

# **AGRICULTURAL COMPETITIVENESS GREEN PAPER**

**SUBMISSION by the OFFICE OF THE  
AUSTRALIAN SMALL BUSINESS COMMISSIONER**

**DECEMBER 2014**

As the Office of the Australian Small Business Commissioner (ASBC), we write to provide our observations on the Agricultural Competitiveness Green Paper (Green Paper) and our view of priorities.<sup>1</sup> We provide a number of observations that relate to Australian agriculture that also align with our recent submissions to the Competition Policy Review.<sup>2</sup>

Our Office has been involved in a range of issues in the agricultural sector that include family farming business, winemaking and wine grape growing, and access to finance. The issues that have arisen can be both agriculture-specific and more general to small business and family enterprises across various sectors.

From a small business and family enterprise perspective, we are encouraged by the Green Paper's focus on achieving a better return at the farm gate (including by reducing costs and unnecessary barriers) to ensure a sustainable and competitive Australian agricultural sector. In this regard, we also note the focus on growth of Australian agriculture in domestic and overseas markets and the emphasis on strengthening labour availability. This provides a unique opportunity for stakeholders involved in the industry, including small businesses and family enterprises, to bring forward concerns directly to Government to improve the overall business environment.

This submission is provided in six sections – deregulation, family business, winemaking and wine grape growing, access to finance, and access to information and justice.

Further to our submission, we would welcome the opportunity to be involved in additional consultation relating to ongoing developments and prioritisation in the agricultural sector, particularly concerning small and family business.

## ***Deregulation***

Our Office strongly supports the Australian Government's deregulation and red tape reduction programme. We believe that approaches in the agricultural sector should be informed by and support this programme.

The Green Paper identified that Australian farmers (who are often small businesses and/or operate as family enterprises) are estimated to spend more than 20 days of their working

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<sup>1</sup> The role of the ASBC is to:

- Provide information and assistance to small businesses;
- Represent small business interests and concerns to the Australian Government; and
- Work with industry and Government to promote a consistent and coordinated approach to small business matters.

The Australian Government is committed to transforming the ASBC into the Australian Small Business and Family Enterprise Ombudsman that will be a:

- Commonwealth-wide advocate for small businesses and family enterprises;
- Concierge for a dispute resolution service;
- Contributor to the development of small business friendly Commonwealth laws and regulations; and
- Seamless link with the Government's Single Business Service to help small businesses easily find out about other Government services and programmes, including general business advice.

<sup>2</sup> The ASBC submissions to the Competition Policy Review are publicly available at:

<http://competitionpolicyreview.gov.au/files/2014/06/OSBC.pdf>

[http://competitionpolicyreview.gov.au/files/2014/11/Small\\_Business\\_Commissioner.pdf](http://competitionpolicyreview.gov.au/files/2014/11/Small_Business_Commissioner.pdf)

year consumed with complying with Government regulation.<sup>3</sup> While regulation is important for economic, safety and social reasons, it must also be effective and efficient.

It is our experience that small business is disproportionately affected by regulations and the way in which they are enforced. This can be a result of small businesses and family enterprises having limited resources compared to larger businesses and also a poorer understanding of how to comply. That is not to say that small business and family enterprises should necessarily be treated differently or more leniently, but this disproportionate effect and impact of the cumulative burden on these businesses should be properly addressed in sector reform.

The Green Paper offers an opportunity to consider the impact of specific red tape and improve outcomes for business. Approaches can include the adoption of facilitative approaches to regulation and its administration, with a focus on educating to comply rather than leaping to enforcement of compliance. It is our experience that the small business community responds more favorably when regulators take a facilitative and educative approach to regulation, rather than simply being a 'black-letter law' regulator of crackdown enforcement.

It is also our experience that small business generally does not differentiate between levels of Government, or even different agencies within a Government. As such, it is important to work collaboratively between agencies and jurisdictions to look for improvements to the cumulative compliance burden.

## **Family business**

As identified in the Green Paper, more than 95% of Australian farms are family owned and operated.<sup>4</sup> The Paper also notes that the Australian Government is focused on agricultural policy that "keeps families as the cornerstone of farming – by establishing career paths based on financial stability, training and succession options".<sup>5</sup> The recognition of the importance of family enterprise in Australian agriculture should inform approaches taken across the sector. However, it should be noted that family enterprises are different to 'ordinary businesses' and are complex organisations created by the overlap of family and business sub-systems. Each family enterprise has its own norms, membership rules, values and organisational structures.

Traditionally, family enterprises have operated under the ownership and management of immediate family members. Now, family enterprises operating in the agricultural sector are commonly comprised of immediate family members alongside other families and unrelated parties. Even traditional hierarchical structures are changing as family enterprises grow and are handed down generationally. The inclusion of non-family members in these emerging businesses (as owners, directors and the like) means that it is becoming increasingly more important for the enterprises to operate according to sound business practices and principles, while preserving family needs for employment, identity and income.

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<sup>3</sup> Agricultural Competitiveness Green Paper, p.xxi.

<sup>4</sup> Agricultural Competitiveness Green Paper, p.38.

<sup>5</sup> Agricultural Competitiveness Green Paper, p.viii.

The Green Paper notes that higher performing farms tend to invest more in expanding their business and have a higher level of management capability.<sup>6</sup> We agree with the reference in the Paper that there is a link between increases in managerial capacity and the ability of an organisation to be more innovative and strategically focused.<sup>7</sup>

We also agree that business performance is improved through:

- Financial planning;
- Management of people;
- Change and innovation;
- Management of natural resources and climate impacts;
- Work–life balance;
- Negotiation; and
- Succession planning.<sup>8</sup>

With this in mind, we believe that consideration should be given to options to focus new and existing services, such as the Rural Financial Counselling Service and other services, on family enterprise succession planning, governance, and mentoring. In particular, coverage of the use of family councils and family charters<sup>9</sup> can have an important role for family business in managing the interaction of potentially conflicting commercial and family value systems. Family charters can cover a broad range of issues, such as who can participate in the family business (including required skills), and the roles and responsibilities of family members who may be actively or passively involved in the business.

The aim of this focus is to recognise the special nature and challenges of family business and tailor management and business approaches to ensure the competitiveness of the business for current and future generations. This would be in addition to approaches designed to address the growth and performance of young farmers and new entrants.<sup>10</sup>

## Winemaking and wine grape growing

Our Office has been working with key stakeholders within the wine industry on a range of issues, including those relating to dynamics in the supply chain, from grower, to winemaker, and on to wholesalers and retailers.

**Collective bargaining** – Traditionally, wine grape growers have supplied their product to the same winemaker for significant periods of time. In recent years, there has been an oversupply of wine grapes in the industry and, in certain regions across Australia, wine grapes are being sold for less than the cost of production. Our Office is aware of some wine grape growers banding together to establish a grower-owned local company that acts as a broker/negotiator for the purpose of selling wine grapes of the growers.

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<sup>6</sup> Agricultural Competitiveness Green Paper, p.39.

<sup>7</sup> Agricultural Competitiveness Green Paper, p.39.

<sup>8</sup> Agricultural Competitiveness Green Paper, p.39.

<sup>9</sup> Also referred to as 'family constitutions' and 'family codes of conduct'.

<sup>10</sup> Agricultural Competitiveness Green Paper, p.39.

Our Office is also aware of co-operatives working well in industries such as the dairy and chicken meat industries. This option could be promoted and adopted more broadly in the wine grape growing industry to provide a better return at the farm gate for the farmer. Alongside this, we support consideration of whether the current *Competition and Consumer Act 2010* provisions are sufficient to support the approach due to the perceived significant power imbalances at points in the supply chain.<sup>11</sup>

**Retrospective pricing and other behaviours** – Our Office has received information that retrospective pricing in the wine industry is occurring at the supply to retailer level. Retrospective pricing is where a retailer pushes the cost of discounting stock (as part of a promotion) back onto the supplier. It may also be used where a retailer discovers that a competing retailer has sourced stock at a lower price (where the retailer recoups the higher margin paid for supply).

There are a number of codes of conduct that could potentially apply to these sorts of behaviour, such as the Australian Wine Industry Code of Conduct. We would support a review of the effectiveness of agricultural codes in the area and this could extend to coverage of the effectiveness of the Horticulture Code of Conduct.<sup>12</sup> A review could also assess these sorts of practice across other agricultural areas. This would be in line with reviews that have recently been conducted into various industry codes.

## Access to finance

The issue of access to finance is often raised with our Office as a key concern of small business and family enterprise. Due to the seasonality of revenue streams, this issue can be an even more difficult task for those operating in the agricultural sector.

There are a number of aspects of access to finance that are relevant to agriculture:

**Environmental events** – Environmental events (such as floods, droughts, and biological hazards like insect and animal infestations) can result in very little or no income generated for significant periods of time. These stresses place great pressure on existing finances, resources, infrastructure and emotional resilience of farming businesses and family enterprises. We agree with the Green Paper's focus on encouraging multi-peril crop insurance (and related approaches) and various types of support in times of drought and other events (including general business and mental health support).<sup>13</sup>

**Changing loan-to-value ratio (and financial over-extension)** – An issue that has been raised with our Office on a number of occasions relates to the impact of changed loan-to-value ratios meaning that loans are called in by financial institutions. In an agricultural context, this will often occur alongside reinvestment of profits in the operation of the farm

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<sup>11</sup> Concerns of this nature are mentioned more broadly across agriculture at p.26 of the Agricultural Competitiveness Green Paper. We also agree with the Paper's argument that farmers are in a stronger negotiating position when there is a greater choice of markets to supply their products into and this aligns with facilitating access to wider markets.

<sup>12</sup> As referred to in the Agricultural Competitiveness Green Paper, pp.26.

<sup>13</sup> Agricultural Competitiveness Green Paper, pp.70-71.

that could have been used to service debt. We have been informed that some Code of Banking Practice complaints are not investigated and inappropriate behaviour may not be addressed.

This is illustrated by a recent example that we have been involved with:

When it was time for an elderly couple to retire from the family farm, one of the children took over the operation and bought out the other family members. At the time, the property was valued at \$8 million. Finance was provided by their financial institution to the sum of \$4 million for purchase of the property and the provision of working capital. After a few poor crop results, further borrowings were made.

Following two strong seasons, profits were used to update machinery; purchase two new cars and renovations to the family home. In addition to the previous lending arrangements, finance was also obtained to increase the size of the property, through the purchase of additional land from a neighbour.

Unfortunately, an extended period of drought occurred, resulting in poor crops and the sale of much of the breeding stock—all of which further limited revenue and the ability to meet financial obligations.

Additional finance was sought for the next crop. This was declined as current commitments could not be met. Soon after, the property was revalued and determined that its value had dropped, resulting in a loan-to-value ratio (LVR) that the bank considered to be too high. This resulted in the loan being called-in, and, following a round of farm debt mediation, the bank eventually foreclosed and the family lost the farm.

This case highlights not only the precarious situation of small business farming operators, but it raises questions about ethical lending and borrowing practices. There are a number of questions such as:

- At what stage should lenders and borrowers realise that over-extension has occurred and how should it be dealt with?
- How much risk should the lenders take on?
- Should changes in loan-to-value ratios be treated in a different way?
- Can education be improved to support farmers to 'future proof' the business to better cope with the boom or bust nature of many agricultural endeavours?
- Are dispute resolution mechanisms for small businesses available under the Code of Banking Practice and farm debt mediation adequate?

In this regard, we believe that Policy Idea 6 in the Green Paper (concerning the implementation of a nationally consistent and mandatory approach to farm debt mediation) is worthy of further investigation.

**Facilitation of debt restructure** – The Farm Finance Concessional Loans Scheme provides a valuable mechanism to restructure debts for the long-term viability of farms. The extension of this scheme post-July 2015 would continue to provide this valuable assistance and we would support consideration of making the scheme permanent.

## Access to information and justice

It is the view of our Office that government has a role in improving the business environment, with two enduring core responsibilities – namely the provision of **information and justice**. These twin pillars have a critical impact on the productivity and profitability of business.

By accessing appropriate **information** and resources, small and family businesses are empowered to work smarter, compete more effectively and reduce the costs of operating a business. This works equally in the agricultural sector as it does more broadly – getting the right information, adopting the right business management practices and accessing the right advisors are critical. Industry bodies also play an important role in the provision of information through undertaking educational and marketing activities, targeted at their members in their specific industries.

Some actions that would improve access to information in the agricultural sector include:

**Information and education programmes** – The provision of information and education programmes around developments stemming from the Green Paper will be important. We also commend a number of the approaches in the Green Paper that relate to ongoing enhancement and consolidation of information and education in the sector, particularly:

- Policy Idea 12 – Business advice, financial counselling and collaboration;
- Policy Idea 14 – Strengthening agricultural education (including at the school level);
- Policy Idea 16 – Increasing drought preparedness;
- Policy Idea 20 – Strengthening research, development and extension (this could also be linked to wider small business and family enterprise research such as through organisations like the Small Enterprise Association of Australia and New Zealand (SEAANZ)); and
- Policy Idea 24 – Export readiness (particularly understanding of overseas markets and exporter readiness training).

We also note that the Entrepreneurs' Infrastructure Programme (EIP) is a further avenue that could greatly benefit those operating in agriculture. The EIP's objective is to increase business competitiveness and productivity, and is part of the Government's Industry Innovation and Competitiveness Agenda.

The EIP has a national network of more than 100 experienced private sector advisers and offers support to businesses through three elements:

1. Provision of support for business improvement and growth;
2. Helping small and medium businesses to collaborate with the research sector to develop new ideas with commercial potential; and
3. Helping entrepreneurs, researchers, start-ups and businesses to address key challenges in the commercialisation pathway of bringing products, processes and services to consumers.

These are key elements for the agricultural sector. However, as the Green paper notes, the eligibility for this scheme is limited to those who have an annual turnover or operating expenditure between \$1.5m and \$100m or between \$750,000 and \$100m for applicants from remote Australian locations.<sup>14</sup> We believe that consideration should be given to the appropriate eligibility criteria for agriculture to ensure access to advice and support needed to improve competitiveness, productivity and foster innovation in the sector.

Consideration should also be given to how services can be tailored for agricultural business to ensure that advice is relevant and targeted. This could include consideration of whether the broad range of agricultural businesses structures and operating models could be fully covered (such as sole traders, trusts, partnerships and the like).

In short, we strongly support the extension of the EIP to the whole of the agricultural sector in a targeted way in accordance with Policy Idea 12 of the Green Paper.

**Professional advice and approach** – Our Office encourages business operators to obtain professional advice concerning their business operations (especially before entering into contracts). This approach is aligned with Policy Idea 12 in the Green Paper that refers to the importance of independent expert advice and assistance to improve decision-making, assist with future business directions and develop strategies to improve business performance and competitiveness. We agree that key areas for this advice include:

- Choice of business structure;
- Financing options and models;
- Succession planning;
- Application of new innovations;
- Risk management; and
- Skills development and workforce planning.

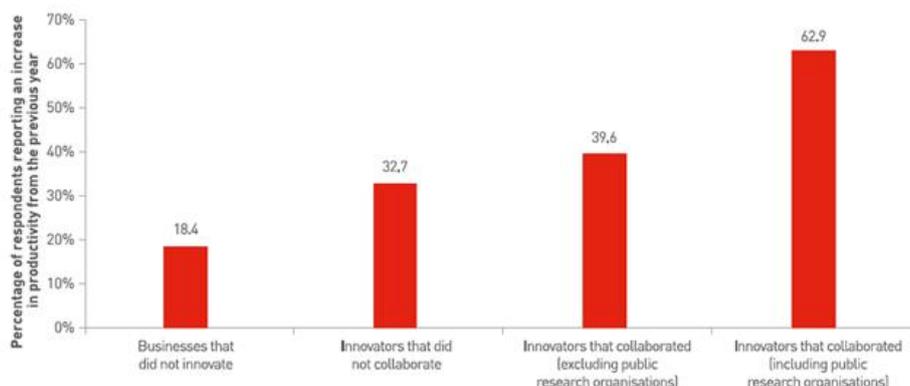
However, through our Office's activities in the agricultural sector, we have discovered that some businesses would also benefit from obtaining advice about more day-to-day matters, such as contracting practices. Although detailed contracts may be entered into for matters like loans and equipment leasing, formal contracts for the sale of produce are not always common practice and handshake deals can be the norm. We have observed this in the relationship between wine grape growers and winemakers/wholesalers. This approach exposes the industry to unnecessary risk and uncertainty in a core business activity. Improvement of these practices could also be assisted through the use of plain English contracting to assist the understanding of the parties to contracts.

**Innovation and collaboration** – We strongly support establishing a programme to encourage collaboration between agricultural businesses via a networking service (Policy Idea 12). The sharing of information, experiences and learning is a critical factor in the growth and success of small business. The link between innovation/collaboration and business productivity is clear from research by the Department of Industry in its Australian Innovation System Report 2013.<sup>15</sup>

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<sup>14</sup> Agricultural Competitiveness Green Paper, pp.47-8.

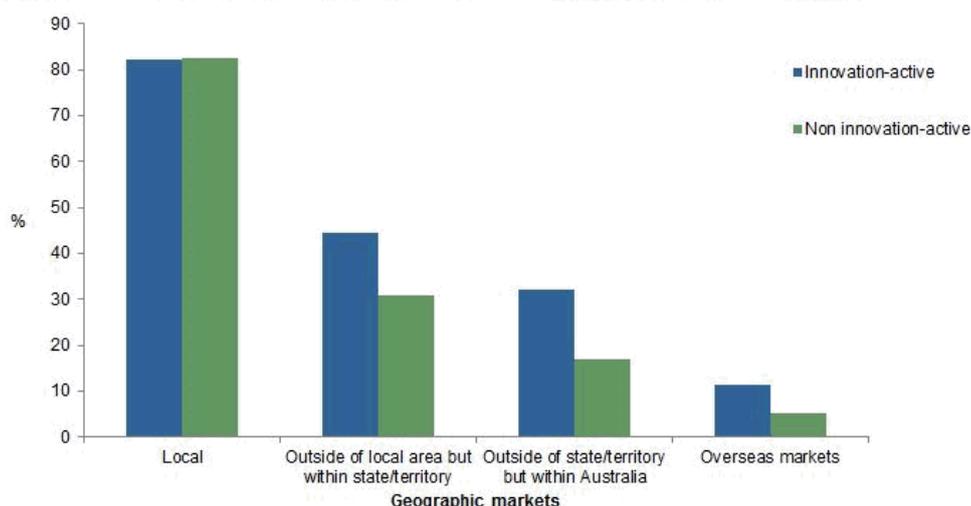
<sup>15</sup> <http://www.industry.gov.au/science/policy/Pages/AustralianInnovationSystemReport.aspx>



Source: DIISRTE Custom data request from the ABS (2012) *Innovation in Australian Business 2010-11*, cat. no. 8158.0

The Australian Bureau of Statistics has also published extensive data that shows a strong relationship between innovation and factors such as increased revenue and competitive edge.<sup>16</sup> We also draw your attention to the relationship between innovation and access to broader geographic markets:<sup>17</sup>

Geographic markets in which businesses sold goods or services(a)(b)(c), by innovation status(d), 2012-13



- (a) Proportions are of all businesses in each output category.
- (b) Businesses could report more than one geographic market.
- (c) The local market is defined as 'the immediate area, town or city in which the business is located'.
- (d) See Glossary for definition of innovation status.

The second core responsibility of government is to provide an **appropriate system of justice**. The speedy, inexpensive resolution of disputes is crucial for business efficacy. Small businesses focus on plying their trade or profession. Disputes will arise from time to time, but small businesses often do not have the skills and resources on hand to deal with incidents as they arise. These disruptions to undertaking core business operations are not easily catered for and depending on the particular type of dispute, can impact small businesses disproportionately. This is often the case in the agricultural sector when smaller businesses are suppliers to larger retailing entities that have the resources and processes in place to deal with disputes on their own terms.

<sup>16</sup> For example, see *8158.0 - Innovation in Australian Business, 2012-13* (<http://www.abs.gov.au>).

<sup>17</sup> *8167.0 - Selected Characteristics of Australian Business, 2012-13* (<http://www.abs.gov.au>).

The cost of a dispute for a small business is not just the financial cost of the lost business and the cost of pursuing a resolution (such as legal costs), but the opportunity cost and emotional stress involved. The opportunity cost includes what the small business would otherwise have achieved using the time and effort involved. For suppliers in the agricultural industry, resolving a dispute takes someone out of operating their business. Added to this cost is the emotional stress that disputes have on suppliers.

To assist access to justice, our Office recently launched an online dispute resolution portal—*Dispute Support*. This portal was developed with states and territories, consolidating dispute resolution information, resources and services available for small businesses Australia-wide. *Dispute Support* provides easy, tailored access to the most appropriate low cost service available to small business operators to resolve disputes, while also providing information on dispute resolution processes and strategies for avoiding and managing disputes.

As already noted, there is likely to be merit in giving further consideration to Policy Idea 6 and investigating potential options for a nationally consistent and mandatory approach to farm debt mediation.

## Conclusion

Our submission has covered a broad range of areas that we believe could be addressed to improve competition, productivity and efficiency in the agricultural sector in Australia. In our view, any reform in these areas should be visited through the lens of the Government's deregulation agenda.

In summary, the particular reforms that we have addressed and believe should be priorities for the White Paper are:

1. Focussing new and existing advisory services on family enterprise succession planning, governance, and mentoring;
2. Promoting the use of cooperatives (including ensuring that Competition and Consumer Act 2010 provisions are appropriate);
3. Reviewing the effectiveness of relevant industry codes including the Horticulture Code of Conduct;
4. Encouraging various approaches to assist in difficult times (such as multi-peril crop insurance, general preparedness and mental health support);
5. Investigating access to finance issues (including loan-to-value ratios and the operation of the Code of Banking Practice and farm debt mediation);
6. Extending the Farm Finance Concessional Loans Scheme beyond July 2015 (and considering whether it should be permanent); and
7. Enhancing and consolidating information and education programmes (including the EIP and an emphasis on areas such as research and export readiness).

We believe that enhancements in these key areas would improve the overall business environment and achieve a better return at the farm gate, to ensure sustainable and competitive Australian agriculture.