Government intends to review its legislation, under the 2013 Plan (p. 26–27), when industry best management practice programs have taken effect.

Outside of the Reef Plan, some Australian Government legislation regulates the activities of agricultural businesses more generally, and in doing so, also contributes to achieving the Reef Plan’s objectives. For example, the Environment Protection and Biodiversity Conservation Act 1999 (Cth) regulates activities that may have a ‘significant impact’ on Australian environmental assets that are nationally or internationally important. In 2009, the Great Barrier Reef Marine
Park was established as a ‘matter of national environmental significance’, thereby requiring approval for activities affecting the marine park under that Act. In addition, the Great Barrier Reef Marine Park Act 1975 (Cth) (GBRMP Act) and its subordinate legislation regulates the ‘use of the Great Barrier Reef Marine Park in ways consistent with ecosystem-based management and the principles of ecologically sustainable use’ (s. 2A(3d)). Although the GBRMP Act is not a component of the Reef Plan, it comprises part of the regulatory framework to which the Reef Plan contributes.

Scope for improving regulatory arrangements

Given the Australian Government’s limited regulatory role under the Reef Plan and recent progress toward achieving the Plan’s objectives, the scope for the Australian Government to improve its regulatory involvement is not large. Past Australian Government action under the Reef Plan has primarily involved supporting the efforts of agricultural businesses in the catchment to improve environmental outcomes, rather than regulating their activities. A major component of this support has been to provide financial incentives to encourage the adoption of better land management practices through the Reef Rescue package. With the recent release of the updated 2013 Plan, which outlines similar regulatory roles for government to those under the 2009 Plan, it appears unlikely that additional Australian Government regulation will be introduced at this point in time.

ABARES assessment

Earlier industry concerns about the potential for government to unnecessarily strengthen regulatory control of land use activities in reef catchment areas have diminished since the Productivity Commission’s 2007 review. This is largely because the 2009 update to the Plan was implemented with relative success, resolving uncertainty about future regulatory changes. This uncertainty was further quelled with the release of the 2013 Plan, which maintained similar regulatory roles for government to those under the 2009 Plan.

Notwithstanding new evidence to the contrary, there appears little scope for the Australian Government to further regulate agricultural activities in the reef catchment areas. Currently, the Queensland Government administers most regulation covering day-to-day activities that might affect the reef through the Queensland Parks and Wildlife Service (Queensland Government DEHP 2011). In comparison, the Australian Government’s role in regulating agricultural activities under the 2013 Plan remains relatively minor.

Finding 12

Following the introduction of the 2009 and the 2013 Reef Water Quality Protection Plans, uncertainty about the burden imposed by future regulatory arrangements no longer significantly concerns stakeholders. There is limited scope to improve the Australian Government’s current regulatory involvement in achieving the goals of the 2009 Reef Water Quality Protection Plan.
15 Building regulations and the energy efficiency of timber

State and territory governments are primarily responsible for building regulation and associated energy efficiency measures, much of which is based on the Building Code of Australia. Stakeholders to the Productivity Commission’s (2007) review took issue with the energy efficiency rating system contained in the Code because it did not account for energy use over the entire life cycle of a building. In their view, it was an incomplete measure. However, insofar as the energy efficiency rating system misrepresents total energy use, this constitutes a regulatory failure, rather than a regulatory burden as defined in chapter 2. Further research would be required to assess the benefits of adopting a more comprehensive nation-wide measure of energy efficiency that includes the embodied energy of building materials.

Background and context

Many aspects of state building regulation, such as the Building Code of Australia (the Code), have been developed at the national level through the Council of Australian Governments. The Code is a nationally consistent set of technical provisions for the design and construction of a wide variety of building types. It is maintained by the Australian Building Codes Board. For the code to be legally binding, state and territory governments must adopt it into their own legislation. Since 2006, the Code has contained minimum standards for building performance relating to energy efficiency, as part of an intergovernmental strategy to reduce greenhouse gas emissions (ABCB 2012a,b).

Stakeholders to the Productivity Commission’s (2007) review raised concerns that building codes, and current energy efficiency rating schemes in particular, dissuade consumers from purchasing wood and wood products. The National Association of Forest Industries (now Australian Forest Products Association) raised the issue that energy efficiency rating systems were unable to accurately assess well-designed wooden houses. In their view, the regulation at the time did ‘not fully recognise the carbon benefits of wood products as they are not based on full life cycle assessments’ (NAFI 2007).

More specifically, publishing ‘annual energy consumption’ (that is, operational energy) as a measure of energy efficiency, without accounting for embodied energy, may create perverse incentives to the extent that it does not accurately reflect the total amount of energy required to construct and operate buildings. Buildings constructed with forest products are likely to contribute less to greenhouse gas emissions than alternative materials with a higher embodied energy content, all other things being equal. As operational energy understates total energy requirements, it may lead government and consumers to make decisions counter to the regulation’s policy objective to reduce greenhouse gas emissions.

ABARES assessment

While energy efficiency assessments take account of building design and operational energy requirements, the omission of embodied energy presents an incomplete picture. The current energy efficiency rating system, proposed by the Australian Building Codes Board to the state and territory governments, does not account for energy used over the complete life cycle of a building and its materials. As a result, this rating system may not effectively convey the information necessary to encourage a reduction in greenhouse gas emissions, as it does not reflect the total environmental impact of various building materials. The OECD (2008) refers to
regulation that is poorly designed and does not properly address the initial problem identified as a regulatory failure, rather than a regulatory burden.

The potential to implement a more comprehensive measure of energy efficiency that includes the embodied energy of building materials on a national scale is an area for further work. As the operational energy requirements of buildings decline over time, the contribution of embodied energy to the energy required to build and operate a building will form a larger proportion of overall energy use (Menzies 2011). Therefore, measuring embodied energy is likely to be of greater importance over the long term.

Some research into the potential for implementing rating schemes that more accurately measure building energy requirements has been conducted. Through the National Strategy on Energy Efficiency, which was adopted in 2009, COAG identified the possibility of including embodied energy, as well as measures for appliance and water use, into energy efficiency ratings. More recently, the Building Products Innovation Council (2012) developed a methodology for measuring and reporting the environmental impact of building products, and a database that could be useful for conducting life cycle assessments of building products. In addition, the Green Building Council of Australia has begun to explore how life cycle assessment might be incorporated into their voluntary Green Star national environmental rating system. In August 2012, they released a discussion paper that raised issues and possibilities relating to life cycle analysis to prompt stakeholder feedback (GBCA 2012).

In weighing the merits of a uniform national scheme, policy-makers would need to consider the additional private and public costs of developing and operating such a scheme, and the extent to which it is likely to lead to additional emission reductions. Introducing a mandatory national scheme that rates life cycle energy requirements has the potential to impose a significant burden on businesses. It may impose costs in the form of data collection requirements, adjustment to new administrative processes and acquiring or hiring specialist or technical knowledge. In this latter regard, the interaction between more comprehensive energy efficiency rating schemes and existing policy instruments that aim to reduce green house gas emissions, such as the current carbon tax, would also require consideration.

**Finding 13**

Current state and territory government energy efficiency rating schemes do not account for the energy used over the complete life cycle of a building and its materials. However, measuring and including such energy use information in these schemes is likely to form a complex task requiring further research to determine the nature and magnitude of likely resulting benefits.
16 Temporary labour

Temporary labour is important to many businesses in the primary sector, particularly those in the horticulture industry. Although mechanisation dominates much of agriculture, the handling and grading demands of horticulture are largely manual because mechanical substitutes have not been found or are too costly for all but the largest farms (Hanson & Bell 2007). Further, horticultural production systems are typically seasonal in nature, and the timing of peak labour demands are typically dictated by picking and packing at harvest, and pruning and thinning at other times. Where local workforces are insufficient to meet peak demand, temporary labour migrates to fill available positions.

A considerable body of regulation governs the employment of temporary labour, in part, due to the diversity of people involved. The temporary workforce includes itinerant farm labourers, family members, local casual workers, students, travelling retirees, backpackers, as well as overseas visitors, some of whom are not authorised to work in Australia (Mares 2005). Although businesses in other market sectors also manage diverse workforces, the seasonal nature of agriculture and its location in less populated areas creates additional pressure and complexity.

Many farmers are now pointing to workforce shortages as a major production constraint (see Box 20). Despite the additional complexities in employing non-residents, some farmers are looking overseas to fill positions, particularly for seasonal labour. While beyond the scope of this study, future research could be directed at examining the implications of this trend in more detail.

Participants to the Productivity Commission’s (2007) review raised various concerns about the burden of some temporary labour regulation on agriculture. In its report, the Commission (2007) addressed four issues, three of which affect farmers’ ability to employ overseas workers:

- work eligibility assessments of overseas visitors by farmers
- complaints concerning the skill requirements to access the 457 visa program
- inconsistent taxation of non-resident and resident workers
- Centrelink reporting requirements.

Work eligibility assessments of overseas visitors by farmers

Background and context

Working holiday makers have traditionally been a significant source of seasonal labour for agriculture, particularly in the horticulture industry. However, some overseas applicants for seasonal horticultural work may not hold the visa entitlements necessary to work in Australia and may seek to work illegally. From 2006-07 to 2009-10, the Agriculture, Forestry and Fishing sector employed the largest number of illegal workers across all industries (Howells 2011). Employing an illegal worker is a criminal offence and penalties include imprisonment and/or fines.
Box 20 Stakeholders views on labour shortages in the primary sector

The difficulty of sourcing labour is a widely acknowledged problem for many primary sector businesses, as illustrated by these recently published statements.

Horticulture faces extreme and chronic labour shortages. We should be doing everything possible to encourage seasonal workers — (Sue Finger, Victorian Farmers Federation Horticulture President, Don’t turn backpackers away—says VFF, Media Release, 24/10/12).

It’s already very difficult to get Australians to do a lot of this seasonal work, so backpackers are a vital source of labour for a lot of producers (Simon Coburn, AUSVEG national marketing manager, The Australian, 25/10/12).

... labour availability and skill shortages remain prominent in the horticulture industry and continue to constrain our farmers (Growcom, Human Resources and Industrial Relations Policy Statement, viewed at 21/11/12).

Growers will ring us requiring a whole workforce for the following day. This can literally change five times a day as the weather changes (Sarah McAlister, VERTO harvest labour consultant, The Canberra Times, 8/10/12).

The affordability and availability of suitable skilled staff are the greatest challenges impacting the immediate labour needs of the broadacre agricultural industries in Queensland (AgForce 2012, Skills and Labour Needs Review Analysis, March, pp. 5).

There are easier jobs these days. You find it difficult even to get shed hands and wool classers (Alan Ticehurst, Bookham grazier, The Canberra Times, 8/10/12).

We advertise in ag colleges all over the world because we can’t get enough Australians (Hugh Strahorn, Ag Workforce recruitment manager, The Sun Herald, 15/7/12).

... when you can’t get any labour you’ve got to find other ways to do it — (Jock Laurie, National Farmers Federation president, The Sun Herald, 15/7/12).

We advertised a lot locally, used employment agencies and advertised nationally, and mostly had little or no response. Anybody we did get usually ended up being unsuitable (Mal Gett, premium pork producer, The Australian, 3/1/12)

It is necessary for employers to check visa entitlements within 48 hours of an employee commencing work to avoid liability. Employers can check visas and entitlements using a web-based facility known as Visa Entitlement Verification Online (VEVO) or the Faxback Service by entering selected details from the applicant’s passport. The then Department of Immigration and Citizenship (DliaC 2012a) claimed VEVO is the ‘easiest and quickest’ way to check the visa entitlements of potential employees, as it provides an almost immediate response. The Department (DliaC 2012b) also offers a toll-free Faxback Service which provides written confirmation of a visa holder’s entitlements within five business days. The Faxback Service may suit some employers, especially in areas where internet services are unavailable.

Participants to the Productivity Commission’s (2007) review criticised the unwieldy process for checking the eligibility of overseas visitors to work in Australia (Growcom 2007, NTHA 2007, VFF 2007, QFF 2007). They reported that it was difficult and time consuming for farmers to check eligibility of employees who were needed immediately (and often for a short period of time only). Problems with the verification system unnecessarily increased the compliance burden (NTHA 2007). The Commission responded by calling for the then Department of Immigration and Citizenship to ‘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’.
Extent of progress in reforming visa verification systems

The Department of Immigration and Border Protection has significantly improved its visa verification systems since 2007. A year after the Productivity Commission review, the Australian Government (2008) declared that ‘issues relating to the technical capacity of visa verification systems have been addressed’ and that the Department had also commenced complementary improvements to its VEVO and Faxback systems to address industry concerns.

Stakeholders have also agreed that the system is working well. For example, the National Farmers’ Federation (NFF 2011) stated that their members have found VEVO to be ‘relatively quick and efficient’ in most instances and did not suggest any areas for further improvements. In addition, the then Department of Immigration and Citizenship commissioned the Social Research Centre to survey VEVO users across various industry sectors to determine their satisfaction levels. Although the survey was not specific to agriculture, it included a representative sample of agricultural businesses. Almost two-thirds of respondents reported that VEVO was easy to use, with only three per cent finding use difficult (Petroulias and Coulter 2011).

Similarly, an independent review of the visa verification system found it to be an effective means for employers to determine whether a person is eligible to work (Howells 2011). Stephen Howells, a legal expert, was appointed by the Minister for Immigration and Citizenship in 2010 to review the Migration Amendment (Employer Sanction) Act 2007 (Cth). Howells (2011) concluded that visa checks through VEVO provide a ‘rapid’ response and that user satisfaction with the system is generally ‘very high’. Although some review participants found the Faxback Service slow and inconvenient, overall, stakeholders considered the visa verification systems to be satisfactory. On the basis of these findings, further improvements are unlikely to be warranted.

Scope for further improving visa verification systems

The evidence above suggests there is limited scope for significant further reform, given that much has already been done to improve the ease of use and speed of the visa verification systems. Feedback, particularly on VEVO, has generally been positive. In addition, the Department of Immigration and Border Protection has introduced mechanisms for continual improvement to the system. While there is always room for improvement, past reviews have not highlighted any specific areas for reform.

ABARES assessment

Most stakeholders in agriculture consider that the Department of Immigration and Border Protection has reduced the unwieldiness of visa verification systems since 2007. Scope for further reform appears limited.

Finding 14

The Australian Government requirements for, and process by which agricultural employers assess the work eligibility of overseas visitors do not currently pose an unnecessary burden.

Skill requirements to access the 457 visa program

Background and context

The Australian Government introduced subclass 457 visas in 1996 as a means of attracting more skilled workers and meeting the demand from overseas workers for avenues of temporary entry to Australia (Box 21). Formally known as Temporary Business (Long Stay) visas, 457 visas are
available to skilled workers from outside Australia who have been sponsored and nominated by a business to work in Australia on a temporary basis—up to four years. It is a faster and more flexible way for employers to access overseas skilled workers than through the permanent migration program. Businesses can sponsor skilled workers if they cannot find appropriately skilled Australian citizens or permanent residents to fill positions listed in the Consolidated Sponsored Occupations List (CSOL). The CSOL lists a broad range of skilled occupations that are eligible for 457 visas. The ABS classifies these occupations as managerial, professional, technical or trade-related, and requires applicants to have completed two years of post-secondary full-time study plus relevant work experience. In addition, the ABS adopted a minimum threshold of 300 people within an Australian occupation for it to be considered eligible as an occupation category (ABS 2006, p. 9).

Box 21 The introduction of 457 visas

The Keating Labour Government decided to introduce 457 visas in 1995, following recommendations in the report by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists and Roach (1995). In a media release, then Minister for Immigration and Ethnic Affairs, Senator Nick Bolkus (1995), commented that the report highlighted ‘the need for faster access to managerial, executive and specialist personnel if Australia is to be able to participate in the rapid growth of international economic activity’. He went on to emphasise the productivity effects of temporary migration, asserting that attracting key business people would benefit Australia through skills and technology transfer, and specialised knowledge of overseas business practice and culture. The Howard Government subsequently introduced the 457 visa program which took effect from 1 August 1996.

Originally, those eligible for 457 visas were required to possess specialised skills or proprietorial knowledge; unskilled or semi-skilled workers were excluded (Bolkus 1995). Eligible applicants typically fell into the first four major groups in the Australian Classification of Occupations (ASCO), the predecessor to the Australian and New Zealand Standard Classification of Occupation (Kinnaird 2006):

1) managers and administrators
2) professionals
3) associate professionals
4) tradespersons and related workers.

The ASCO described occupations in these groups as requiring completion of an entry-level trade certificate (Australian Qualifications Framework Certificate III), or a higher level qualification, usually requiring at least three years full-time study.

Participants to the Productivity Commission (2007) review raised concerns about the restricted ability of horticultural businesses to sponsor overseas workers under a 457 visa because some horticultural occupations are not specifically classified in the Australian and New Zealand Standard Classification of Occupation (ANZSCO) (formerly ASCO) codes. The ABS classify occupations into five skill levels and the Department of Immigration and Border Protection use these classifications to determine which occupations are eligible for 457 visas. While, in some instances, the regulations may constrain sponsorship of skilled horticultural workers, ABARES’ consultation with Growcom during the course of this study clarified that their issue largely concerns recruitment of fruit pickers, who generally do not require specialist skills.

While foregone opportunities to recruit labour via 457 visas may constitute a regulatory burden on the horticulture industry, it may be a necessary one. Eligibility is largely determined by the skills needed for an occupation listed on the CSOL and the availability of a corresponding Australian job vacancy. Attempting to fill unskilled positions through 457 visas is counter to the program’s stated objective of skilled migration. Generally, occupations listed on the CSOL require skill level one to three (DIAC 2012c). As such, eligible occupations require a skill level equal to at least an Australian Qualifications Framework Certificate III, including two years of on-the-job training.
Several measures of skill objectively determine whether an occupation requiring a higher skill level is suitable for inclusion on the CSOL. In the first instance, the current workforce in that occupation must also reflect a high skill level. This is determined by the Australian Bureau of Statistics (2006), which measures skill levels required to competently perform the tasks required in occupations according to the:

- level or amount of formal education and training
- amount of previous experience in a related occupation
- amount of on the job training.

An additional requirement is that the majority of workers currently in that occupation must also possess such qualifications and experience. This latter requirement serves to reduce the likelihood of prospective employers exaggerating the occupational skills required in less skilled occupations.

**ABARES assessment**

Although minimum skill requirements for 457 visa eligibility may impose a burden on horticulture businesses by limiting recruitment opportunities, they do not constitute an unnecessary burden, given the scheme’s policy objectives. As the Australian Government has introduced 457 visas specifically to attract skilled workers, it appears inappropriate for the ABS to singularly amend the ANZSCO codes to embrace less skilled workers potentially available to the horticulture industry.

**Finding 15**

Minimum skill requirements for 457 visa eligibility do not impose an unnecessary regulatory burden on horticultural businesses. The Australian Government uses the 457 visa program to target highly skilled overseas workers, where skill requirements are defined by the Australian and New Zealand Standard Classification of Occupation codes.

**Inconsistent taxation of non-resident and resident workers**

**Background and context**

The income of foreign residents derived in Australia is generally taxable, subject to the obligations set out in Australia’s bilateral tax treaties and other international agreements (Henry 2010). Among other things, it allows governments to provide a range of public services such as infrastructure, law enforcement and health care.

Participants to the Productivity Commission’s (2007) review perceived income tax regulation that differentiates between residents and non-residents to create perverse incentives. For example, the Northern Territory Horticultural Association (NTHA 2007) contended that lower after-tax wages for working holiday makers from overseas, relative to Australian resident workers, created discontent among non-resident workers. In turn, this negatively affected their productivity and retention. In addition, Growcom (2007) referred to instances where overseas workers had illegally claimed to be Australian residents to gain a higher after-tax wage. In 2012-13, the Pay As You Go tax liability applying to Australian residents who worked for the same employer for less than six months was 13 per cent, in contrast to 32.5 per cent for non-residents (ATO 2012).

In the past, the Australian Government has not supported the alignment of resident and non-resident tax rates because, broadly speaking, differing incentives and policy objectives apply to
both groups. First, Australian residents working in horticultural jobs, such as fruit picking, have a lower amount of income tax deducted from their pay to reflect the likely temporary nature of their employment (Agriculture and Food Policy Reference Group 2006). Although they may earn a large fortnightly income, this does not necessarily translate into a high annual income where the work is not ongoing. Therefore, rather than returning a large tax refund on completion of a tax return, a lower tax rate is applied to residents who derive their livelihood from seasonal work (Ian Reason [ATO], pers. comm. 7 November 2012). However, the Australian Government does not extend these provisions to non-residents.

In addition, lowering the tax rates of non-resident horticultural workers to align with those applying to residents has the potential to reduce Australia’s tax revenue. Applying a lower Pay As You Go tax rate to non-residents is likely to reduce the incentive for some to lodge a tax return as their expected refund would be lower. Consequently, the Productivity Commission (2007) advised that ‘any changes to the taxation treatment of non-residents should be made as part of any broader review of the taxation regime’.

**Extent of progress in addressing the issue**

Although a comprehensive review of the tax system (Henry Review) was completed in 2010, tax rates for resident and non-resident workers remain inconsistent. The Henry Review was flagged by the Australian Government (2008) in responding to the Productivity Commission’s 2007 review, when it noted that a forthcoming broad review of the taxation system allowed ‘for consideration of the taxation treatment of non-residents’. The Review’s terms of reference sought to reduce regulatory burdens by inviting recommendations from the Review Panel that ensure appropriate incentives for ‘reducing tax system complexity and compliance costs’ are provided.

Underpinning the Henry Review (2010) was the broad principle of consistency in income taxation. It stated that ‘a simple and fair system would treat all forms of employee remuneration and related amounts in the same way’ (Henry Review 2010, p. 40). Although the income of foreign residents was considered, the review did not discuss the alignment of tax rates for foreign and Australian residents working in horticulture or other industries.

**Scope for improving regulatory arrangements**

Given the above, further consideration of the issue appears useful to accurately determine whether there is a case for aligning resident and non-resident tax rates. Although the current arrangements may create perverse incentives, the merits, or otherwise, of aligning income tax rates for Australians and non-residents working in horticulture have not yet been fully explored. Whether the benefits to the horticulture sector of implementing such regulatory changes are likely to outweigh the cost to the broader community of doing so requires further research.

**ABARES assessment**

As the Australian Government has not considered all aspects of the case for aligning resident and non-resident tax rates, particularly in reference to the horticulture industry, further research into the issue appears useful. Specifically, it could include analysing the relative magnitude of the costs and benefits of reducing the Pay As You Go tax rate for non-resident workers to that applied to resident workers.

**Finding 16**

Research directed at understanding the likely costs and benefits of reducing the Pay As You Go tax rate for non-residents to the rate applied to resident workers in the horticultural industry may be useful for underpinning policies designed to alleviate workforce shortages.
Centrelink reporting requirements

Background and context
Stakeholders raised the issue that excessive reporting requirements by Centrelink deter farmers from employing workers who receive Centrelink allowances. The Northern Territory Horticultural Association (NTHA) claimed that Centrelink's request for information from employers when employees do not meet their disclosure obligations can be 'cumbersome for farmers' (NTHA 2007 p. 10). For example, employers may be asked to verify employment, and provide information on an employee's income and work hours, sometimes several years after the period of employment (NTHA 2007).

Extent of progress in reforming regulatory arrangements
Significant progress has been made toward reducing the burden placed on employers by Centrelink reporting requirements. In response to NTHA's concerns, the Productivity Commission (2007) highlighted several ways in which Centrelink had already sought to reduce the burden on employers resulting from information requests. In addition, the Australian Government (2008) response outlined further improvements that Centrelink had made to its processes for collecting information from employees, and from employers with reporting requirements.

Scope for improving regulatory arrangements
There appears little scope for the Australian Government to further reduce the burden of Centrelink's reporting requirements on primary sector businesses. Consultation with NTHA during the course of this study confirmed that this issue no longer concerned them. This could be a result of changes in the horticultural labour force, where a significant proportion of horticultural workers are overseas residents and are therefore ineligible for Centrelink allowances. Regardless of whether this or direct Centrelink action has caused the decline in importance of this issue, there appears to be no rationale for pursuing further improvements to Centrelink processes at this point in time.

ABARES assessment
There appears limited benefit to further reducing the burden of Centrelink's reporting requirements on primary sector businesses. Stakeholders no longer consider Centrelink reporting requirements to be a significant concern. There seems little benefit to be gained from additional changes to Centrelink processes at this point in time.

Finding 17
Requirements for rural businesses to report information to Centrelink on behalf of former employees no longer appear to impose a significant regulatory burden on employers in the primary sector.
17 Work health and safety

Work Health and Safety (WHS) regulation, formerly Occupational Health and Safety, aims to secure the health and safety of workers and workplaces (Model Work Health and Safety Bill 2011). Although state and territory governments are responsible for WHS regulation in their respective jurisdictions, the Council of Australian Governments (COAG) has sought progress toward national consistency in recent decades. With regard to agriculture, stakeholders have raised three issues: inconsistency across jurisdictions, unnecessary complexity and disincentives for compliance by employers (Productivity Commission 2007). In responding to these concerns, the Australian Government (2008) emphasised COAG’s role in reforming WHS regulation, which has recently culminated in the adoption of legislation that is largely consistent across most jurisdictions. While there has been recent progress toward reducing the unnecessary burden of WHS regulation on rural businesses, there remains scope to improve interjurisdictional consistency.

Background and context

The primary goal of work health and safety regulation is to protect the health and safety of workers involved in producing goods and services. While all workplaces pose risks to workers, occupations in the agriculture, forestry and fishing sector can be particularly high risk. In recent years (2003-04 to 2008-09), these industries have had among the highest worker fatality rates (Safework Australia 2011a).

Employers voluntarily invest in making their workplaces safer, to a point. Doing so can serve to reduce equipment damage, loss of worker-specific job skills and workplace disruptions, among other things. This is apart from offering wage premiums to attract workers to riskier jobs in a competitive labour market, as well as meeting any sense of moral obligation.

However, employers will typically not provide protection to the extent deemed appropriate by society because they do not solely accrue the benefits. For example, workers would otherwise benefit to the extent they avoid medical expenses not covered by workers’ compensation insurance, and their households avoid having to expend time and resources in nursing and for recuperation. In addition, tax payers would benefit by avoiding expenditure on public medical subsidies applied to health services.

Government seeks to address employers’ underinvestment in work health and safety precautions using two legislative instruments: workers’ compensation insurance, and work health and safety regulation. The goal of workers’ compensation insurance is to insure workers against work-related injuries and to induce employers to invest more in safety through experience-rated premiums. Work health and safety regulation codifies the common law duty of care to do everything ‘reasonably practicable’ to protect the health and safety of workers. It does this through prescribing minimum safety standards and incorporating guiding principles into workplace operations.

Australia’s workplace health and safety system

Primary responsibility for regulating workplace safety is held by state and territory governments because the Australian Government does not have a head of power under the Constitution to do so.

Notwithstanding state and territory responsibility for WHS regulation, national consistency has been emphasised as an intergovernmental goal since the mid 1980s (Industry Commission 1995).
Inconsistent work health and safety legislation can impose significant and unnecessary costs on businesses that operate in multiple jurisdictions. These may arise when businesses change systems of work or transfer staff between jurisdictions (Industry Commission 1995). In addition, regulatory inconsistencies impose greater monitoring costs on industry and government.

The Australian Government has sought to play a leadership role in harmonising WHS regulation through the establishment of the National Occupational Health and Safety Commission (NOHSC) in 1984. Subsequently, the NOHSC developed National Standards and National Codes of Practice in a number of areas (Safe Work Australia 2011b). It also developed its National Occupational Health and Safety Strategy: 2002-2012, which established national targets and priorities, and drove efforts to improve work health and safety in each jurisdiction (Access Economics 2009).

Nevertheless, continued inconsistency in regulation between jurisdictions (among other issues) has persisted, despite being considered by the Industry Commission (1995), Productivity Commission (2004) and the Regulation Taskforce (2006). Inconsistency has arisen because National Standards are not enforceable unless a jurisdiction had adopted them into their legislation. In addition, there was no binding agreement on how and when jurisdictions should adopt these Standards.

**Past concerns**

Participants to the Productivity Commission's 2007 review raised three concerns about the workplace health and safety system.

- Inconsistent regulation between states remains, despite similar regulatory objectives. Businesses may incur greater costs through time spent or consultants engaged to ensure compliance with different protocols applying across jurisdictions.

- Farmers considered regulation to be unnecessarily complex and frequently changing. The combination of these two factors makes understanding and correctly implementing regulation more difficult. For example, Davidson and Elliston (2005) found that time spent complying with work health and safety regulation by some farmers increased farm costs and discouraged them from employing labour.

- A lack of incentives for employers to comply with regulation because they held an ‘absolute duty of care’ with limited legal defence if a worker was injured. The NSW Farmers’ Association (2007) believed that this share of liability for employers was excessive and that exposure to legal prosecution, regardless of the extent of compliance, acted as a disincentive for employer efforts towards compliance.

Following its assessment, the Productivity Commission (2007) responded that:

> COAG has developed a strategy to develop a nationally consistent occupational health and safety (OH&S) framework. Its progress will be reported on during the 2011 review of generic regulation. (Response 3.19)

In accepting the Commission’s response, the Australian Government (2008) noted that:

> ... an historic Intergovernmental Agreement was signed by COAG on 3 July 2008 which commits the Commonwealth and state and territory governments to the implementation of national uniformity of the OH&S legislative framework, complemented by a nationally consistent approach to compliance policy and enforcement policy, by December 2011.
Extent of progress in addressing the issues

Since the Commission’s 2007 review, some progress has been made toward reducing the unnecessary burden of work health and safety regulation on agriculture. Much of this has followed action to develop nationally consistent WHS legislation, in particular, through COAG.

Harmonising interjurisdictional inconsistencies

There has been considerable effort to harmonise WHS regulation since 2007, but some variation between jurisdictions remains. In July 2008, regulatory harmonisation was included in COAG’s National Reform Agenda, which culminated in the signing of an Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA). This marked the first time that all jurisdictions had formally committed to adopting model work health and safety legislation within a set timeframe.

The IGA included developing and implementing a model Act, supported by model regulations, model codes of practice and a National Compliance and Enforcement Policy. It also involved conducting a National Review into Model Occupational Health and Safety Laws (Stewart-Crompton et al. 2008; 2009). The two reports resulting from this Review made recommendations regarding the optimal structure and content of a model Act that could be adopted in all jurisdictions by December 2011. Subsequently, COAG’s then Workplace Relations Ministers’ Council requested Safe Work Australia (newly established by the Safe Work Australia Act 2008 (Cth)) commence development of the model legislation required under the IGA. Safe Work Australia replaced the Australian Safety and Compensation Council, who had earlier succeeded the NOHSC.

On 1 January 2012, the model Act and regulations came into operation in the Commonwealth, Queensland, New South Wales, the Australian Capital Territory and the Northern Territory, with model codes of practice also being developed as part of the process. Following this, Tasmania and South Australia also adopted the model WHS legislation, which commenced on 1 January 2013. However, governments in Victoria and Western Australia have not agreed to adopt the model regulatory instruments. Victoria has announced that it will not adopt the national model workplace health and safety laws in their current form, although the Victorian Government supports nationally consistent WHS regulation in principle (Work Safe Victoria 2013). While Western Australia does not intend to adopt the model Work Health and Safety Bill in its entirety, WorkSafe WA does not consider the four major variations to concern matters that will directly affect workplace safety outcomes (Western Australia Department of Commerce 2012). In Victoria and Western Australia, the pre-existing regulations are still in force.

Reducing regulatory complexity

COAG has directed some effort toward reducing the unnecessary complexity of regulation through its reform of WHS legislation. Safe Work Australia provides a series of guides and fact sheets to provide further information for those seeking to understand or comply with various aspects of WHS legislation. Further, Safe Work Australia provides interpretive guidelines to assist duty holders demarcate their obligations and apply key concepts and requirements under the model WHS laws.

To address WHS issues that are specific to rural industries, model codes of practice are currently being developed for the use of machinery and vehicles in rural workplaces, and for managing risks in forestry operations. These provide practical guidance to primary sector employers, as they seek to comply with new WHS regulation (Safe Work Australia 2013). As a result, compliance costs, in terms of time and effort spent interpreting and applying the legislation to a
particular farm, are likely to decrease. These two draft model codes of practice are currently ready for consideration and approval by the Select Council on Workplace Relations.

In addition, a wider pool of information and resources may be applicable and available to farmers under a nationally-consistent regulatory framework. In particular, material that assists compliance will be relevant in multiple jurisdictions; thereby adding to the pool of resources on which employers can draw to decrease the difficulty of interpreting and complying with regulation. For example, interpretive guidelines and legislative fact sheets provided by Safe Work Australia are now applicable in several jurisdictions. Further, a specific objective of reform covered by the IGA is to create efficiencies for governments in providing WHS regulatory and support services (COAG 2008b s. 1.4(c)). A nationally-consistent regulatory system may allow some support services to be rationalised, without reducing the quality or availability of information provided.

**Aligning employer and employee incentives**

The regulatory reforms have also realigned incentives to improve compliance by employers. Employer obligations have been made somewhat clearer and where met, reduce the likelihood of employers bearing the full cost of future worker injuries. An employer’s duty of care is qualified by the use of the term ‘reasonably practicable’ under section 3(2) of the Model Work Health and Safety Act. The term encompasses the likelihood of a hazard occurring, the degree of harm that might result, and the practicality and cost of methods to ameliorate a potential hazard. Codes of practice are also admissible in court proceedings and can be used to determine what is reasonably practicable in relevant circumstances. In addition, the legislative review process has clarified the compliance requirements for workers and employers. In doing so, employers may now have greater defence in the face of potential legal prosecution for workplace injuries, assuming ‘due diligence’ in complying with WHS measures.

Further, the legislative changes have clarified workers’ responsibilities to address the potentially excessive burden of responsibility placed on an employer for their workers’ actions. Workers are required to:

- take reasonable care of their own and others’ health and safety at work
- comply with instruction so far as reasonably able
- cooperate with any reasonable workplace policy/procedure relating to WHS.

Legal documentation of a worker’s duty of care, with the possibility of penalties for failing to fulfil this duty, increases worker incentives to maintain a safe work environment for themselves and others.

**Scope for improving regulatory arrangements**

Notwithstanding recent changes to WHS regulation, there is likely to be scope for additional improvement. While the process for enacting consistent WHS legislation in all jurisdictions and implementing a nationally-consistent approach to inspection and enforcement is in place, interjurisdictional variation remains. Legal requirements and enforcement have not yet been harmonised in Victoria or Western Australia, and neither state intends to adopt model WHS regulations that are wholly consistent with those adopted in other jurisdictions. While it is prudent to implement regulation that efficiently and effectively achieves the desired WHS outcomes, the benefit of harmonising regulation across jurisdictions is reduced without implementation in all states and territories.
In addition, although model codes of practice for agricultural plant (machinery) and forestry are currently being developed through the IGA, there may be scope to reduce regulatory complexity by providing additional industry-specific, practical guidelines for use by primary sector businesses. A more comprehensive code of practice that covers a wider range of farm-related activities could reduce outstanding ambiguity about how employers can comply with WHS regulation. While a flexible outcomes-based approach can remove some unnecessary regulatory requirements, it can also increase the difficulty faced by employers as they determine how to ensure compliance. In producing guidance material to aid employer compliance, it will be important for policymakers and regulators to consider the appropriate level of detail provided, so as to minimise complexity but give adequate practical direction.

Given the extent of recent regulatory changes, the nature of their full impact remains unclear. Specifically, the extent to which they have reduced unnecessary burdens cannot be known until businesses have adjusted to the new regulatory environment. While model WHS laws are to be reviewed every five years, it will be useful for such reviews to examine how effectively the model legislation has been in achieving its objectives.

**ABARES assessment**

Recent reform to WHS regulation appears to have reduced the unnecessary burden resulting from overly complex regulation and aligning the incentives of both employees and employers. This has been achieved by introducing clearer definitions of key terms and phrases to support efforts towards compliance. Current efforts to develop model codes of practice, especially those specific to rural industries, are likely to further reduce the difficulty of complying with WHS regulation. In addition, clarifying respective duties of care has served to correct incentives, thereby encouraging action to achieve and maintain safe and healthy workers and workplaces.

There may be scope for the Australian Government to further improve regulatory arrangements through the ongoing COAG process of harmonising WHS regulation. Although recent reform of WHS legislation has, in some way, addressed all three areas of potentially unnecessary burden, regulatory consistency across jurisdictions could be further improved. Enduring variation in WHS legislation and enforcement between some jurisdictions is likely to reduce the benefits and effectiveness of prior harmonisation efforts. Sustained intergovernmental support for harmonising WHS regulation will be required to gain the full benefit of a nationally-consistent regulatory system.

As the implementation of new WHS regulation began relatively recently, the extent to which unnecessary regulatory burdens have been reduced is unclear. The proposed five-yearly reviews are likely to be useful in determining the need for further improvement. At that stage, sufficient time would have passed for the model WHS legislation to have taken effect. In particular, the review could examine the extent to which regulation achieves WHS objectives in each jurisdiction, in conjunction with workers’ compensation insurance schemes.

**Finding 18**

There appears to be scope for the Australian Government to assist in further improving the consistency of work health and safety regulation between states and territories through the Council of Australian Governments. Reviewing the implementation of work health and safety legislation in future, in light of its consequent effect in the respective states and territories, seems prudent.
Agricultural chemicals and veterinary medicines

Agricultural chemicals and veterinary medicines (‘agvet chemicals’) protect crops and livestock from pests and diseases, and are vital to the value of Australia's primary industries. However, the use of agvet chemicals can pose risks to human health, animals and the environment. Their use can also affect Australia’s ability to export to countries with strict requirements regarding chemical residues in food products.

The Australian Pesticides and Veterinary Medicines Authority (APVMA) is the Australian Government statutory authority responsible for regulating the supply of agvet chemicals up to and including the point of retail sale. State and territory governments remain responsible for controlling the use of agvet chemicals after the point of sale.

Issues raised by participants to the Productivity Commission’s (2007) review included the:

- timeliness and complexity of national chemical registration procedures
- access to chemicals for minor uses
- overlap, inconsistency and duplication in regulation across jurisdictions.

Following the Commission’s reviews, former Minister Ludwig (2010) acknowledged that agvet chemicals regulation was 'not working as effectively as it should' and advocated improvements. Following comprehensive stakeholder consultation, the Agricultural and Veterinary Chemicals Legislation Amendment Act 2013 (the Act) received Royal Assent on 29 June 2013. The Act and its subordinate legislation will commence on 1 July 2014 to allow time for the APVMA and industry to prepare for the reforms.

While the following analysis considers the three issues listed above, it does not address all potential areas for reform of agvet chemical regulation. The Productivity Commission (2007) noted a wider range of issues, but referred many to the Commission’s separate study on chemicals and plastic regulation (Productivity Commission 2008a). It is advisable that the issues explored in this study and ABARES’ findings are considered in the context of broader regulatory reforms and that any subsequent government action is underpinned by more detailed analysis.

Timeliness and complexity of national chemical registration procedures

Background and context

All agvet chemicals that are supplied in Australia must be registered by the APVMA as per the Agricultural and Veterinary Chemicals Code Act 1994 (Cth). The scope and magnitude of the APVMA’s assessment procedures vary according to the product for which registration is sought. Applicants must address safety, efficacy and trade criteria in their application, which may involve providing data, citing a reference product or providing a valid scientific argument.

Participants to the Productivity Commission’s (2007, 2008a) reviews raised concerns about the timeliness of registration and approval processes (Animal Health Alliance 2007a, CropLife Australia 2007b, Growcom 2007a, VMDA 2007). The Australian National Audit Office had also raised concerns about the APVMA’s capacity to meet statutory timeframes for registering agvet
chemicals (ANAO 2006). In addition, participants considered the application process to be unnecessarily complex, which may have contributed to the lengthy registration and approval process. Undue complexity can result in incomplete or incorrect applications to the APVMA causing unnecessary delays in the registration process. Overall, excessive time taken to register chemicals and uncertainty about decisions, for whatever reason, pose an unnecessary burden on industry through lost opportunities to use products that enhance productivity.

Several participants also raised the issue of unnecessarily costly data requirements. In particular, stakeholders considered the cost of gathering local data on product efficacy to be excessive, as the APVMA would not accept overseas data (Animal Health Alliance 2007a, VMDA 2007). For example, the Animal Health Alliance (2007a) suggested the APVMA’s requirement for efficacy testing from multiple locations and environments was unnecessary in some cases and increased costs to industry. However, the Productivity Commission (2008a) noted the APVMA does consider internationally-generated efficacy data on a case by case basis and deemed these provisions adequate.

**Extent of progress in addressing the issue**

As mentioned above, reforms through the new Act have commenced to address ongoing stakeholder concerns (CropLife Australia 2012, Syngenta 2010). The new regulation aims to improve the timeliness and reduce the complexity of national chemical registration process. Under the new Act, the APVMA is required to balance the burden imposed on applicants with the chemical risk posed. For example, the APVMA is able to reduce information requirements for some applications and increase transparency in their risk assessment processes by:

- specifying the information it requires more precisely (Schedule 1 s. 8B)
- simplifying the application process for products of low regulatory concern that meet a standard established by the APVMA
- permitting the use of overseas data
- developing, implementing and publishing new regulatory guidelines concerning their risk assessment process.

In addition to improvements initiated through legislative changes, the APVMA is in the process of improving their business practices, which includes:

- offering pre-application advice for prospective applicants (APVMA 2012a)
- reviewing and updating all policies and procedures to improve the timeliness and quality of decision-making
- improving accessibility to information, and making applications and fee payment easier to complete online (APVMA 2013).

**Scope for further improving the issue**

Although the extensive reforms to agvet chemical regulation aim, in part, to address issues concerning national chemical registration, they have not yet been implemented by the APVMA. It is therefore too early to assess their effectiveness and efficiency. Nevertheless, given the inherent complexity of the registration process, this issue would benefit from reassessment after proposed reforms have become established. In this regard, the Act provides for review after five and ten years.
**ABARES assessment**

Since 2007, applicants seeking to register agvet chemicals have experienced limited improvements to the timeliness and complexity of this process. Although not yet finalised or implemented, current reforms to regulations and APVMA business practices are intended to deliver significant improvements in this regard. However, it is too early to identify significant areas for further reform.

**Finding 19**

Ongoing reforms to Australian Government regulation of agricultural chemicals and veterinary medicines, and Australian Pesticides and Veterinary Medicines Authority processes are designed to improve the timeliness and reduce the complexity of national chemical registration procedures.

**Access to chemicals for minor uses**

**Background and context**

The APVMA approves labels for agvet chemicals to ensure they give sufficient instruction to guide use without harming human or animal health or the environment, and without prejudicing trade. Approval is based on scientific data provided by registrants about their product. However, generating these data is expensive. In particular, generating residue data to support health risk assessments can require significant investment by industry. In some cases, registrants are unlikely to recoup the cost of registering an agvet chemical for a particular use because the Australian market is small. Low returns relative to registration costs reduce the incentive for chemical companies to register the product for use in Australia and, in turn, the variety of chemicals available to farmers.

Regulators recognise this issue and have established a minor use permit system to allow the legal use of agvet chemicals in some ‘off-label’ situations. Under the Agvet Code, the APVMA may grant minor use permits where the commercial return on registering a product is unlikely to outweigh registration costs, including the costs of providing data to support the application. Where a chemical has not been registered for a particular use, affected farmers may apply for a permit to use it on: a minor crop, animal or non-crop situation; or a major crop, animal or non-crop situation, but with limitations. The APVMA can also permit the use of an unregistered product for a specific purpose.

Notwithstanding, participants to the Productivity Commission reviews (2007, 2008a) argued that the costs of applying for minor use permits remained unnecessarily high (Virginia Horticulture Centre 2007, HAL 2008). More specifically, Horticulture Australia Limited (HAL 2008) claimed that the major cost was not the application fee, but the scientific testing to generate the necessary data. This particularly affected horticultural and developing industries (Growcom 2007c, CropLife Australia 2010).

In addition, government has recognised that restricted access to minor use chemicals can have undesirable consequences. First, it can discourage private investment in new, target-specific chemicals that have a smaller impact on environmental and human health. This is because the APVMA has typically issued minor use permits for older, broader-spectrum chemicals (APVMA 2010a). Second, it can increase the likelihood of illegal use and decrease appropriate risk management actions by chemical users (MULO 2007). Third, it can have trade consequences. In
the past, maximum residue limit violations in minor crops have led key import markets to demand greater testing, thereby imposing higher costs on Australian producers (MULO 2007).

Acknowledging the need for a long-term strategy, the Department of Agriculture established a Minor Use Liaison Office (MULO) in conjunction with the APVMA in 2006. Shortly after, the MULO released a paper discussing the implications of reduced access to agvet chemicals because of high costs (MULO 2007, Productivity Commission 2008a). It recommended establishing a publicly-funded research and development program to generate scientific residue and efficacy data to support minor use registration (MULO 2007). While the Productivity Commission (2008a) supported efforts to address minor use registration that were in the public interest, it concluded that the case for such a program had not been established.

In response, COAG agreed to *A National Policy Framework for the Assessment, Registration and Control of use of Agricultural and Veterinary Chemicals* (COAG 2008). The framework’s policy principles recognised the need for off-label uses unless this added unacceptable risk to human health, animal welfare, the environment or trade (COAG 2008).

**Extent of progress in improving access**

While access to minor use agvet chemicals remains a challenge, various initiatives have enabled progress on several fronts. For example, the APVMA has allowed greater use of international data, thus lowering data costs in some instances (APVMA 2010b). In addition, various rural research and development corporations, which are partly government funded, have commissioned scientific data to assist particular industries to obtain minor use permits (GRDC 2012, RIRDC 2012, HAL 2012). Further, the Department of Agriculture provides funding to the APVMA to support the processing of minor use applications.

The Australian Government also benefits industry by participating in international forums. Many countries are also experiencing high costs in generating data to support minor use approvals (FAO 2012). In particular, Australia participated in the Global Minor Use Summits in 2007 and 2012 and is chairing the OECD Expert Group on Minor Uses.

The new Act may also improve incentives to register minor use chemicals by offering intellectual property rights over supporting data to those who generate it. This may assist them in recouping the associated costs where multiple companies could register the same chemical for identical uses. In addition, the new Act may increase access to chemicals for a larger range of minor uses by allowing third parties to apply to vary a chemical’s use.

**Scope to improve access**

Increasing access to minor use agvet chemicals remains a challenge. In part, this reflects limited options to improve the efficiency of risk assessment methodologies. While an unduly risk averse approach could impose an unnecessary regulatory burden, it was beyond the scope of this study to assess whether the APVMA’s methodologies are commensurate with relative risk. In this regard, the Productivity Commission (2008a) has outlined the features of an effective and efficient industrial chemical assessment scheme.

There are potential opportunities for industry to significantly reduce data costs per minor use by taking greater advantage of ‘flexibilities’ within the current arrangements. One possibility is to make greater use of ‘grouping options’—the ability to expand the initial compass of applications by extrapolating data for a specific commodity to related commodities within the same crop or pest group. For example, a company may only need to generate data for four crops in order to satisfy data requirements for an entire group containing 20 crops, which has the
potential to significantly reduce data costs per minor use. While the APVMA accepts grouping options, uptake has been limited. There may be scope for industry or government to promote greater awareness among chemical manufacturers of this option.

Raising awareness of existing data sets may be another option, to avoid duplicating data and application effort. The Department of Agriculture is currently working with bodies such as Plant Health Australia, Grains Research and Development Corporation, Rural Industries Research and Development Corporation, Horticulture Australia Limited, Grain Producers Australia and CropLife to resolve issues regarding minor chemical use. This may be a suitable forum for creating opportunities for industry cooperation and data sharing. In addition, the potential for industry to use existing residue monitoring data to support minor use applications may be worth exploring.

A third option is to reconsider the case for additional publicly-funded research to generate scientific residue and efficacy data. There are likely to be broader public benefits from reducing reliance on ‘hard’ chemicals and mitigating the incentives for illegal use in some instances. For example, in the United States, the publicly funded IR–4 Project generates data for minor uses. It focuses support on the registration of pesticides that substantially reduce the risk to human and environmental health relative to existing or recently de-registered products. A recent study found there was a net public benefit from public investment in the program, which includes reducing industry’s reliance on older, more toxic chemicals (Miller & Leschewski 2011).

While these options attempt to reduce data generation costs to support minor use applications, it may be worth considering the benefits and costs of industry self-regulation. More specifically, it may be less costly to assess whether the final commodity complies with the Australia New Zealand Food Standards Code, when compared to the current requirements to seek approval for minor chemical use before their application. In this regard, the Productivity Commission has strongly supported self-assessment options for agvet chemicals by approved applicants (Productivity C 2008a). The merit in pursuing such an approach will be influenced by whether users are able to assess, with adequate accuracy, if their intended chemical use is likely to meet food safety requirements. The extent to which the cost of ensuring the intended level of compliance is reduced by monitoring final products, rather than approving and monitoring the initial application of minor use chemicals is also worth considering.

**ABARES assessment**

Access to agvet chemicals for minor uses is a global problem, although more acute in Australia due to its relatively small market. Often there is insufficient economic return for an applicant to meet the cost of registering a product across a wide range of potential uses. Applying for a minor use permit is costly, primarily because of the significant cost of generating the data required by the APVMA. In turn, this reduces the range of chemicals available for use by farmers.

Although the Australia Government already plays a role in improving access to minor use permits, there is merit in considering the case for further involvement. In some instances, there could be public benefits from reducing industry’s reliance on chemicals that pose a greater risk to the environment than alternatives. For example, further involvement by the Australian Government could involve:

- promoting greater awareness among chemical manufacturers of opportunities to expand the range of potential minor uses included in each application
- raising awareness within industry of existing data sets to create opportunities for inter-industry cooperation and data sharing
• supporting additional research to generate scientific residue and efficacy data with a view to increasing substitution away from older chemistry, toward chemicals with less environmental impact

• assessing whether regulatory objectives can be met at a lower cost through industry self-regulation.

Finding 20
Gaining permission for the minor use of agricultural chemicals and veterinary medicines remains difficult. There is merit in considering the case for further involvement by the Australian Government to support industry initiatives directed at improving access to minor use chemicals, where it is in the public interest.

Overlap, inconsistency and duplication in regulation across jurisdictions

Background and context
The Australian Government, through the APVMA, is responsible for regulating agvet chemicals up to and including the point of retail sale. After sale, use is regulated by state and territory governments, although the degree of control over agvet chemicals differs across jurisdictions (Productivity Commission 2008a). Differences exist in:

• licensing and training requirements for chemical users
• notification and record-keeping requirements
• administration of jurisdiction-specific codes of practice, policies and guidelines
• monitoring and enforcement of the conditions of use imposed by the APVMA on a product’s registration.

Participants to the Productivity Commission’s (2007) review raised concerns relating to unnecessary complexity and inconsistency in regulation between jurisdictions. For example, CropLife Australia (2007b) cited inconsistencies in pesticide use regulation between jurisdictions, including differences in:

• requirements for recordkeeping, training and licensing
• neighbour notification
• application rates and equipment
• ‘off-label uses’ (that is, use on pests, crops and situations different to those labelled).

In their view, inconsistent regulation across jurisdictions led to duplication and confusion, thereby increasing the cost to farmers of complying with multiple regulatory regimes (CropLife Australia 2007b, Growcom 2007a, VFF 2007, VMDA 2007).

Extent of progress in addressing the issue
There has been limited progress in reducing the overlap, inconsistency and duplication in agvet chemical regulation between jurisdictions, despite recent action by governments to address some aspects.
In 2008, the Productivity Commission addressed stakeholders concerns about interjurisdictional inconsistency in more detail and suggested potential improvements. In particular, the Commission supported the vertical integration of state and territory regulation of agvet chemicals after the point of sale into a national scheme to:

- improve consistency in risk-management outcomes
- reduce interstate competition distortions
- potentially increase the net public benefit of regulation (Productivity Commission 2008a).

In response, COAG agreed to pursue a national framework for agvet chemical regulation to improve its efficiency and effectiveness (COAG 2008). In 2012, the Standing Council on Primary Industries (SCoPI) proposed a model regulatory framework to harmonise licensing, training and access to agvet chemicals (SCoPI 2012). This framework comprised a minimum level of consistency in regulation across jurisdictions including, but not limited to:

- licensing requirements
- recognition of licences issued by other jurisdictions
- competency requirements to receive a licence
- recordkeeping
- provisions for veterinarians prescribing, compounding and supplying veterinary medicines off-label
- a nationally coordinated chemical residue monitoring program for domestic produce (COAG 2012b).

Responsibility for overseeing the implementation of these reforms was given to the Agvet Chemical Regulation Committee, which was established in March 2013. In May 2013, the Australian, state and territory ministers for primary industries agreed to sign an intergovernmental agreement outlining a consistent framework for regulating agvet chemicals across jurisdictions.

However, action to harmonise off-label uses is minimal under this framework, and inconsistencies between jurisdictions are likely to remain. Inconsistent regulation of off-label use arises from differing legal recognition of an agvet chemical’s label across jurisdictions. In some instances, regional differences may be justified. Notwithstanding, farmers in some states benefit from easier access to a wider range of chemicals and uses, as a result of more flexible regulatory arrangements. Off-label chemical use remains a contentious issue and it is therefore unlikely that a consensus across jurisdictions will be achieved in the foreseeable future regarding the extent to which off-label uses are regulated.

Scope for further improving the issue

COAG is currently implementing the national framework to harmonise state and territory regulation of agvet chemicals and working to identify further areas for reform through the Agvet Chemical Regulation Committee.

In light of forthcoming changes through the implementation of the national framework for agvet chemical regulation, it is not yet possible to comment on the scope for further improving
regulatory arrangements. Given COAG’s aim to harmonise licensing, training and access to agvet chemicals, the model regulatory framework may serve to reduce overlap, inconsistency and duplication across jurisdictions after the point of sale.

The forthcoming national framework is scheduled for review in five years. This will provide an opportunity to consider the scope for further reforms, as the new regulatory arrangements will have taken effect.

**ABARES assessment**

Some of the overlap, inconsistency and duplication in regulation across jurisdictions is currently being addressed through COAG-led reform. The development of a national framework through this intergovernmental process aims to reduce the unnecessary burden resulting from differences in chemical use regulation after the point of sale between jurisdictions. Although COAG will not address all inconsistencies, some differences may be warranted to address different operating environments between jurisdictions.

**Finding 21**

The Council of Australian Governments is currently developing a national framework for regulating agricultural chemical and veterinary medicine use to minimise overlap, inconsistency and duplication in regulation between jurisdictions.
19 Chemicals of security concern

The regulation of hazardous materials, including chemicals of security concern, is a joint responsibility of Australian, state and territory governments (NCTC 2012). In 2002, Australian governments began to examine the security arrangements around agricultural, veterinary and industrial chemicals that could be used for terrorist activities. Regulating access to ammonium nitrate was prioritised because of its wide availability as a fertiliser. By 2008, all state and territory governments had implemented different systems to regulate security sensitive ammonium nitrate (SSAN). To date, there has been limited progress in improving the interjurisdictional consistency or reducing the complexity of SSAN regulation. Most of the following assessment of progress relates to SSAN; however, towards the end there is a broader discussion about the regulatory approach being developed to control access to other chemicals of security concern.

Background and context

Although agricultural, veterinary and industrial chemicals are used legitimately by farms, industries, mines and households every day, there is also a risk that they will be used for terrorist activities. Of particular security concern is ammonium nitrate, which can be used as a fertiliser and as a commercial explosive, particularly in mines (Productivity Commission 2008a). Security sensitive ammonium nitrate (SSAN) is defined as ‘ammonium nitrate, ammonium nitrate emulsions and ammonium nitrate mixtures containing greater than 45 per cent ammonium nitrate, excluding solutions’ (COAG 2004). Although ammonium nitrate is more expensive to transport and store than alternative nitrogen fertilisers, such as urea, it is less prone to losing nitrogen to the atmosphere and can deliver a quicker nitrogen response (Incitec Pivot Fertilisers 2012).

Following terrorist attacks in 2002, Australian governments, through COAG, agreed to examine the security arrangements around hazardous materials. The review focused on four areas: ammonium nitrate, radiological sources, harmful biological materials and chemicals of security concern. Government action on ammonium nitrate was prioritised because of its wide availability and potential for use by terrorists as an explosive (Productivity Commission 2008a).

COAG completed its review of ammonium nitrate in 2004, agreeing that state and territory governments should license the import, manufacture, storage, transport, supply, export, use and disposal of SSAN. It also agreed to a set of national principles limiting access to those that could demonstrate a legitimate need. According to COAG (2004), ‘legitimate need’ was likely to include agriculture, mining and other commercial uses. Further, licence applicants have to prove probity through background checks by police and the Australian Security Intelligence Organisation. By 2008, all states and territories had implemented separate legislative arrangements (Productivity Commission 2008a).

Participants to the Productivity Commission (2007) review raised concerns about these regulations, in particular the limits effectively imposed on legitimate agricultural use and the inconsistency between jurisdictions (CropLife Australia 2007a, NFF 2007a, QFF 2007 and VFF 2007). In their view, the regulation had unnecessarily impeded farmers’ access.

Regulation has directly and indirectly reduced the use of SSAN in agriculture. Tasmania banned its use in agriculture in 2005. Elsewhere, there are now fewer suppliers of fertilisers with ammonium nitrate in concentrations that trigger security requirements (Productivity Commission 2008a). Although commercial reasons may have contributed—several producers
ceased supplying certain ammonium nitrate fertilisers prior to the 2004 COAG agreement (Productivity Commission 2008a, SCCRHM 2004)—one stakeholder argued knowledge of future regulation may have also played a role (Whamcorp Pty Ltd 2008).

Participants were also concerned that regulation of other security sensitive chemicals could become as burdensome as SSAN regulation. At the time, ammonium nitrate was the only one of the four areas reviewed by COAG where a regulatory system had been implemented. Stakeholders highlighted the need for a nationally consistent approach that balanced compliance costs and security risk (NFF 2007a, QFF 2007).

The Productivity Commission (2007, resp. 3.13) responded by referring to a separate study on chemicals and plastics (Productivity Commission 2008a) that would examine the regulation of SSAN. The Commission (2007, p. 81) also noted that COAG was in the process of developing a framework for regulating other security sensitive materials and highlighted that ‘an effective regulatory regime needs to be put in place as soon as practicable’.

**Security sensitive ammonium nitrate**

Since 2007, there has been limited progress towards harmonising SSAN regulation across jurisdictions. Improving consistency in particular aspects, such as licensing, remains a COAG agenda item. The Productivity Commission (2008a) found significant inconsistency between jurisdictions regarding: SSAN licensing arrangements (different terminology and licence coverage), probity assessments (information requirements) and licence fees and charges. It recommended that all state and territory governments:

- implement a nationally uniform approach to security checks that is managed by a single agency, with information shared across jurisdictions (reco. 10.1)
- consider improving consistency in reporting requirements, storage, transport, licence durations and licence assessment timeframes (reco. 10.2).

Although COAG agreed to reforms based on the Commission’s recommendations in 2009, there was no clear indication of progress by 2011 (COAG Reform Council 2012, SCOC 2012a). In 2012, the Federal Attorney-General agreed to lead harmonisation efforts to address concerns about lack of accountability and slow progress in harmonising SSAN regulation, at the request of the Business Regulation and Competition Working Group (SCOC 2012b). Although regulating SSAN remains a state and territory responsibility, the Australian Government plays a role in promoting regulatory consistency through COAG.

Given the above, there remains considerable scope to improve the consistency of SSAN regulation across jurisdictions. Current COAG reform processes aim to improve national consistency in licensing requirements and increase information sharing across jurisdictions, thereby reducing compliance and administrative burdens on applicants and regulators. The National Government Advisory Group on Chemicals Security review of SSAN risk and controls may highlight further areas for reform.

**Other chemicals of security concern**

In 2008, a broad framework to assess and mitigate the national security risks associated with chemicals of security concern (including SSAN) was established under the intergovernmental ‘Agreement on Australia’s National Arrangements for the Management of Security Risks Associated with Chemicals’ (IGA). All state and territory governments signed the IGA and the Commonwealth Attorney-General’s Department is responsible for implementing the IGA. This approach follows a similar recommendation by the Productivity Commission (2008a, reco. 10.4).
Although the IGA promotes national consistency, it does not limit the ability for state and territory governments to implement additional measures.

In contrast to SSAN regulation, other chemicals of security concern are regulated through a National Code of Practice for Chemicals of Security Concern. The code was developed by Australian governments under the IGA, in partnership with industry, and was launched on 25 July 2013. In response to stakeholder feedback that strongly opposed replicating SSAN regulation for other chemicals (COAG 2008), this separate, voluntary approach is expected to be less burdensome. This is in line with the Productivity Commission (2008a reco. 10.3) recommendation that a separate approach be developed to regulate access to other chemicals of security concern.

The National Code of Practice for Chemicals of Security Concern promotes effective security management practices along the chemical supply chain for 11 of the remaining 95 chemicals of security concern. Government is considering incorporating the remaining chemicals, including 29 agricultural and veterinary chemicals, into the Code (Australian Government nd). NFF (2013) recently highlighted the importance of minimising the Code’s duplication with state government regulation and considering the compliance burden on businesses to avoid creating unnecessary regulatory burdens. However, stakeholder groups such as CropLife Australia (2013) and the Fertilizer Industry Federation of Australia have stated their support for the Code and noted its consistency with industry’s own codes of practice (FIFA 2012).

Although the Code may alleviate stakeholder concerns about possible unnecessary regulation of other chemicals of security concern, it has only recently been introduced and thus its effect on agricultural businesses remains uncertain.

**ABARES assessment**

There remains considerable scope to improve the consistency of SSAN regulation and reduce the complexity in applying for a license. It is likely these aspects have reduced SSAN fertiliser use, although the increasing availability of competitively-priced substitutes, some of which avoid triggering SSAN legislation (Incitec Pivot Fertilisers 2013), is also likely to have been a factor. Nevertheless, there is merit in pursuing regulatory consistency insofar as demand for ammonium nitrate could increase in the future, were it to become more attractive (for example, under uncertain rainfall regimes due to climate change, particularly in southern cropping areas).

In contrast, COAG’s proposed regulatory changes may improve consistency and reduce the costs imposed on agricultural businesses through information sharing and interjurisdictional validity of licences. The code of practice applying to other chemicals of security concern appears to avoid some of the unnecessary burdens associated with existing SSAN regulation.

**Finding 22**

There is scope to reduce the complexity and to improve the consistency of security sensitive ammonium nitrate regulation between jurisdictions. The Australian Government is already playing a coordination role through the Council of Australian Governments.
20 Food regulation

The prevailing aim of food regulation is to protect public health and safety by reducing risks related to food (ANZFRMC 2008). Australia’s food regulation system is established by the Food Regulation Agreement (2000), which commits the Australian Government and all state and territory governments to a national approach to food regulation in Australia. New Zealand is a partner in this system, through the Agreement between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards (The Food Treaty 1996). These agreements are underpinned by the Food Standards Australia New Zealand Act 1991 (Cth) and legislation in each jurisdiction.

More consistent food standards across jurisdictions have been sought for many years. Food Standards Australia New Zealand (FSANZ, formerly known as the National Food Authority) has had responsibility for developing and maintaining the Australia New Zealand Food Standard Code since 1991, when the Food Standards Australia New Zealand Act 1991 (Cth) came into force. In 1998, the Food Regulation Review Committee also recommended a national approach to food regulation in the Blair Review (Food Regulation Review Committee 1998). Despite broad support for an integrated and coordinated food regulation system, national standards continued to be implemented and enforced at the discretion of state and territory governments, which has allowed inconsistencies between jurisdictions to persist.

The Regulation Task Force (2006) recommended the Australian Government commission an independent public review to examine its role in the food regulatory system, including whether it could play a greater role in enforcing standards. It also recommended revisiting outstanding recommendations from the Blair Review on the consistent application of food laws. While findings of the 2007 Bethwaite Review into Australia’s food regulation system were not released, COAG’s Business Regulation and Competition Working Group has subsequently taken up the reform agenda.

Participants to the Productivity Commission’s (2007) review raised various concerns about the burden of some food regulation on agricultural businesses. The Commission addressed the following issues:

- inconsistency in food regulation between jurisdictions
- inconsistency in regulation of domestic and imported food
- timeliness of regulatory processes involving FSANZ and the Australian Pesticides and Veterinary Medicines Authority (APVMA).

Inconsistency in food regulation between jurisdictions

**Background and context**

State, territory and local governments are primarily responsible for implementing and enforcing food standards, although the Australian Government, through the Department of Agriculture, has a role in enforcing the Australia New Zealand Food Standards Code at the border. In 1998, the Blair Review (Food Regulation Review Committee 1998) recommended Australia adopt an integrated and coordinated food regulatory system with nationally uniform laws and a co-regulatory approach. Following this, Australian, state and territory governments agreed to move towards a national system (Productivity Commission 2012b). An Intergovernmental Food
Regulation Agreement (FRA), signed by COAG in 2000, included the Model Food Act as a template for developing consistent legislation in each state and territory (Productivity Commission 2012b). The FRA also established the Australia New Zealand Food Regulation Ministerial Council, now known as the Legislative and Governance Forum on Food Regulation. The forum’s membership comprises ministers responsible for food regulation from all states and territories, the Australian Government and New Zealand. Its role is to develop Australian food regulation policy using powers to adopt, amend, reject or request the review of food standards.

Despite an overarching national approach, inconsistent regulation remains, due to the autonomy of state and territory governments to determine how and whether to implement national standards. With the introduction of the Model Food Act and, in particular, the Model Food Provisions in Annex A and Annex B, the intent was for all state and territory governments to uniformly apply Annex A, but to have the ability to vary Annex B when passing their own legislation. The ability to vary Annex B provisions, which primarily relate to administration and enforcement, has resulted in diverging compliance requirements between jurisdictions.

Participants to the Productivity Commission’s (2007) review contended that inconsistency in food regulation between jurisdictions creates an unnecessary regulatory burden by increasing compliance costs for businesses operating in multiple jurisdictions. This is because the cost to businesses of seeking advice on food standards multiplies where it is necessary to contact regulatory bodies in each jurisdiction to ensure compliance with their interpretation of standards. In this regard, the Queensland Farmers’ Federation (2007) stated that:

… 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.

Extent of progress

While some progress towards harmonisation has been made since the Productivity Commission’s 2007 review, interjurisdictional differences have stymied achieving a seamless national approach to food regulation and overall progress has been slow (Productivity Commission 2009b). Despite intergovernmental aspirations of consistency evident in the FRA, jurisdictions have considerable liberty to deviate from the national approach to monitoring and enforcing food regulation. And while COAG’s Legislative and Governance Forum on Food Regulation encourages national coordination, it has limited means to enforce national consistency.

Notwithstanding, COAG (2008d) has agreed to ‘accelerate development and implementation of reforms to reduce the regulatory burden on businesses and not-for-profit organisations’ relating to consistency in food legislation and uniform enforcement. It has also agreed to pursue national consistency in monitoring and enforcing food standards, and to explore the ability for the Australian Government to be involved in this area (COAG 2008e).

Clarifying the roles and responsibilities of bodies involved in food regulation was prioritised by COAG’s Legislative and Governance Forum on Food Regulation (ANZFRMC 2008). In its Overarching Strategic Statement, the Forum (ANZFRMC 2008) identified key areas for regulatory improvement relating to duplication and overlapping roles and responsibilities, including assisting local government to administer food legislation more consistently.

While progress toward greater interjurisdictional consistency of food regulation has been limited, there have been efforts to reduce the operational burden imposed by this inconsistency. In particular, some progress appears to have been achieved through the work of COAG’s
Implementation Subcommittee on Food Regulation (ISFR) (formerly the Implementation Subcommittee (ISC)) and the introduction of the Code Interpretation Service (CIS) by FSANZ.

- The then ISC developed an Integrated Model to support the development and adoption of primary production and processing (PPP) standards and promote their consistent implementation. The Model, endorsed by ISC in February 2011, ensures that all jurisdictions can consistently implement PPP standards and that industry has access to guidance to assist in achieving compliance (ISC 2010). The Model outlines the approach, principles and functions for use to support and promote consistent implementation of PPP standards across jurisdictions. To date, the Model has been applied to PPP standards for eggs, egg products and poultry meat.

- The CIS was established in 2011 to provide centralised advice on food standards with a view to reducing duplicative efforts by businesses to interpret standards. It was introduced after the *Intergovernmental Agreement for Food Reforms* was signed and aims to ‘enable a nationally consistent approach to the way in which food standards are interpreted and enforced by jurisdictions’ (COAG 2011b, p.5). The CIS provides businesses with a common interpretation of food standards as they apply in all states and territories. While the CIS charges a fee-for-service, it makes the information freely and publicly available once gathered. The cost of a complex (tier 4) application is currently $23 105. In the short term, the service may not significantly reduce overall costs to those businesses purchasing guidance and this factor may have contributed to the limited uptake of CIS expertise to date. When assessing the costs and benefits of the CIS, it is important to note that the benefits to industry are likely to accrue over time, as the volume of information collected and made freely available by the CIS grows (Productivity Commission 2012b).

**Scope for further reducing the unnecessary regulatory burden**

While substantial inconsistency in food regulation and compliance requirements between jurisdictions remains, there may be a role for additional Australian Government involvement in re-evaluating legislative provisions that are open to interjurisdictional variation. However, its influence is limited insofar as its membership on the Forum entitles it to one vote among ten on matters relating to food standards.

The Productivity Commission (2008b) advised that the provisions in Annex B be examined to determine whether there is a demonstrable need to vary these to meet unique regional or local needs. Aspects that can be applied nationally could then be included in Annex A for consistent adoption by each jurisdiction, thereby limiting variations of Annex B provisions to those necessary to meet food safety outcomes in specific locations.

It also suggested that the Australian Government, on behalf of and with the agreement of states and territories, establish identical contractual arrangements with agencies in each state and territory to strengthen efforts toward nationally consistent food regulation (Productivity Commission 2008b). Such arrangements would drive improvements to regulatory consistency in areas previously agreed in the 2000 Intergovernmental Food Regulation Agreement. Periodic review and auditing may also be appropriate, to ensure that desired outcomes are achieved.

Despite the general merits of regulatory consistency, it is noteworthy that interjurisdictional differences can be beneficial in some circumstances. For example, the VFF (2007) supported harmonising regulation, but retaining sufficient flexibility to accommodate geographical differences. It provided an example from the egg industry, where regulation in Queensland requires eggs to be stored at a humidity level different from that required in Victoria. Further, the VFF (2007, p. 22) asserted that ‘maintaining sufficiently flexible Primary Production Standards will ensure good food safety practices in each State’.
ABARES assessment

Some progress towards harmonisation has been made since 2007, but although broad support for nationally consistent food regulation remains, this has not been achieved. While national consistency remains on COAG’s agenda, the ability of state and territory governments to vary aspects of the Model Food Provisions has increased the compliance burden for businesses operating in multiple jurisdictions than might be the case under nationally consistent regulation. Unless specific food safety outcomes require variations unique to particular areas, divergence from the model legislation can create an unnecessary regulatory burden.

Notwithstanding the Australian Government has no constitutional powers to regulate food, it may still have a role in creating a nationally consistent system. For example, there is a sound case to re-evaluate the provisions included in Annex B of the Model Food Act to ascertain the necessity that they be open to jurisdictional variation. In addition, the potential for each state and territory government to enter into identical contractual agency arrangements with the Australian Government to strengthen accountability for achieving regulatory outcomes is worth exploring.

Finding 23

Further Australian Government involvement in facilitating improvements in the consistency of food regulation between jurisdictions could potentially reduce unnecessary regulatory burdens.

Inconsistency in regulation of domestic and imported food

Background and context

Food imported into Australia is required to meet Australian food product standards, as is food produced domestically (DAFF 2012e). The responsibility for monitoring imported food is shared by multiple agencies across the three levels of government. Under the Imported Food Control Act 1992 (Cth), the Department of Agriculture administers a risk-based border inspection program to monitor importers’ compliance in sourcing food that meets Australia’s food product standards, as listed in the Australia New Zealand Food Standards Code.

In 2007, participants to the Productivity Commission’s review perceived imported food to be less stringently regulated than domestically-produced food, thereby affecting the competitiveness of local growers. In essence, this suggests that the testing regime applied to imported food does not provide the same level of quality assurance to consumers as domestically-produced food that meets Australia’s food standards. For example, the Victorian Farmers Federation (VFF 2007) and Australian Pork Limited (APL 2007) questioned whether some imported produce met Australian food standards.

The Productivity Commission (2007) highlighted that imported food is inspected and assessed against the same product standards applied to domestically-produced food by Department of Agriculture officers under the Imported Food Control Act 1992 (Cth). However, because it would be very costly to test all imports against the large number of standards contained in the Food Standards Code, they are only assessed against standards that address the risks deemed most relevant. While procedures for monitoring and enforcing the Code differ with respect to imported and domestically-produced food products, all food products must meet the same standards. In this respect, no unnecessary regulatory burden on local producers seemingly exists.

In responding to stakeholder concerns, the Productivity Commission (2007) called for the Department of Agriculture and the Department of Health to ensure that industry is fully aware that the same standards apply to food manufactured in Australia and overseas.
Extent of progress in raising awareness of uniform standards for imported and domestic food

Since 2007, the Australian Government has been involved in intergovernmental efforts to raise industry awareness that food product standards apply equally to domestic and imported food. For instance, the Legislative and Governance Forum on Food Regulation (ANZFRMC 2008) has developed an Overarching Strategic Statement for the food regulatory system to provide context for, and clarify the objectives of food regulation in Australia and New Zealand. The Statement specifically draws attention to the fact that food regulation in Australia ‘will not discriminate in the way it is applied between domestic products or imported products, nor between imports from different supplying countries’ (ANZFRMC 2008, p. 18). In addition, the terms of reference for the Implementation Sub Committee (ISC) of the Food Regulation Standing Committee state that the ISC is to develop and oversee a consistent approach to implementation and enforcement of food regulation, regardless of whether the food is imported or produced domestically.

Scope for further improving awareness of uniform standards for imported and domestic food

Some stakeholders still consider differences in the regulatory requirements of imported and domestic food to exist. These views appear to derive from a perception that the current testing regime for imported food used by the Australian Government is not adequate to prevent the import of sub-standard food products. Without a stronger evidence base to the contrary, the justification for increasing the stringency of the current testing regime appears limited.

ABARES assessment

Concerns regarding differences in operating costs facing primary sector businesses in Australia and other countries stem from differences in regulatory objectives. Assessing such objectives is beyond the scope of this study and, in particular, lower regulatory standards adopted by other countries are beyond the jurisdiction of the Australian Government.

As the same food standards apply to domestic and imported food products, there is no evidence of an unnecessary regulatory burden. The Legislative and Governance Forum on Food Regulation has made an effort to raise industry awareness of food standards. On this basis, additional work in this area is not warranted.

Finding 24

Imported food is subject to the same product standards that apply to food produced in Australia and food standards do not therefore impose an unnecessary burden on rural businesses.

Timeliness in regulatory processes involving FSANZ and APVMA

Background and context

In Australia, the setting of legal limits for agricultural or veterinary chemical residues in both domestic and imported food requires extensive collaboration between the Australian Pesticides and Veterinary Medicines Authority (APVMA) and FSANZ (ANZFRMC 2008). The APVMA assesses agricultural chemicals to determine appropriate limits on use, in light of the health and safety risk posed by a chemical. FSANZ has overall responsibility for assessing dietary exposure to residues as part of the process of setting maximum residue limits (MRLs) (FSANZ 2013). Once
use of a chemical has been approved by the APVMA, the appropriate MRL must be included in the Food Standards Code for domestically-produced foods (APVMA 2011).

Growcom (2007) raised the issue that inconsistencies in regulation arose because of the lengthy transition period between approval to use a pesticide by the APVMA and FSANZ incorporating it into the Food Standards Code. Such delays may unnecessarily postpone opportunities to improve farm productivity and profitability (FSANZ 2012a). For example, it is illegal to use an APVMA-approved pesticide that does not have a corresponding MRL in the Food Standards Code.

**Extent of progress in reducing the unnecessary regulatory burden**

The timeframe between changes to pesticide registration with APVMA and FSANZ transposing the associated changes to MRLs in the Food Standards Code has, in many instances, shortened significantly since 2007. For example, Growcom claimed the transition period for fresh food and produce could extend to 15 months in 2007, but this has now been reduced to between 10 and 14 weeks (APVMA 2012b).

In addition, legislative changes have also served to streamline the development of food standards by enabling quicker recognition of MRLs in food standards (FSANZ 2013). In their Overarching Strategic Statement, the Legislative and Governance Forum on Food Regulation (ANZFRMC 2008) highlighted standard setting as a priority for regulatory improvement, with particular emphasis on reducing unnecessary delays. Now, under arrangements that took effect on 1 March 2011, APVMA can itself vary MRLs in Schedule 1 of Standard 1.4.2 in the Australia New Zealand Food Standards Code, thereby significantly reducing transition times. Insofar as significant progress to date has addressed earlier concerns, further improvement may not be warranted.

**ABARES assessment**

There has been a significant reduction in the delay between the APVMA setting an MRL for a chemical’s use and the associated changes to the Food Standards Code. Given these regulatory improvements, there seems little benefit to be gained from further work in this area.

**Finding 25**

The delay between the setting of Maximum Residue Limits for chemical use by the Australian Pesticides and Veterinary Medicines Authority and its incorporation in the Australia New Zealand Food Standards Code has been significantly reduced since 2007.
21 Testing biodiesel produced on farms

In the 2000s, a possible carbon emissions trading scheme, increasing mineral fuel prices and relatively low technical constraints stimulated interest in renewable fuels, including on-farm production of biodiesel (Kingwell & Plunkett 2006, Paech 2006). At the same time, the regulatory environment surrounding on-farm biodiesel production was also changing. The Productivity Commission's review in 2007 investigated various regulations concerning the testing of biodiesel produced on farms, which farmers considered had contradictory policy intents. The Australian Government accepted the Commission's suggestion that the Australian Taxation Office clarify requirements on biodiesel testing and record keeping provisions with rural producers (Australian Government 2008). Although there appears limited scope to simplify regulatory arrangements, recent stakeholder feedback also suggests that farmer concerns in this area have waned in recent years.

Background and context

Three pieces of legislation directly affect biodiesel production on farms, although their effects depend on individual circumstances.

- Under the Excise Tariff Act 1921 (Cth), persons intending to manufacture biodiesel (canola farmers, for example) need a ‘licence to manufacture excisable products—fuel and petroleum products’. In addition, all biodiesel manufactured on-farm is subject to excise duty. Here, ‘manufacture’ may include the simple act of blending biodiesel and diesel. Taxing transport fuels at their point of manufacture helps to avert tax evasion associated with other policy-related transfers, such as rebates, remissions, refunds, subsidies and grants (Treasury 2001). A key motivation for including biodiesel (and other renewable fuels) within the fuel excise system was to ensure it would not enjoy a competitive advantage over other transport fuels (Campbell 2003). Although the Australian Government introduced fuel taxes in the early 1900s to fund the development and maintenance of Australia’s road network, it now considers them simply as a general source of government revenue (Box 22).

- Biodiesel manufacturers, including licensed farmers, may be able to offset the abovementioned excise payable under the Excise Tariff Act by claiming a grant under the Energy Grants (Cleaner Fuels) Scheme Act 2004 (Cth). The objectives of the Energy Grants Act are to encourage the manufacture (and importation) of fuels that have a reduced impact on the environment. The Australian Taxation Office (ATO) administers this Act, which requires claimants to keep various records and to have their fuel tested as proof that it meets minimum quality standards prescribed under the Fuel Quality Standards Act. Among other things, such testing serves to determine the accuracy of the goods’ described in a claim, as required under the Product Grants and Benefits Administration Act 2000 (Cth).

- The Fuel Quality Standards Act 2000 (Cth) regulates the quality of fuels supplied in Australia to improve air quality for environmental and health reasons, among other objectives. Although biodiesel produced and used on-farm (that is, not sold to others) is exempt from testing for the purposes of this Act, testing against these standards is a prerequisite for claiming a grant under the Cleaner Fuels Grants Scheme. For this latter purpose, the ATO accepts less frequent testing once manufacturers have demonstrated a capacity to consistently produce biodiesel to standard.

(Note that the long-standing fuel rebates that apply to many (typically off-road) agricultural, fishing and forestry activities under the Fuel Tax Act 2006 (Cth) are not available for biodiesel that has already received another grant or subsidy, except for diesel fuel blends that contain less than 20 per cent biodiesel.)
Tax on fuel in Australia was first introduced in the early 1900s as excise duties on transport fuels (such as petrol and diesel) to fund the development and maintenance of Australia’s road network. The link between fuel taxes and road funding was reinforced by the provision of exemptions (and later rebates) of fuel tax for off-road users of diesel from the late 1950s, and by concessional rates of excise where fuel is used other than for transport.

In later years, however, the principal rationale for fuel taxes has been to provide a general source of government revenue. Tax concessions have remained in the fuel taxation structure for fuel used other than as a transport fuel, or for a number of uses of petroleum products other than as a fuel. These concessions take the form of lower excise rates, remissions or refunds of excise duty and can generally be seen as mechanisms for providing tax relief to legitimate users of petroleum products for uses other than as a transport fuel.

Since the early 1980s, the emphasis on fuel excise as a significant source of government revenue has grown, along with an increase in excise evasion activities. This has resulted in an incremental approach to restructuring and extending the range of fuels to which excise applies, to protect the revenue source, and an increase in compliance provisions to detect evasion.


At issue is the apparent perverse incentive across the legislation as it relates to testing of biodiesel produced on-farm. In their submission to the Productivity Commission’s 2007 review, the National Farmers’ Federation (2007) contended that the Fuel Quality Standards Act and the Excise Tariff Act appear to have contradictory policy intents. On the one hand, the Standards Act exempts farmers from having to pay an accredited laboratory to test biodiesel they manufacture for their own on-farm use. On the other hand, the Excise Act mandates testing if farmers want to claim a rebate of excise paid compulsorily, which the Schedule to the Act currently states as $0.38143 per litre. At the time, the NSW Farmers’ Association (2007) viewed these arrangements as a disincentive to adopt ‘cleaner fuels’ which, in the advent of any carbon trading regime, would constitute an opportunity cost to farmers.

However, the concurrent existence of the Excise Tariff Act 1921 and the Energy Grants (Cleaner Fuels) Scheme Act 2004 does not, of itself, imply an unnecessary regulatory burden. In the first instance, the Constitution (s. 55) requires that laws imposing taxation shall deal only with the imposition of taxation and prevents other things being included in taxation laws. Secondly, the Productivity Commission (2007) pointed out that an unnecessary regulatory burden may not exist. Although farmers face a regulatory burden insofar as substantiating claims for energy grants requires testing, ‘good governance’ standards seemingly warrant some form of testing.

Extent of progress towards reducing misconception surrounding testing requirements

The regulatory arrangements concerning the testing of biodiesel produced on farms have changed little since 2007. The Australian Government (2008) accepted the Commission’s response 3.29 that the ATO should clarify the arrangements with rural producers to allay possible misconceptions. The ATO publishes information on biodiesel testing on their website, as part of the ‘Cleaner Fuels Grants Scheme’.

Scope for improvement

For the governance reasons discussed above, scope to improve the current arrangements appears small while the Australian Government retains fuel excise duties as part of their revenue mix and offers incentives to manufacturers of renewable fuels.

Future reforms to Australia’s tax system could involve changes to Australia’s long-standing reliance on fuel excise duties. The Henry Tax Review—a comprehensive ‘root and branch’
review of Australia’s taxation system—recommended less reliance on them, as part of a broader strategy to manage the fiscal challenges over the next 40 years (AFTS Secretariat 2010, rec. 65). Recognising that most taxes result in some loss of economic efficiency, the Review recommended increasing reliance on taxes that lead to smaller losses in consumer welfare relative to the amount of revenue raised (namely, personal income, business income and consumption taxes, and resource rents).

Notwithstanding, there are no plans to review the taxation arrangement for biodiesel in the near future. On 12 May 2011, the Government announced a 10-year moratorium on changes to the taxation and grant arrangements for biodiesel (and other renewable fuels), as part of reforms to improve the operation of the fuel market more broadly while introducing a policy to put a price on carbon emissions. After 30 June 2021, the Government intends to conduct a review of the taxation arrangements for biodiesel (House of Representatives 2011b).

Moreover, there is evidence to suggest this issue has not unduly concerned farmers in recent years. It was not specifically mentioned in reports summarising discussions of forums held by the then Department of Resources, Energy and Tourism where industry was consulted on regulation surrounding biodiesel as part of the Strategic Framework for Alternative Transport Fuels (Rare Consulting 2011a, 2011b). In addition, stakeholders consulted as part of this study indicated it was no longer an issue.

**ABARES assessment**

Although regulations governing biodiesel production by farmers for their own use may seem contradictory or unnecessarily burdensome, for reasons relating to good governance, this is not the case. Notwithstanding that stakeholders no longer point to this issue as a significant concern, many commentators, including the recent Henry Tax Review, consider Australia’s taxation system to be overly complex. While simplifying current excise and grant offset arrangements may increase welfare across society, various governance principles are likely to constrain efforts to do so. Nevertheless, in the long run, fundamental reforms to Australia’s tax system could involve changes to Australia’s long-standing reliance on fuel excise duties which, in turn, would annul the testing arrangements were fuel excise duties abolished.

**Finding 26**

Stakeholders participating in this review no longer consider differing intents of regulatory instruments affecting on-farm biodiesel manufacture to be a significant issue. Notwithstanding, there is currently limited scope for the Australian Government to remove the requirement to test biodiesel produced by farmers for their own use under the existing excise and grant offset arrangements.
22 National Livestock Identification System

The National Livestock Identification System (NLIS) allows the movement of Australian cattle, sheep and goats to be traced throughout their lives, in order to meet the National Traceability Performance Standards (NTPS). The NLIS is enacted by state and territory legislation but is overseen by the Standing Council on Primary Industries (SCoPI), of which the Australian Government is a member. The Australian Beef Association (2007) suggested that it was unclear whether the benefits of NLIS outweighed the costs of implementing the system. However, assessing the appropriateness of the NLIS objectives under the NTPS is beyond the scope of this study. Given the lifetime traceability of all livestock required under the NTPS, the burden imposed by the NLIS appears necessary to achieve the traceability standards.

Background and context

The National Livestock Identification System (NLIS) is Australia’s system for tracing the movement of livestock. It is a nation-wide system that was endorsed by the Standing Council on Primary Industries (SCoPI) (formerly PIMC) in 2004, and which is enacted by state and territory legislation. SCoPI regarded consistency in livestock identification and tracing systems across Australia as necessary (PIMC 2003). Although the states and territories are responsible for implementing the NLIS, the Australian Government provides a coordination role consistent with its constitutional responsibilities relating to quarantine and trade with other countries (s. 51).

The overriding objective of the NLIS is to provide whole-of-life traceability for all livestock in a rapid and accurate manner (PIMC 2003). This is regarded as important to maintain market access, control disease outbreaks and minimise the effects of chemical contamination. NLIS requirements relate to cattle, sheep and goats, with identification systems under development for pigs, alpacas and llamas.

The National Traceability Performance Standards (NTPS), developed by Animal Health Australia and endorsed by PIMC (now SCoPI) in May 2004, set out the minimum requirements of the NLIS. These standards describe the level of traceability required in the system (Box 23).

The NTPS apply to all livestock, but can be met with different systems for different species. In this vein, a ‘risk-based approach’ to the NLIS has traditionally been taken, with changes to the various species systems reflecting evolving perceptions of the costs and benefits to industry (PIMC 2003). For example, NLIS (Pork) recognises that most pigs travel solely from their property of birth to place of slaughter, and only requires that each pig have a pig slap brand or ear tag to identify their property of origin (APL 2010, Pricewaterhouse Coopers 2006).

NLIS (Cattle) is the most extensive system of whole-of-life livestock traceability in Australia, while NLIS (Pork) and NLIS (Alpaca & Llama) are currently under development. Electronic Identification (EID) tagging was first introduced in Victoria in 1999, following the 1996 ‘cotton trash’ incident where contaminated cattle could not be located with the tail tagging system in use at the time (Helper 2009). In May 2004, state and territory governments agreed that cattle moving between jurisdictions had to be individually identified using EID tags (unless the importing jurisdiction determines otherwise) (PIMC 2004).
Applicable to all foot and mouth disease (FMD) susceptible livestock species

1.1 Within 24 hours of the relevant CVO being notified, it must be possible to determine the location(s) where a specified animal was resident during the previous 30 days.

1.2 Within 24 hours it must be also possible to determine the location(s) where all susceptible animals that resided concurrently and/or subsequently on any of the properties on which a specified animal has resided in the last 30 days.

Applicable to cattle only

2.1 Within 48 hours of the relevant CVO being notified, it must be possible to establish the location(s) where a specified animal has been resident during its life.

2.2 Within 48 hours of the relevant CVO being notified, it must be possible to establish a listing of all cattle that have lived on the same property as the specified animal at any stage during those animals’ lives.

2.3 Within 48 hours of the relevant CVO being notified, it must also be possible to determine the current location of all cattle that resided on the same property as the specified animal at any time during those animals’ lives.

Applicable to all FMD susceptible livestock species except cattle (lifetime traceability excluding the preceding 30 days – addressed by 1.1 and 1.2 above)

3.1 Within 14 days of the relevant CVO being notified, it must be possible to determine all location(s) where a specified animal has been resident during its life.

3.2 Within 21 days of the relevant CVO being notified, it must also be possible to determine the location of all susceptible animals that resided concurrently with a specified animal at any time during the specified animal’s life.

Source: Animal Health Australia (2009)

Notes:
1 For the purposes of these Standards, ‘FMD susceptible species’ means cattle, sheep, goats, and domesticated buffalo, deer, pigs, camels and camelids.
2 ‘The relevant CVO’ means the state or territory Chief Veterinary Officer, or their delegate, in the jurisdiction where the specified animal is located or has been traced to.
3 For the purposes of these Standards, the term ‘notified’ means the relevant CVO is aware of an incident that required tracing.
4 ‘Location’ means any definable parcel of land including (but not limited to): any parcel of land with a Property Identification Code, travelling stock routes, saleyards, abattoirs, feedlots, live export collection depots, show grounds, Crown land and transport staging depots.
5 Given the risks posed by BSE, it was considered appropriate to establish separate Standards for cattle.

NLIS (Sheep and Goats) is currently a group- or mob-based system, but SCoPI is currently considering improving the system to enable whole-of-life traceability using mandatory EID tagging of individual sheep and goats. Currently the use of EID tagging is voluntary. At a minimum, sheep and goats must display visually readable ear tags identifying their property of birth and last property of residence where they are included in the system, to allow mob-based movements to be tracked. However, government and industry are currently discussing the cost of implementing these changes and how to apportion the costs. The discussion centres around two opposing realities. On the one hand, tracing exercises have shown that mob-based identification is not sufficient to meet the NTPS for sheep and goats (Pricewaterhouse Coopers 2010). On the other hand, the high cost of tracing individual animals using EID relative to sheep prices has discouraged industry from supporting individual tagging. In October 2013, ABARES released a regulation impact statement on behalf of SCoPI to seek stakeholder feedback on changes to NLIS (Sheep and Goats) involving the introduction of electronic identification devices.

While some stakeholders supported the NLIS, the Australian Beef Association (2007) queried whether the benefits of NLIS outweigh the costs to industry of implementing the system, in their
submission to the Productivity Commission's (2007) review. At issue is the appropriateness of the NLIS objective (under the NTPS) to provide whole-of-life traceability for all livestock in a rapid and accurate manner. While it is beyond the scope of this study to assess whether the given regulatory objectives are appropriate, current efforts to improve NLIS (Sheep and Goats) provide an opportunity to investigate the suitability of livestock traceability requirements.

In response to stakeholder submissions, the Productivity Commission (2007) highlighted that periodically assessing the efficiency and effectiveness of NLIS in meeting industry and community needs will assist in identifying areas for improvement. In light of this, the Commission (2007) supported PIMC's (now SCoPI) continuing role in monitoring the NLIS. The Australian Government (2008) accepted this response, emphasising the role of NLIS in managing disease outbreaks and food safety issues, and maintaining market access (Box 24).

**Box 24 Monitoring and review of the NLIS**

> Although it is beyond the scope of this study to examine whether the National Livestock Identification System’s objectives are appropriate, the Standing Council on Primary Industries (SCoPI) (formerly PIMC) has continued to monitor NLIS since 2007, in line with the Productivity Commission’s (2007) response to stakeholder submissions. Through SCoPI, the state and territory governments continue to produce standard reports on the effectiveness of the system and industry compliance on a quarterly basis.

In addition, NLIS Limited regularly reviews the operation and administration of the NLIS database to reduce administrative costs for businesses. NLIS Limited administers the NLIS database on behalf of industry and government stakeholders. It works to improve uptake and usability of the system by analysing information gathered from the field and the NLIS database. For example, a 2010 review focused on improving software development practices and processes. More recently, NLIS Limited has explored potential improvements to the system’s architecture to ensure that NLIS operates sustainably and will continue to meet the needs of industry and government.

**ABARES assessment**

Governments currently consider rapid and accurate whole-of-life traceability for all livestock to be necessary to achieve desired biosecurity, food safety and market access outcomes. However, assessing whether the regulatory objectives under the NTPS are appropriate is beyond the scope of this study. While NLIS imposes costs on businesses, these appear necessary to meet given standards.

**Finding 27**

Assessing the appropriateness of the National Livestock Identification System objective to provide whole-of-life traceability for all livestock in a rapid and accurate manner is beyond the scope of this study. The current regulatory burden appears necessary to comply with given National Traceability Performance Standards.
Biosecurity and quarantine are important for the Australian economy and environment. Biosecurity can be broadly defined as ‘the protection of the economy, environment and human health from the negative impacts associated with entry, establishment or spread of exotic pests (including weeds) and diseases’ (Beale et al. 2008 p. XLVIII). Quarantine is a narrower concept and can be defined as ‘the system of measures which are used to manage risks of the entry and establishment of pests or diseases which threaten animal, plant or human health’ (Beale et al. 2008 p. LI).

As an island, Australia is naturally free of many significant pests and diseases present in other parts of the world. This provides the agricultural sector with a clear advantage in international markets and is important for market access. An incursion of exotic pests or diseases into Australia could significantly affect the primary industries, as well as have serious consequences for the Australian economy and the environment more generally (Beale et al. 2008).

The Quarantine Act 1908 (Cth) is the Australian Government’s primary legislation for regulating and managing biosecurity in Australia. It empowers the Australian Government to minimise the risk of exotic pests and diseases entering, establishing or spreading in Australia and harming people, animals, plants or other aspects of our unique environment and economy.

The Australian Government Department of Agriculture primarily biosecurity risk manages at the border and offshore. This involves inspecting vessels, goods and passengers as they enter Australia, and assessing risks posed by proposed import of goods, including plants, animals and their products.

While the Quarantine Act does not provide powers for the Australian Government to manage post-border pests and diseases in general, it does allow the Australian Government to play a role during emergency situations. The Australian Government participates in significant on-shore responses to pest and disease incursions through the Emergency Plant Pest Response Deed, the Emergency Animal Disease Response Agreement and the National Environmental Biosecurity Response Agreement. These agreements outline emergency response and cost-sharing arrangements, and complement the role of state and territory governments in managing biosecurity within Australia’s borders.

Over the years, Australia’s biosecurity system has been the subject of a number of reviews which have identified a range of strengths and weaknesses. As in the most recent ‘roots and branch’ reviews (Nairn et al. 1996; Beale et al. 2008), these have typically been conducted against a backdrop of persistent challenges relating to: increasing risks (growth in trade volumes and international passenger movements); differing stakeholder views about assessing risk; advancing surveillance technologies; and mounting concerns about the system’s adequacy following high-profile incursions (either domestically or overseas).

For its part, the Productivity Commission (2007) review considered seven issues that were raised in stakeholder submissions, including three that were resolved within the review. The outstanding issues were:

- timeliness of import risk analyses
- overlap between the Department of Agriculture and the Australian Pesticides and Veterinary Medicines Authority
- problems with the Interstate Certification Assurance Scheme
- uncertainties about the Emergency Plant Pest Response Deed.
Timeliness of import risk analyses

Background and context

Import risk analyses (IRAs) are used by the Department of Agriculture to determine the level of quarantine risk that may be associated with the importation or proposed importation of plants, animals or other goods (DAFF 2011b). When biosecurity risks are found to be unacceptable, an IRA proposes measures to reduce risk to an acceptable level. If it is not possible to do so, trade is not permitted. An IRA is undertaken if either of the following apply:

- relevant risk management measures have not been established in the past
- relevant risk management measures for a similar good and pest/disease combination exist, but the likelihood or consequences of entry, the establishment or spread of pests or diseases could differ significantly from those previously assessed.

Some IRAs are subject to an expanded, more detailed review process if the IRA involves significant difference in scientific opinion or where an import may result in significant harm to people, animals, plants or the environment (DAFF 2011b). In particular, an independent Eminent Scientists Group—a group of experts in science and economics who are independent of the Department of Agriculture—is then tasked with reviewing its scientific and economic rigour.

In their submission to the Productivity Commission’s (2007) review, Growcom (2007a) raised concerns about the timeliness of the IRA assessment process, which can take years. In its view, the process was unnecessarily long, thereby creating costs through uncertainty which may stifle innovation and reduce incentives to invest in industries potentially exposed to increased import competition.

Extent of progress in improving the timeliness of import risk analyses

There appears to have been some progress toward improving the import risk analysis process in recent years. The Australian Government has introduced and adhered to timeframes to complete various stages of the IRA process as discussed below. However, stakeholders remain concerned about timeliness.

The Productivity Commission (2007) outlined Australian Government reforms to the IRA process that were introduced in September 2007 through amended regulations to the Quarantine Act 1908 (Cth). These included specified timeframes for completing IRAs: 24 months for standard IRAs and 30 months for expanded IRAs. The Productivity Commission (2007 p. 49) considered these changes to have ‘the potential to reduce the cost and time burden imposed on businesses’.

However, Beale et al. (2008) found that stakeholder concerns about lengthy delays in the IRA process remained, despite the introduction of specified timeframes for elements of the IRA process. Although Beale et al. (2008) noted that stakeholders supported the introduction of timeframes, they also discussed the potential for delays to be shifted prior to the commencement of the IRA process, thereby resulting in no net improvement in timeliness.

While the Australian Government appears to have met specified timelines for IRAs since then, stakeholders remain concerned about the timeliness of the process. The Department of Agriculture (DAFF 2012f) reported that 100 per cent of IRAs were conducted in accordance with biosecurity regulations in 2011–12 and 2010–11. However, the timeliness of IRAs was again raised by the Senate Standing Committee on Rural and Regional Affairs and Transport (2012) in
their inquiry into Australia’s biosecurity and quarantine arrangements, indicating that stakeholders remain concerned about this issue.

**Scope for further improving the timeliness of import risk analyses**

The extent to which the IRA process remains unnecessarily lengthy is not clear. It is inevitable that stakeholders will experience some uncertainty during IRA but the point at which the time taken becomes unnecessarily lengthy is difficult to determine. While the Department of Agriculture (DAFF 2012f) reports timeframes for conducting various aspects of IRAs, this does not include time spent waiting for assessment to commence.

While greater Australian Government resourcing could hasten the IRA process, decisions to reallocate scarce resources are complex and have implications for the resourcing of other government priorities. Determining whether this is desirable would require additional, more detailed consideration by policymakers.

**ABARES assessment**

The Australian Government introduced specified timeframes to conduct various aspects of the IRA process in 2007, which have been met in recent years. To the extent that the Australian Government has met set timelines, it is not clear that the time taken to complete IRAs is unnecessarily lengthy. Determining whether it is appropriate to further reduce times taken to complete IRAs is justified would require additional consideration by the Australian Government in consultation with industry.

**Finding 28**

It is not clear that the time taken to complete Import Risk Analyses is unnecessarily lengthy. Determining whether it is appropriate to further reduce times taken to complete IRAs is justified would require additional consideration by the Australian Government in consultation with industry.

**Overlap between the Department of Agriculture and APVMA**

**Background and context**

All agricultural and veterinary chemical products in Australia must be registered with the Australian Pesticides and Veterinary Medicines Authority (APVMA) if they are to be legally distributed, sold or used. The APVMA is an Australian Government statutory authority whose role is to ensure the efficacy and safety of new and existing agricultural and veterinary products. It operates under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cth), the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth) and their associated regulations. The APVMA assesses registration applications for all agricultural and veterinary products, whether imported or manufactured domestically. In addition to registration with APVMA, imported biological agricultural and veterinary products must also be permitted by the Department of Agriculture’s (previously the Australian Quarantine and Inspection Service (AQIS)) Biological Imports Program (BIP). BIP assesses permit applications to manage risks from such products to Australia’s biosecurity.

In their submission to the Productivity Commission (2007) review, Animal Health Alliance (Australia) (2007b) raised the issue of duplication in approval requirements between APVMA and AQIS in regulating the use of animal health products, such as veterinary vaccines. In their view, this led to long lag periods in product approval, unnecessary costs to Australian businesses and reduced competitiveness of Australian produce.
In response, both APVMA (2007) and AQIS and Biosecurity Australia (2007) highlighted differences in the roles each played. APVMA was responsible for assessing both imported and domestically-manufactured animal health products to determine whether they were safe and effective. In contrast, AQIS was responsible for undertaking quarantine risk assessments on imported animal health products to ensure freedom from contamination by pathogens.

Nevertheless, APVMA (2007) stated they would work with AQIS to streamline the approvals process to reduce burdens on applicants, where appropriate. AQIS (2007) also noted that it had worked with Biosecurity Australia (now the Department of Agriculture) and APVMA to reduce duplication during vaccine assessments. In particular, the agencies share assessment details to minimise overlap in areas of common responsibility.

Extent of progress in addressing duplication

Since 2007, duplicative assessment requirements and unnecessary delays in receiving approval for animal health products appear to have been reduced. While the APVMA and the Department of Agriculture have different responsibilities, increased cooperation has streamlined approval procedures. In this regard, the APVMA and the Department signed a memorandum of understanding in 2012 agreeing to liaise and share information on regulatory issues of common interest, including:

- commercial vaccine products
- ingredients or components used to manufacture commercial vaccine products
- research regarding the exposure of live animals to imported products that contain or are manufactured from materials of biological origin
- compliance issues concerning importation of veterinary products of biological origin
- manufacturing quality and licensing of veterinary manufacturers (APVMA & BIP 2012).

In addition, both agencies have simplified supporting documents that assist applicants in preparing dossiers to accompany applications to import and register veterinary products, respectively. This has reduced the amount of unnecessary information submitted to both agencies (Carol Sheridan [Department of Agriculture], pers. comm. 8 April 2013). Feedback from the Animal Health Alliance during consultation for this study suggested that increased communication between the organisations has also improved timeframes for assessments.

Scope for further reducing the unnecessary regulatory burden

As duplication in assessment requirements for animal health products appears to have been reduced, the scope to further improve regulatory arrangements in this regard is limited.

ABARES assessment

The APVMA and the Department of Agriculture have cut duplication in assessment and approval requirements for animal health products since 2007. Although they have distinct responsibilities, increased cooperation has served to reduce unnecessary regulatory burden on businesses. Scope to further streamline arrangements appears limited.

Finding 29

The Australian Pesticides and Veterinary Medicines Authority and the Department of Agriculture’s Biological Imports Program have reduced duplication in testing requirements and approval procedures for animal health products since 2007.
Problems with the Interstate Certification Assurance Scheme

Background and context

The Interstate Certification Assurance (ICA) scheme is a national scheme that allows accredited businesses to self-certify the health of their plants and plant products for the purpose of trade across state borders, thereby providing an alternative to traditional certification through government inspectors. Certification of interstate trade in plants and plant products aims to ensure compliance with the importing jurisdiction’s quarantine requirements. Certification requires that a ‘plant health certificate’ be granted by a state government inspector or that a ‘plant health assurance certificate’ be issued by the business itself under the ICA scheme. For some businesses, becoming accredited under and using the ICA scheme is more cost-effective than obtaining certification from state government inspectors. Growers recognise the ICA scheme as being highly useful for trading interstate (Growcom 2007a, QFF 2007).

While state and territory governments administer the ICA scheme, the Australian Government has a complementary role through the Subcommittee on Domestic Quarantine and Market Access (SDQMA) (formerly the Domestic Quarantine and Market Access Working Group (DQMAWG)). The Subcommittee is an intergovernmental group of senior plant health regulators from the state and territory government departments of agriculture (or equivalent), and representatives from the Australian Government Department of Agriculture. Industry is represented indirectly through Plant Health Australia, the government/plant industry liaison group with observer status.

The working group develops and maintains domestic market access conditions for plants and plant products to minimise regulatory burden, coordinate and harmonise access conditions where possible, and ensure that Australia meets its obligations under international agreements (DQMAWG nd). In particular, the Australian Government can influence state and territory quarantine requirements to ensure Australia complies with its obligations to the World Trade Organisation, and under the International Plant Protection Convention (DQMAWG 2009). In addition, the SDQMA promotes the use of consistent conditions, terminology and certificate format for movement across jurisdictions (DQMAWG 2009).

Participants to the Productivity Commission (2007) review raised multiple issues concerning the ICA scheme. In particular, the Queensland Farmers’ Federation (QFF 2007) and Growcom (2007a) claimed the design and implementation of the scheme created unnecessary costs for businesses and could hinder interstate trade. Both groups raised the following issues:

- an excessive number of commodity classifications for similar products (such as separate ICAs for different types of limes)
- inconsistent biosecurity requirements between jurisdictions
- potentially lengthy interjurisdictional negotiations (Growcom 2007a, QFF 2007).

Stakeholders raised several other concerns including burdensome inspection and auditing requirements for ICA and other certification programs (Growcom 2007a, QFF 2007). However, decisions regarding inspection and auditing arrangements are made by state and territory governments. Hence, there is no specific role for the Australian Government in these matters.

The Productivity Commission (2007) noted that the Certification Services Working Group—a sub-group of the former DQMAWG (now SDQMA)—was to review the consistency of
certification services, including the ICA. The Commission proposed that details of the review ‘be announced as soon as practicable’ and include wide, transparent consultation.

**Extent of progress in addressing the issues**

Government has acted to address stakeholder concerns about ICAs since 2007. Industry understanding of ICA requirements has improved following involvement in government-initiated workshops and this has addressed some concerns regarding commodity classifications. Other concerns regarding timeliness and inconsistency between jurisdictions may be partly addressed by several intergovernmental strategies and agreements that have recently been introduced.

Concerns regarding ICA commodity classifications have seemingly subsided since the Productivity Commission’s (2007) review. At that time, some stakeholders had suggested that an ‘excessive number of commodity classifications for similar products’ created an unnecessary regulatory burden, using limes as an example. However, at least in this case, the rationale for multiple classifications, in part, reflects numerous factors that can influence their status as a fruit fly host. Certain types of limes may be recognised as having non-host status if, for example, they have undergone particular treatments or are in a specific condition (such as harvested hard green with unbroken skin).

The number of commodity classifications did not feature as a significant issue for stakeholders consulted during this study. In recent years, government has sought to promote and enhance understanding of the ICA, the then DQMAWG held a workshop in 2009 to address these concerns. This occurred in place of the planned review of the ICA scheme. Since then, better stakeholder engagement, including through two more DQMAWG workshops in 2010 and 2012, has further improved awareness and understanding of the ICA scheme (DQMAWG 2010, 2012).

Stakeholders had also raised concerns about inconsistent biosecurity requirements between jurisdictions imposing an unnecessary burden. However, inconsistent biosecurity requirements under the ICA scheme are not a result of the scheme itself, but of the inconsistent state and territory regulation under which the scheme operates. Nevertheless, reducing the unnecessary burden imposed by inconsistent biosecurity regulation between jurisdictions would likely improve the ease with which interstate trade in plant and plant products occurs.

While managing biosecurity within Australia’s borders is primarily a responsibility of state and territory governments, the Australian Government plays a role in encouraging and promoting consistent biosecurity requirements across jurisdictions and a national approach to determining biosecurity risk. These include the Intergovernmental Agreement on Biosecurity and the National Plant Biosecurity Strategy. These national efforts may improve regulatory consistency between jurisdictions and foster an environment where interjurisdictional agreement can be reached in a more timely manner.

The Australian, state and territory governments (aside from Tasmania) are signatories to an Intergovernmental Agreement on Biosecurity which came into effect in January 2012. The Agreement aims to clarify responsibilities and strengthen relationships between governments to improve the national biosecurity system (COAG 2012c). Under the Agreement, interstate trade must be based on scientific risk and minimise trade restrictions (COAG 2012c). It also requires parties to consult and notify others of new or altered trade requirements (COAG 2012c). The Agreement identifies seven priority areas for national reform:

- decision-making and investment framework
- biosecurity information framework
• surveillance and diagnostic system
• management framework for established pests and diseases
• engagement and communication framework
• emergency preparedness and responsive arrangements
• biosecurity research, development and extension framework (COAG 2012c).

The recently introduced National Plant Biosecurity Strategy (NPBS) also recognises the importance of further reform to improve consistency in interstate trade. The NPBS is a 10-year, high-level plan for Australia’s plant biosecurity system developed by Plant Health Australia (PHA) in consultation with stakeholders. The NPBS promotes ‘nationally consistent plant biosecurity legislation, regulations and approaches where possible within each state and territory government’s overarching legislative framework’ (NPBS 2010). The Australian Government, state and territory governments and PHA industry members have all endorsed the NPBS.

**Scope for further reducing the unnecessary regulatory burden**

The ICA scheme appears to have been successful in meeting its objectives. Although not imposed by the ICA scheme itself, there may be scope to improve the consistency of biosecurity regulation across jurisdictions. The Intergovernmental Agreement on Biosecurity and the NPBS have commenced, and will be implemented over multiple stages. Both initiatives provide an opportunity to reduce the unnecessary regulatory burden faced by those trading plants and plant products interstate. However, it is too early to assess whether further improvements to these initiatives are warranted at this stage.

**ABARES assessment**

Although industry has found the ICA scheme useful when trading plant or plant products between states and territories, interjurisdictional inconsistency in biosecurity requirements has limited its potential benefit. While state and territory governments carry primary responsibility for domestic biosecurity, the Australian Government may play a role in promoting consistent legislation and risk approaches, to reduce unnecessary burdens on businesses trading between jurisdictions. While the Intergovernmental Agreement on Biosecurity and the NPBS aim to reduce regulatory burdens on businesses, this is likely to take some time and the success of these approaches cannot yet be determined.

**Finding 30**

The recently introduced Intergovernmental Agreement on Biosecurity and the National Plant Biosecurity Strategy offer opportunities to improve the interjurisdictional consistency of biosecurity regulation and reduce the unnecessary burden imposed on businesses trading plants and plant products between jurisdictions.

**Uncertainties about the Emergency Plant Pest Response Deed**

**Background and context**

The Emergency Plant Pest Response Deed (EPPRD) came into effect in 2005 to formalise funding arrangements and the roles of signatories during a plant pest emergency. It is designed to enable a quick, consistent intergovernmental and industry response to a plant pest emergency (such as the incursion of an exotic or new plant pest) with minimal uncertainty over funding and management roles (PHA nd). The EPPRD is legislated for in the Plant Health Australia (Plant Industries) Funding Amendment Act 2006 (Cth) and signatories to the EPPRD include the Australian Government, state...
and territory governments and Plant Health Australia, as the national coordinating body for plant health. Plant industry bodies can also be, and are, signatories to the EPPRD. For members of such industry groups, this provides a potential means of reimbursement in the event that emergency response actions lead to crop or property damage.

The objective of the EPPRD is to facilitate rapid decision-making to control and eradicate emergency plant pests (EPPs). This includes:

- removing financial disincentives to report suspected emergency plant pests
- facilitating an early and comprehensive response to eradicate the EPP
- confirming a decision-making role for all signatories
- clarifying funding arrangements and responsibilities.

In its submission to the Productivity Commission’s (2007) review, Growcom (2007b) expressed concern that ‘heated political environments’ had led governments to act outside of arrangements under the EPPRD. It perceived this to undermine industry and government commitment to, and involvement in the EPPRD process as a whole.

In the past, governments have acted to stabilise emergency plant pest incursions where an affected industry is not a signatory and the Deed does not apply (SSCRRAT 2006). While such actions could be influenced by politics, including decisions to reimburse affected industries, there is no assurance for businesses that this will be the case. A key benefit of the EPPRD is increased certainty around funding arrangements and involvement by signatories in the decision-making process.

**Extent of progress in addressing the issue**

Since the time of the Productivity Commission’s 2007 review, Australian, state and territory governments, and Plant Health Australia have directed considerable effort toward clarifying responsibilities and expectations under the EPPRD. At that time, the Deed was in its infancy, having been in effect for only two years and applied in few situations. Thus, it is reasonable to expect there was considerable scope to improve the EPPRD’s operation at that stage.

Experience gained from the application of the Deed to particular EPPs since 2007 has highlighted areas for improvement and action has been taken to address these issues. Such areas for improvement include the timeliness of decision-making and the familiarity of participants in Australia’s biosecurity system with EPPRD processes to ensure appropriate responses to an EPP. Biannual meetings of EPPRD signatories to discuss the Deed’s specification and technical aspects of its operation have also provided an opportunity to initiate actions to improve the EPPRD, as suggested in the first comprehensive external review of the EPPRD in 2010.

Consultation with Plant Health Australia during the course of this study indicated there is now general industry appreciation of the benefits provided by the EPPRD. They have attributed this to cooperative arrangements that support continuous regulatory improvements, as mentioned. Since its inception in 2005, the number of industry signatories has risen from 12 representative bodies to the 29 current industry members.

**Scope for further reducing the unnecessary regulatory burden**

Insofar as mechanisms to improve the EPPRD’s operation are already in place, there seems little scope for additional Australian Government action to further improve regulatory arrangements.
While there remains scope to improve the pace of decision-making and participants’ understanding of EPPRD processes in response to an EPP, these can be achieved under the current arrangements. Five-yearly comprehensive external reviews will assist in identifying areas for further improvement, with the next review scheduled for 2015. Additionally, biannual meetings of EPPRD signatories to discuss and implement changes to the Deed and its operation encourage continuous improvement to regulatory arrangements. Plant Health Australia also recognises that ongoing training is necessary to maintain corporate knowledge regarding the appropriate processes during an EPP and offers training courses for decision-making committees, industry liaison officers and farmers.

**ABARES assessment**

The ability for governments to reimburse industry losses in plant pest incursions not covered by the EPPRD does not impose an unnecessary regulatory burden. There is no obligation on the part of the Australian, state or territory governments to provide funding for reimbursement to an affected industry that is not party to the EPPRD. However, governments may decide to share the cost of an emergency response outside the EPPRD or reimburse industry for crop or property damage. In any case, parties to the EPPRD will have greater certainty surrounding cost-sharing arrangements in the event of an emergency pant pest incursion.

**Finding 31**

The Emergency Plant Pest Response Deed increases the certainty for plant industries regarding cost-sharing arrangements and their role in decision-making processes during a plant pest emergency. The current review arrangements between Australian, state and territory governments, and Plant Health Australia have enabled their roles to be clarified and refined over time, guided by experience gained through the application of the Deed to plant pest emergencies.
24 Drought support

In submissions to the Productivity Commission’s (2007) review, various stakeholders considered the process of applying for drought support to be unnecessarily costly because of inconsistencies between state and Australian Government-funded programs. Since 2007, there has been much work directed at improving Australian drought policy, which has culminated in the signing of an Intergovernmental Agreement on National Drought Program Reform by the Australian, state and territory primary industry ministers on 3 May 2013. While the detail of future programs is yet to be determined, the current reform process provides an opportunity to minimise burdens, such as inconsistency and duplication in application processes between jurisdictions.

Background and context

In recent years, a variety of government programs have been introduced to assist farmers during drought. The concept of drought as an ‘exceptional circumstance’ has underpinned the availability of support to farmers since it was introduced in 1992 under the *Rural Adjustment Act 1992* (Cth). This concept formed part of the National Drought Policy that was announced in July 1992, from which stemmed the Exceptional Circumstances Interest Rate Subsidy (ECIRS) and the Exceptional Circumstances Relief Payment (ECRP) programs (Productivity Commission 2009c). These were introduced in 1992 and 1997, respectively, and both programs have attracted substantial government funding in recent years (Productivity Commission 2009c).

The Australian Government was responsible for wholly funding the ECRP program, while state and territory governments funded ten per cent of ECIRS (the majority being funded by the Australian Government plus an administration fee for each application). Both forms of drought support were available to eligible farming businesses located in regions declared by government to be in exceptional circumstances. In 2006, the programs were extended to non-farming small businesses deriving 70 per cent or more their income from declared regions (Productivity Commission 2007).

Various stakeholders raised concerns to the Productivity Commission’s (2007) review that applying for ECIRS and ECRP support imposed unnecessary costs on farmers because the application processes between these Australian and State Government-funded programs were inconsistent. In particular, stakeholders considered the following a burden:

- unnecessary differences in application forms and processes between Australian Government and state programs
- duplicative information requests between state and Australian Government programs (NFF 2007a; VFF 2007; QFF 2007; APL 2007, SAFF 2007).

For example, the Victorian Farmers Federation (2007) noted that applicants needed to submit similar information to different agencies to claim payments under the ECIRS and ECRP programs. In addition, eligibility for Centrelink payments signalled eligibility for concessions from the Victorian Government, but further information and applications were required to secure these concessions.

In response, the Productivity Commission (2007) outlined three ways the Australian Government might reduce the unnecessary burden imposed by application requirements. These focused on aligning the application procedures for:

- ECIRSs and ECRPs
- various Centrelink-administered programs
- ECIRSs across different states and territories.
In its subsequent response, the Australian Government (2008) noted the concerns raised but, in light of a then forthcoming report on national drought policy, did not commit to any particular course of action.

**Extent of progress in addressing burdensome application requirements**

Since 2007, there have been multiple reviews of Australia’s drought policy, culminating in an intergovernmental agreement to pursue national drought policy reform. The Australian Government began a national review of drought policy in 2008. This included assessments of the future climate (Hennessy et al. 2008), and of the economic (Productivity Commission 2009c) and social (Kenny et al. 2008) implications of drought and drought policy.

Stakeholders to the Productivity Commission’s (2009c) inquiry into government drought support also raised concerns about the difficulty associated with applying for Exceptional Circumstances (EC) assistance (Australian Dairy Industry Council 2008, Tasmanian Farmers and Graziers Association 2008). At that time, governments had been providing grants to the Rural Financial Counselling Service to assist farmers with reporting requirements and running advertising campaigns to encourage the uptake of professional advice.

However, the Productivity Commission (2009c) suggested that promoting advisory services may not provide a long-term solution because these services may not be readily available in all locations. It also concluded that assistance was not necessarily being directed to its best end use. In the Commission’s view, assistance should be provided to assist farmers in understanding their financial situation and improving their viability, or in planning for exit from the industry. The Productivity Commission (2009c) recommended that the ECIRS and ECRP programs be terminated or replaced, which would negate the need to reduce the reporting burden of existing application processes.

Just prior to the Productivity Commission (2009c) inquiry, Kenny et al. (2008) had also reviewed Australian drought policy and found that farmers perceived EC policy, eligibility criteria and application forms for assistance to be overly complicated. In addition, Kenny et al. (2008) reported that different regulatory arrangements between jurisdictions caused confusion among farmers, particularly when thresholds for eligibility varied between jurisdictions despite the existence of a national drought policy. Kenny et al. (2008, reco. 20) recommended that ‘access to government drought assistance and services must be improved by making applications and referral pathways simpler’.

In response to Kenny et al. (2008), the Australian and Western Australian Governments announced a pilot of drought reform measures in parts of Western Australia (Keogh et al. 2011). The trial began on 1 July 2010, with most pilot programs concluding on 30 June 2012. The pilot tested measures designed to better support farmers, their families and rural communities. It also trialled improvements to social support services for farming families and rural communities.

In an independent review of the pilot drought measures after their first year of implementation, the Drought Pilot Review Panel (Keogh et al. 2011) concluded that in future, eligibility for income support for farm families should be based on demonstrated individual need rather than climatic circumstances. The panel noted that:

> Although perceived by some applicants as onerous, the accountability and documentation requirements for assessment were consistent with the broader framework within which Centrelink operates (Keogh et al. 2011, p. 58).
Subsequently, the panel recommended that:

... in any future income support program for farm families, more complete guidance on the application process, such as an online tool, should be developed to better inform applicants about the information needed to support their application (Keogh et al. 2011, reco. 4.3).

In light of the findings resulting from the Australian Government’s national review of drought policy, the Standing Council on Primary Industries (SCoPI) (then known as the Primary Industries Ministerial Council) agreed to consider drought policy reform. More specifically, they agreed to assess the pilot’s outcomes and agree on the next steps, approach and scope of a new drought policy in July 2011 (PIMC 2011a). At their next meeting, SCoPI agreed on the importance of national drought policy reform and reconfirmed its commitment to a new policy framework (PIMC 2011b). Consequently, SCoPI asked the Primary Industries Standing Committee to develop proposals for a future drought policy package that emphasised risk management and preparedness by farmers, rather than crisis management.

Subsequently, the Australian, state and territory primary industry ministers signed an Intergovernmental Agreement on National Drought Program Reform on 3 May 2013. This Agreement outlines new measures to improve the capacity of primary producers to manage business risks and support farm families during hardship. The new approach will include:

- a farm household support payment
- Farm Management Deposits and taxation measures
- a national approach to farm business training
- a coordinated, collaborative approach to providing social support services
- tools and technologies to inform farmer decision making (SCoPI 2013).

Notably, the reforms base farm income support on individual circumstances and demonstrated need, rather than government-declared ‘exceptional circumstances’. While Australian, state and territory governments are yet to determine the detail of future programs, including application procedures, they plan to consider these aspects prior to the package’s proposed implementation in July 2014.

As the former drought support programs are no longer in place, the Productivity Commission’s proposal to align application procedures across those programs is no longer appropriate. Until the introduction of new drought programs, low income farming families can receive income support payments under the Transitional Farm Family Payment program.

**Scope for improving the application process for drought support**

There is considerable scope to avoid the unnecessary burdens of the past, in light of upcoming major changes to drought assistance programs. Although the specific improvements suggested by the Productivity Commission in 2007 no longer apply, the underlying principle of reducing inconsistency and duplication in regulatory arrangements remains pertinent to drought policy reform. In this respect, SCoPI (2012) members have signalled their support for ‘a coordinated, collaborative approach’ to providing social support services.

In addition, future regulatory arrangements are likely to benefit from clear delineation of roles among government agencies involved in delivering drought assistance. This will assist in identifying and minimising potential overlap in information requested of applicants under
forthcoming programs. For example, future Australian Government and state or territory-based programs could consider adopting more consistent application forms to minimise duplication in the information requested of farmers. In addition, sharing information between relevant authorities could also reduce the need for applicants to resubmit the same information several times, where feasible. Although the use of information would need to comply with the 'National Privacy Principles' outlined in the Privacy Act 1988 (Cth), information collection could be further simplified with web-based forms, in which details provided at an earlier stage could be pre-filled.

**ABARES assessment**

Following a lengthy period of reviewing Australia's drought policy and programs, reform is underway. In light of the changes set to commence in July 2014, it is prudent for all jurisdictions to minimise the overall burden imposed on businesses when administering drought assistance programs. In doing so, it will be useful to identify links between various programs and potential overlap in information required from applicants. It may be useful to consider aligning the application process and forms across programs, encouraging the use of electronic application forms and sharing information provided by farmers across agencies, where cost-effective and appropriate to do so.

**Finding 32**

National drought policy is currently being reformed and this provides a good opportunity to minimise unnecessary regulatory burdens, such as inconsistency and duplication in application processes between jurisdictions that could arise in future.
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