



**NSW Farmers' submission to  
the Revitalisation of the National  
Competition Policy Consultation Paper**

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## About NSW Farmers

NSW Farmers is Australia's largest state farming organisation, representing the interests of its farmer members in the state. We are Australia's only state-based farming organisation that represents farmers across all agricultural commodities. We also speak up on issues that matter to farmers, whether it's the environment, biosecurity, water, animal welfare, economics, trade, workforce or rural and regional affairs.

Agriculture is an economic 'engine' industry in New South Wales. Despite having faced extreme weather conditions, pandemic and natural disasters in the past three years, farmers across the state produced more than \$23 billion in 2021-22, or around 25 per cent of total national production, and contribute significantly to the state's total exports. Agriculture is the heartbeat of regional communities, directly employing almost two per cent of the state's workers and supporting roles in processing, manufacturing, retail, and hospitality across regional and metropolitan areas. The sector hopes to grow this contribution even further by working toward the target of \$30 billion in economic output by 2030.

Our state's diverse geography and climatic conditions mean a wide variety of crops and livestock can be cultivated here. We represent the interests of farmers from a broad range of commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens.

We have teams working across regional New South Wales and in Sydney to ensure key policies and messages travel from paddock to Parliament. Our regional branch network ensures local voices guide and shape our positions on issues affecting real people in real communities. Our Branch members bring policy ideas to Annual Conference, our Advisory Committees provide specialist, practical advice to decision makers on issues affecting the sector, and our 60-member Executive Council makes the final decision on the policies we advocate on.

As well as advocating for farmers on issues that shape agriculture and regional areas, we provide direct business support and advice to our members. Our workplace relations team has a history of providing tailored, affordable business advice that can save our members thousands of dollars. Meanwhile, we maintain partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are also a proud founding member of the National Farmers' Federation.

## Executive summary

A thriving and competitive agriculture and food industry is vital for the future sustainability and prosperity of Australia and its farmers. The target of reaching \$100B in gross value of production by 2030 will only be achieved if improvements to competition and fairness within those supply chains are made<sup>1</sup>. To support this, NSWFA aims to see the state reach \$30B of production by 2030, supported by fair and competitive supply chains as a key pillar<sup>2</sup>. This submission addresses the issues raised in the Consultation Paper on the Revitalisation of the National Competition Policy (NCP) and provides a broad outline of the rationale for an understanding of the sector-specific competition issues currently facing agriculture today, as well as recommendations to support a revitalised NCP.

This paper covers several issues with respect to the NCP reform themes, including:

- **Promotion of a more dynamic business environment**  
Dynamism, measured through the number of entries and exists in farming businesses, has continually declined since 2008, raising concerns about barriers to entry, especially for young farmers. In addition, industries upstream and downstream of agriculture remain highly concentrated, making it particularly vulnerable to abuses of market power and monopolistic behaviour.
- **Harnessing the benefits of the Net Zero transformation**  
Noting that Government intervention in the Net Zero transformation has the potential to exacerbate, rather than improve issues associated with market concentration, including with land use issues and policy favouring certain technologies.
- **Lowering barriers to labour mobility**  
Agriculture remains highly constrained by inadequate access to labour, which are exacerbated by low quality and expensive transport options, particularly from the highly concentration regional airline industry.
- **Better harnessing choice, competition and contestability in human services**  
Regional areas are characterised by a distinct lack of competition and choice when it comes to vital sectors of the economy, including health, education, childcare, postal services and others. Often, it falls to local governments to supply these services, or provide the buildings, facilities, and administrative support to enable them to operate at all.
- **Leveraging the economic opportunities of data and digital technology**  
Technology represents one of the best opportunities to improve productivity in agriculture. However, a concentrated telecommunications sector, and no third-party right to repair for agricultural machinery means that farmers are unable to make the most of the potential.

The paper also raises several issues associated with the previous and potential new NCP Principles, including:

- **Structural reform of public monopolies**  
The failure to properly regulate newly privatised monopolies, such as the Port of Newcastle, has had long-lasting consequences for agriculture – which relies on that infrastructure for access to export markets.
- **Access to Services Provided through the Significant Infrastructure Facilities Principle**  
While the National Access Regime has been effective to some extent, the national rail network is still a complex mix of infrastructure owners, technologies, signal regimes and operating requirements. In addition, the deficiencies of the Wheat Port Code of Conduct demonstrate the important role that regulatory oversight plays where there is natural monopolies in maximising fair and transparent access to ensure that supply chains can operate efficiently.

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<sup>1</sup> Department of Agriculture, Water and Environment – Delivering Ag2030, April 2022

<sup>2</sup> NSWFA – 30 by 30 vision – Growing our food and fibre future.

[https://www.nswfarmers.org.au/NSWFA/NSWFA/Content/IndustryPolicy/Resource/30\\_by\\_30\\_vision.aspx](https://www.nswfarmers.org.au/NSWFA/NSWFA/Content/IndustryPolicy/Resource/30_by_30_vision.aspx)

- **Prices Oversight Principle**  
Compared to other international jurisdictions, Australia lags behind in the collection and dissemination of prices throughout the agricultural supply chain, especially considering the substantial market concentration prevalent in the industry.
- **Public Interest Test**  
Food security is a critical issue facing Australia, however, it has not been taken seriously by the National Government. Food security should be considered as a factor for a revitalised NCP.
- **Promoting competition**  
The Government is the single largest consumer of goods and services, making it a monopsonist buyer in many markets, but it does not have the information it needs to determine whether or not its procurement decisions substantially lessen competition in any market. Furthermore, the power to intervene structurally in a market in order to increase competition in Australia are extremely limited compared to overseas jurisdictions.
- **Consumer empowerment**  
Households are vulnerable to a concentrated retail sector, and as a result, few adults or children consume the recommended amount of fresh fruit and vegetables. Researcher suggests that Government will have to take an active role in enabling households to make optimal choices.
- **Market design and stewardship**  
Governments are increasingly turning to markets to solve issues associated with agricultural activity, including water, carbon, biodiversity and other. Yet there are significant concerns regarding a lack of market transparency, manipulation of those markets by speculative investors, government involvement as buyers and sellers, and negative externalities.
- **Facilitating competition through data sharing**  
In order to address many of the issues raised throughout this paper, it is considered that a requirement for government to support data sharing in the public and private sectors will be an important feature of any revitalised NCP.

Finally, with respect to institutional arrangements, it is recommended that any new or expanded body charged with advancing a revitalised NCP include a special agriculture unit which has the knowledge, experience, and capacity to address the complex issues faced by agriculture with respect to competition-related issues.

## Overarching Recommendations for Reform

This submission encompasses a broad range of issues that NSW Farmers have identified that should be addressed through a revitalised NCP. However, taken together, they can be summarised into a few overarching themes that should guide the mission and principles of the NCP. These overarching recommendations for reform cut across multiple commodities, markets, and associated failures arising from a dearth of competition. These are summarised in the table below.

<b>Increase competition in input and output markets for agriculture</b>	<b>Improve price and operational transparency in public and private markets</b>
<p>Markets that supply to and take output from agriculture are highly concentrated and vertically integrated, leading to inefficient and perverse outcomes that threaten the overall sustainability and dynamism of farming itself. The NCP should empower Governments to proactively promote market entry into concentrated markets, and increases competition between existing incumbents, as a high priority. Where necessary, structural remedies for addressing market concentration, such as different levels of divestiture, should be considered.</p>	<p>Information asymmetry in highly concentrated markets allows incumbents to exert undue influence over prices, and keeps competitors out. Additionally, trust in public markets (like water) is low, reducing their effectiveness, and making them vulnerable to speculators. The NCP should prioritise actions that support greater price and operational transparency in markets serving farmers to promote efficient critical market functions – including price discovery and resource allocation.</p>
<b>Ingrain operational and procedural fairness into markets and regulation</b>	<b>Centralise agriculture in decision-making, governance and institutional arrangements</b>
<p>A lack of recourse for farmers where issues arise as a result of misuses of market power means that structural issues are hard to identify and rectify, and justice rarely served. This is particularly the case where farmers rationally fear retribution from market participants that have power over the long-term outcomes of the business. The NCP should help to ensure that avenues to pursue restorative justice, independent mediation or arbitration, and seek investigations into structural issues of concentrated markets are not hindered by cost, legal barriers, or the influence of monopolists over the procedure. In addition, behavioural remedies for the misuse of market power, such as fines, should be enforceable and large enough to disincentivise those outcomes.</p>	<p>The issues and market failures impacting agriculture are unique, and arise due to a range of geographical, demographic, and commodity-specific characteristics that vary from region to region. Previous general competition policy has failed to produce optimum outcomes for farmers or consumers. Ensuring that sector-specific expertise and decision-making capacity – exemplified by the ACCC Agriculture Unit - is necessary to ensuring that the regulatory responses to nation-wide issues are appropriate. A revitalised National Competition Council should incorporate a specialist unit for agriculture to inform policy, and advocate for the specific consideration of agriculture where appropriate in other institutions and regulatory instruments charged with implementing the NCP.</p>

# Introduction

The NSW Farmers Association has consistently campaigned on issues relating to competition throughout the agricultural supply chain. Our policy paper ***Competition Policy and Food Supply Chain: Time for a rethink (2019)*** outlines several of the key issues facing agriculture and finds that the National Competition Policy (NCP) is failing farmers. In particular:

- a lack of fairness in Australian Consumer Law (ACL), combined with a myopic focus on short-term consumer benefit with no regard to the consequences of a less sustainable food system
- the inability of competition provisions to deal with undue market power of monopsony
- unconscionable conduct provisions are poorly defined and notoriously difficult to prove
- a lack of resources for the Australian Competition and Consumer Commission to provide adequate enforcement and compliance
- the high cost of litigation, particularly the imposition of cost orders, stifling third-party action.

The NSWFA Competition Policy paper makes several overarching recommendations to improve the function of the markets through which raw produce is processed, transported and ultimately served to households. In brief, these are:

- **Limiting supermarket power** – a review of unconscionable conduct provisions
- **A fair go for small business** – the principle of fairness included in the NCP
- **Effective enforcement** – adequate resourcing of the ACCC
- **Enabling 3<sup>rd</sup> party enforcement** – cost effective dispute resolution and access to justice
- **Government support for a unified farming sector** – facilitating collective bargaining
- **Challenging coercive power** – an agriculture commissioner and dairy advocate

The ***NSW Farmers Submission to the ACCC Perishable Agricultural Good Inquiry (2020)*** outlines a raft of examples where competition has failed farmers, for examples in the dairy, poultry, horticulture, eggs, and meat industries. In particular, the report finds that the Australian Consumer Law is inadequate when it comes to provisions relating to unconscionable conduct, unfair contract terms, and enforcement – hobbling supply chains with inefficiencies and incentives to squeeze farmer and consumer surpluses without consequence.

In order to inform the revitalisation of the NCP, NSWFA have provided a compiled list of other recommendations that we have made with respect to competition policy in **APPENDIX A** to this submission. The following sections of the submission respond to the discussion themes and questions raised in the discussion paper, and raise further issues of concern to farmers with respect to competition policy including:

- Declining business dynamism and increasing market concentration
- Labour force issues in agriculture
- The supply of government services in regional and remote Australia
- 
- Barriers to right to repair for agricultural machinery
- Privatisation of public owned transport infrastructure, including ports and rail
- Poor market transparency in the supply chain and government-designed markets, including water markets.
- No food security provision in the public interest test
- No ability for regulators to pursue structural interventions in markets characterised by high degrees of market power
- No recognition of the fact that Government, as a monopsonist buyer in many markets, has the ability to substantially reduce competition as a result of its procurement choices.

# NCP Reform Themes

The following sections briefly underscore the importance of an enhanced NCP to farm businesses and the agricultural sector more broadly.

## Promoting a more dynamic business environment

Business dynamism is a crucial ingredient in promoting a healthy economy, especially where new businesses continually seek to challenge incumbents market shares and products, promoting continual price, quality, and labour market competition. Agriculture is no exception to this rule, however as shown in Figure 1, both the number of entries and exits of businesses into farming has declined substantially since 2008.

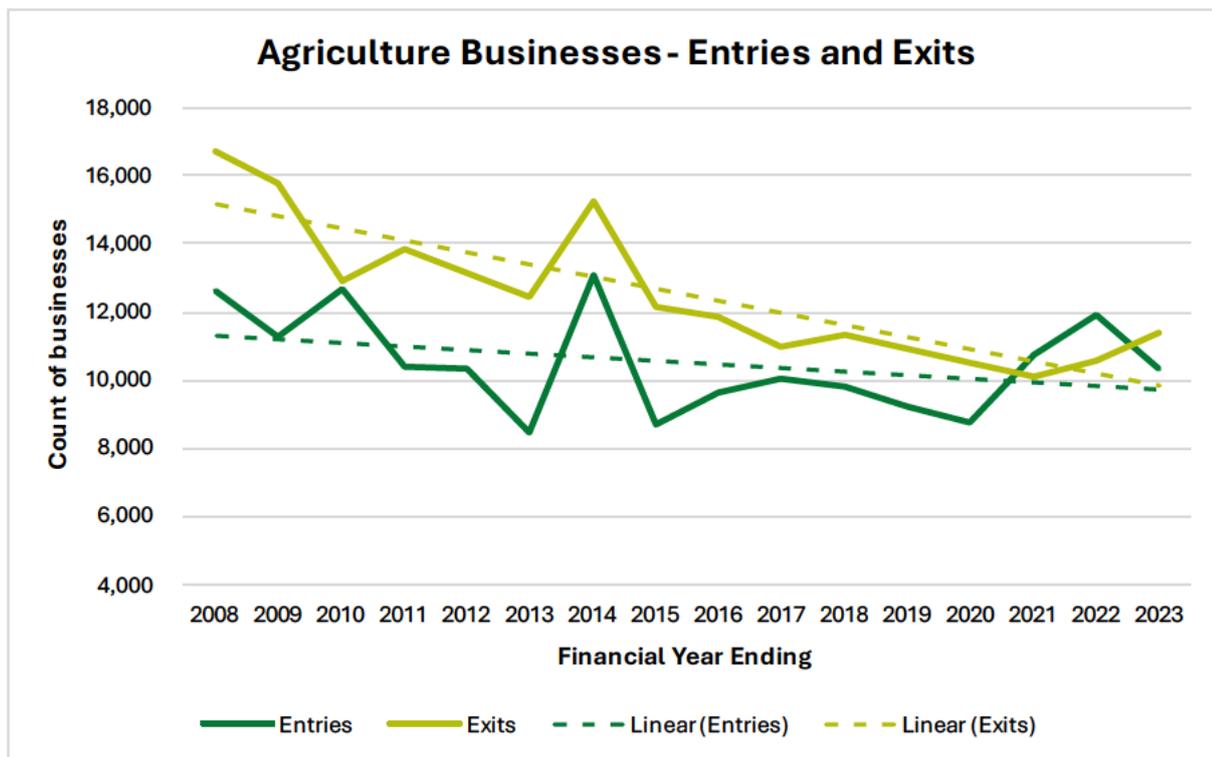


Figure 1: Counts of Agriculture Farming Businesses. Source: Australian Bureau of Statistics – Counts of Australian Businesses, including Entries and Exits, multiple years.

The reduced business dynamism in Agriculture has ramifications for the long-term sustainability and productivity of the sector. The high capital costs associated with starting a farming enterprise is a considerable barrier to entry, especially to younger farmers, who are often the most open to the development and adoption of new technology. As a result, between 2000 and 2022, the average age of a farmer has increased from 54 to 63 years old<sup>3</sup>.

Despite the farming sector dynamism declining somewhat, it is still highly competitive, with over 50,000 broadacre businesses producing a wide variety of products. However, competition in the agricultural supply chain has become extremely limited, especially in some sectors. As outlined in Table 1, there are several industries where there is very limited choice, especially when considering the vast geographical separation between markets. Farmers are often faced with only one potential supplier for crucial inputs (such as fertilisers, agrichemicals, irrigation equipment, etc), or a single

<sup>3</sup> Australian Bureau of Agricultural and Resource Economics and Science – Farm Data Portal, All Broadacre Farms, National.

buyer for their products in their region<sup>4</sup>. For example, the red meat processing sector has experienced significant market consolidation over the past 20 years, in 2006 the top 25 processors accounted for 77% of red meat production, and today the top 2 account for 46% (up from 24%), leading to significant misuse of market power<sup>5</sup>.

*Table 1: Counts and approximate market shares of major businesses in key industries in the agricultural supply chain.*

Commodity / Sector	# Large Players	Market Share
Grocery Retail	2	65% of consumer spend
Nursery Products	1	70% of consumer spend
Cotton	3 (2 <sup>6</sup> )	65% of cotton gins
Poultry meat	2	70% of output
Grain	3	90% of bulk handling
Smallgoods/Pork	3	55% of processing
Seafood	3	65% of processing
Airlines	1	91% of regional routes
	3	92% of city-regional routes

It is notable market concentration in key industries in the agricultural supply chain persists, despite the raft of competition reforms the sector faced, including deregulation, in a large part due to wider reforms spurred on by the original NCP. While deregulation, for example of single desk arrangements and the use of marketing boards, has led to improvements in productivity, their overall impact on market choice and dynamism has been lacklustre.

## **Harnessing the benefits of competition in the Net Zero transformation**

The transition to a Net Zero economy represents both a series of opportunities as well as substantial challenges for Australian agriculture. The advent of carbon trading markets has opened up the ability for some farmers to gain an income from land management activities, essentially diversifying their businesses into carbon as a commodity. Other farmers have been able to support renewable energy generation, such as wind turbines, or solar PV. The opening up of new markets offering diversified sources of income is an example of improved competition leading to benefits for farmers.

However, those same opportunities often also come at a cost, especially where increased competition for agricultural land, particularly for renewable energy generation, often leads to negative externalities – for example, the impact of high-voltage overground transmission lines on landscape connectedness, bushfire risk, and visual amenity. The presence of negative externalities is further exacerbated when the ownership of these large infrastructure projects are highly concentrated entities operating under favourable planning regulations designed to expedite construction, such that communities are faced with an inability to have concerns addressed<sup>7</sup>. In a hypothetical alternative context, where the rights to construct, for example, transmission infrastructure were contestable – different corporations could bid on both market (that is, price) and non-market (minimisation of

<sup>4</sup> NSWFA – Submission to the Inquiry into promoting economic dynamism, competition and business formation, Parliament of Australia, 2023

<sup>5</sup> NSWFA – Submission to the Inquiry into the effect of market consolidation on the red meat processing sector, 2015

<sup>6</sup> Namoi Cotton which owns 10 cotton gins across NSW and Queensland is currently under offer from Olam (Queensland Cotton) which owns 7 gins across Queensland. The combined entity would control 48% of gins in Australia.

<sup>7</sup> NSWFA – Submission to the Draft Energy Policy Framework, NSW Government, 2024

externalities) considerations, in such a way that could produce an efficient and socially desirable outcome.

Agriculture is also exposed to changes in the overall economy as a result of Net Zero transitions. For example, global and domestic policies supporting the uptake of electric vehicles (EVs) are explicitly aimed at out-competing and ultimately phasing out the use of petrol-reliant vehicles. However, while EVs may be economical in metropolitan areas, their range and viability remain constrained in regional and rural Australia where trip distances are typically much larger. In addition, viable electric alternatives to heavy farm machinery, such as tractors or trucks, are yet to come to market at an economic price point, raising the risk that certain farm assets may be stranded in the transition to Net Zero, with no – or only a few highly uncompetitive and inefficient alternatives on the market.

## **Lowering barriers to labour mobility**

Access to labour is one of the critical issues facing agriculture. Since 2000 the number of people employed on farms in Australia has fallen 22% from 410,000 to 300,000<sup>8</sup>. Agriculture faces intense competition from other sectors of the economy, including Mining and Services, where wages for low and unskilled labour can be significantly higher<sup>9</sup> – as well as opportunities for upward mobility. As stated above it is increasingly difficult, if not impossible, for someone who's only experience is working in agriculture to be able to start their own business as a farmer in their own right.

The geographic barriers to labour mobility in the regions, typified by low quality, unreliable and expensive transportation (especially by air), telecommunications, housing and services (see below), are often also characterised by a lack of market competition. The recent solvency issues facing Bonza and Rex risk leaving regional airlines dominated by Qantas<sup>10</sup>. And regional population centres simply cannot compete with metropolitan areas for both the labour and materials required to meet their housing needs. In addition, agriculture is a highly cyclical industry, with employment rising and falling with seasonal conditions. All of these issues compound to mean that agriculture faces immense challenges in obtaining the necessary labour, particularly during peak seasons.

## **Better harnessing choice, competition, and contestability in human services**

Regional areas are characterised by a distinct lack of competition and choice when it comes to vital sectors of the economy, including health, education, childcare, postal services and others. Often, it falls to local governments to supply these services, or provide the buildings, facilities, and administrative support to enable them to operate at all<sup>11</sup>. Even though these services fall outside the remit of local government, councils are ultimately pressured to take them on as 'public goods' in order to maintain viable communities. As a result, regional and remote local governments are typically much more expensive to operate, putting significant pressure on the local rate-paying base, of which a significant proportion are farming businesses<sup>12 13</sup>.

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<sup>8</sup> Australian Bureau of Statistics – Modeller's Database

<sup>9</sup> Australian Bureau of Statistics – National Labour Account – 2024 Quarter 1.

Average labour cost per hour paid in Agriculture (\$43.30), Mining (\$97.27), Administrative and Support Services (\$61.94)

<sup>10</sup> ACCC – Domestic airline competition report, February 2024

<sup>11</sup> For example, The Guardian – A lack of federal support means several rural areas are using local council rates to subsidise health services for vulnerable patients.

<https://www.theguardian.com/australia-news/2022/aug/11/bulk-billing-is-almost-non-existent-tasmanian-councils-turning-to-ratepayers-to-prop-up-flailing-gp-clinics>

<sup>12</sup> NSWFA – Submission to the Inquiry into the ability of local governments to fund infrastructure and services, NSW Government, 2024

<sup>13</sup> NSWFA – Submission to the Inquiry into local government sustainability, 2024

Notwithstanding, changes to the scale at which certain human services are funded have led to improvements. The implementation of the National Disability Insurance Scheme (NDIS) has meant that choice of providers available in regional areas has improved service availability and choice in regional areas, albeit with significant remaining gaps<sup>14</sup>. The experience of the NDIS raises the question of whether or not local governments are the appropriate administrative level and geographic scale to provide the wide range of human services that they do, and if state or the Commonwealth Governments have a larger role to play in actively creating and shaping markets to supply them efficiently<sup>15</sup>.

## Leveraging the economic opportunities of data and digital technology

While the adoption of precision agriculture tools and artificial intelligence<sup>16</sup>, connected to digital services, represents one of the major opportunities to improve productivity in the sector – market inefficiencies, characterised by a lack of competition and restrictive property-right protections, increases the barriers to their adoption and places farmers at a disadvantage. In addition, the presence of large incumbents in the agribusiness supply chain hinders the uptake of new technology, as they do not have the incentive to facilitate the use of technology that may increase the independence and bargaining power of farmers<sup>17</sup>. Important opportunities to promote the continued innovation and adoption of agtech in farm businesses includes Federal and State Government support to promote attractive opportunities for foreign and domestic investment into agtech development within Australia. This is important to stimulate the sectors growth and drive continued RD&E advancements to improve farm competitiveness, productivity and risk management.

Many NSW Farmers continue to face telecommunications coverage and reliability issues in regional, rural and remote areas telecommunications. Telecommunications access is very important for farmers not just in terms of essential everyday use of phone and internet services but also for a range of digital technologies used on farms, such as water and irrigation monitors, machinery diagnostic tools, and automatic weather stations. These devices are important for farming operations and are reliant on network connectivity to transmit and receive data in equipment that use sensors, devices and handsets. Increasing usage and traffic of mobile data services broadly in the community creates network capacity challenges, necessitating ongoing improvements and spectrum allocation as evidenced by the closure of the 3G network . The cost of building telecommunications infrastructure is high in regional NSWs and becomes more expensive with remoteness, in particular the backhaul required for towers. Government programs at a state and federal level have been important to encourage operators to build new infrastructure by reducing the associated costs. Most operators would not have built these towers if it weren't for programs such as the Mobile Black Spot Program which has provided important government co-investment with network operators and infrastructure providers to improve mobile coverage. However, there are still significant mobile coverage gaps and service quality issues to be addressed throughout regional New South Wales, and continued co-investment by government is needed to minimise mobile blackspots. Additionally, NSW Farmers is broadly supportive of Government action to encourage feasible infrastructure and spectrum sharing arrangements with the objective of delivering enhanced connectivity and network expansion through more efficient use of infrastructure, use of underutilised spectrum, and promoting competition<sup>18</sup>.

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<sup>14</sup> National Disability Insurance Agency – Rural and Remote Strategy, 2016-2019

<sup>15</sup> For example, through state government-run employment agencies for medical locum.

<https://www.nsw.gov.au/media-releases/bringing-medical-locum-recruitment-house-to-drive-down-costly-agency-fees>

<sup>16</sup> NSWFA – Submission to the Inquiry into artificial intelligence, NSW Government, 2023

<sup>17</sup> NSWFA – Submission to the Inquiry into Agricultural Technology and Innovation, 2015

<sup>18</sup> NSWFA – Submission to the Regional Telecommunications Review.

In addition, access to machinery diagnostics, codes, and schematics are considered a key barrier to an open repairs market by many farmers. The inability for farmers or independent repairers to access diagnostic codes means that the problem with the machinery cannot be identified until an authorised repairer is available to inspect the machinery. This adds to repair delays by increasing the time spent waiting for parts or for the repairer to return to the property with the necessary parts to undertake repairs. Similarly, access to machinery codes and schematics is not readily available, and is often inaccessible to consumers and third parties, preventing independent repairers from undertaking repairs. This restriction of the market results in inconvenience for farmers through inability to utilise local repairers to fix non-critical machinery issues in a timely manner, and increased costs through being forced to use an authorised repairer. NSW Farmers members key concerns are

- the importance of access to machinery diagnostics, codes, and schematics,
- the challenges of significant reduction of dealer networks across regional areas,
- the need to support qualified mechanics to make non-critical repairs without voiding warranties, and
- inadequate consumer law protections for agricultural machinery

The issue of closed digital ecosystems is a significant issue for agriculture when farmers need to repair or upgrade their existing technology. Nearly all modern agricultural equipment and machinery has digital components, and this added layer of complexity means that farmers are often unable to use the option of a timely, local and therefore less expensive third-party repair services, or a more distant and often more expensive licensed repair service, even for non-critical issues<sup>19</sup>.

Internationally, only one manufacturer of agricultural machinery (John Deere) has signed a voluntary Memorandum of Understanding with the American Farm Federation guaranteeing a right to repair. The lack of a comprehensive agreement covering all manufacturers, or any similar agreement being able to be reached in Australia demonstrates the fact that the market cannot be left up to its own devices to solve this issue<sup>20</sup>. Therefore, NSWFA considers that it is imperative that a right to repair agricultural machinery be enshrined in legislation, including expansion of the ACL to include farm machinery related purchases greater \$100,000 under consumer protections. Machinery represents a significant outlay for farm businesses and it is important that a farmer can have machinery, equipment and hardware repaired at fair and competitive prices. It is also important to note that Australia does not offer a large number of agricultural machinery dealers per capita. This is due to many factors, some of which are explored above, but it is essential that no excessive increased costs or regulatory burden falls to dealers, as ultimately this will be passed on to the farmer.<sup>21</sup>

In addition, NSWFA have raised the following emerging issues with the growing role of data and artificial intelligence (AI) used and generated on farms:

- The growing importance of appropriate checks and balances being in place concerning the utilisation of farm data and AI in agriculture for example, coupled with the necessary safeguards for agricultural data.
- It is imperative that farmers retain control over the data produced on their farms and in their businesses. Agriculture data needs special consideration, unlike data from other sources such as social media.

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<sup>19</sup> NSWFA – Submission to the Inquiry into the Right to Repair, Productivity Commission, 2021

<sup>20</sup> Australian Automotive Aftermarket Association – AAA Supports Farmers Right to Repair Law, 2023.  
<https://www.aaaa.com.au/news/aaaa-supports-farmers-right-to-repair-law/>

<sup>21</sup> 4715 - That NSW Farmers engage with government, ACCC and industry to facilitate a right to repair for all Australian agricultural industries. To ensure that a farmer can have machinery, equipment and hardware repaired at fair and competitive prices.

- As farmers incur costs at every stage - from purchasing the hardware and equipment generating the data to paying for the software and services utilising it – it must be recognised that any data generated is a product of the farmers' intellectual property and knowledge.
- Unfortunately, due to unfair contracts in the form of end-user licensing agreements, farmers currently lack control over their data which diminishes trust and creates some hesitancy among farmers to embrace and utilise new agtech applications.

# Review of current NCP Principles

## Structural Reform of Public Monopolies

The Structural Reform of Public Monopolies Principle sought to strip the regulatory or standard-setting functions from public monopolies before they are privatised. However, as outlined by the ACCC, simply removing these functions in law does not mean that a newly privatised monopoly does not have the power to exercise distortionary control over the supply chain and prevent new entrants into the market.

Of particular concern for agriculture is the way in which natural monopolies, including rail and port infrastructure have been privatised and regulated, with over 197 privatisations and Public Private Partnerships of economic infrastructure and transport assets in Australia in the last 50 years<sup>22</sup>. As outlined in the following sections, privatisations have not always led to greater efficiencies, especially where fragmented freight systems lead to a proliferation of standards and operating requirements that raise the cost of exporting agricultural produce to local and global markets. As a result of the infrastructure and competition issues that have arisen, NSW Farmers have called for the storage, handling, and port infrastructure to be declared an essential service to ensure open, fair and equitable access<sup>23</sup>.

As an example, the trade restrictions imposed on the Port of Newcastle after privatisation of Port Botany and Port Kembla led to monopolistic price setting in the container market<sup>24</sup> while the quality of port infrastructure was allowed to deteriorate, creating significant congestion and increasing the cost to export agricultural produce<sup>25 26</sup>. Meanwhile, the operating profit margins of Australian stevedores are historically high, reaching 25% in 2022-23, compared to the 15-year average of 18%<sup>27</sup>.

## Access to Services Provided by Means of the Significant Infrastructure Facilities Principle

The National Access Regime (NAR) has been applied to sectors relevant to agriculture, in particular the:

- Hunter Valley rail network access undertaking
- Interstate rail network access undertaking
- Wheat Port Code of Conduct
- Telecommunications (Under Part XIC of the Competition and Consumer Act 2010)

With respect to rail infrastructure, while the Hunter Valley and Interstate rail network access undertaking have meant that operators have been able to more effectively utilise their competitor's infrastructure using a well-established price mechanism, it remains that the rail network in Australia is highly localised with a patchwork of different Total Axle Loads (TAL) and rail gauges that restricts interconnection between networks and leads to costly inefficiency. Across Australia there are 8 rail infrastructure owners and over 50 above rail operators, leading to a mess of technologies, signal systems, and regimes with different operating requirements<sup>28</sup>. While there is a clear public benefit to harmonising regimes, upgrading the entire system to 25 tonne TAL, and standardising rail gauges –

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<sup>22</sup> Department of Infrastructure and Regional Development, Bureau of Infrastructure, Transport and Regional Development – Infrastructure and Transport PPPs and Privatisation in Australia, 2017

<sup>23</sup> NSWFA Policy 3420

<sup>24</sup> ACCC – Submission to the Treasury Competition Review, 2024

<sup>25</sup> NSWFA – Submission to Australia Maritime Logistics System Inquiry, Productivity Commission, 2022

<sup>26</sup> NSWFA – Submission to the National Freight Strategy, Infrastructure Australia, 2023

<sup>27</sup> ACCC – Container stevedoring monitoring report 2022-23

<sup>28</sup> NSWFA – Submission to the Transport for NSW Freight Policy Reform, 2024

there is evidently little incentive for infrastructure managers to bear the costs of improving their share of the network. If nationally agreed standards for monopoly rail infrastructure are agreed, then access undertakings for rail should include, especially within their price determination settings, incentives for rail operators that invest in their infrastructure to meet that standard.

The Wheat Port Code of Conduct is mandatory code that ensures that bulk wheat exporters have fair and transparent access to port terminal services. While the Code has been beneficial for improving access to ports, there have been significant deficiencies, including:

- Exemptions for port terminal service providers – to date 23 port terminal service providers have been granted exemptions at various facilities around Australia, including some of the largest carriers such as GrainCorp, Cargill and Qube.
- A tendency to claim that reporting obligations are too onerous to comply with, despite many items being information that should be collected as part of usual business, such as total capacity and volumes carried each period.
- Inconsistent application to a single commodity – as the Code only covers wheat, it is problematic for several operational and regulatory reasons, and is increasingly incongruent with the growing export share of other grains, such as barley and canola.

Clearly, there are lessons to be learned from the operation of the Wheat Port Code of Conduct, particularly with respect to the limitations of codes of conduct regulating access to monopoly infrastructure.

## Prices Oversight Principle

The Prices Oversight Principle has, in Australia, been largely restricted to natural and government monopolies such as utilities. However, as noted above, the agricultural sector is highly concentrated both upstream and downstream of farmers, and would also benefit from rigorous price oversight and collection at various stages of the supply chain. NSWFA have consistently reported cast studies where the relationship between farmgate prices and retail prices have indicated that supply chains are inefficient and point to misuses of market power, for example the wide divergences in the retail prices paid for various horticultural products throughout the state and within localities seemingly disconnected from wholesale or transport costs<sup>29</sup>.

In the United States this function is undertaken by the U.S. Department of Agriculture, for example, through the distribution of Market News Reports that provides information on distribution of prices for cattle slaughter, not just a weighted average price<sup>30</sup>. In the European Union, the European Commission collects price data on all major traded commodities and fertiliser by country in order to uphold price transparency and fairness in the supply chain<sup>31</sup>. By comparison, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) only provides a tokenistic amount of information on its Australian horticulture prices page from a single market<sup>32</sup>. The NSWFA considers that a robust prices oversight principle is necessary to ensure that the agricultural sector is operating efficiently, particularly to counter the market power exercised by major supermarket retailers. Robust prices oversight, aimed at countering the information asymmetry that supermarkets are able to use to their advantage, would also help to address the range of other issues faced by growers when dealing with them, in brief:

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<sup>29</sup> NSWFA – Submission to the Fresh Food Pricing Inquiry, NSW Government, 2018

<sup>30</sup> USDA - New USDA Market News Reports to Enhance Price Transparency in Cattle Markets -

<https://www.ams.usda.gov/press-release/new-usda-market-news-reports-enhance-price-transparency-cattle-markets>

<sup>31</sup> European Commission – Fairness in the food supply chain: Commission proposes to increase price transparency - [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_2629](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2629)

<sup>32</sup> ABARES – Australian horticulture prices - <https://www.agriculture.gov.au/abares/data/weekly-commodity-price-update/australian-horticulture-prices>

- Onerous quality standards, which give supermarkets the power to unilaterally reject whole consignments of goods due to a failure of a small percentage of those goods to meet the standard.
- Specific packaging requirements imposed on producers, which require large significant investments in processing equipment that effectively 'lock-in' those farmers to exclusively supplying those supermarkets. Sudden changes in packaging requirements render productive packaging equipment and materials obsolete, leaving producers to absorb losses and find additional funding in order to "comply to supply".
- The imposition of food safety standards, duplicating and additional to what is already required by law, which are introduced without adequate consultation or consideration of impact to producer costs.
- Increasing requirements for non-product related quality standards, including environmental, social and governance (ESG) standards, which come with demanding, time-consuming and costly data collection and certification obligations. While ESG certifications are notionally an opportunity for some farmers to obtain higher prices from consumers willing to pay to compensate for higher production costs, the current arrangements mean that supermarkets gain all the profits for enhancing ESG standards, while producers bear most of the costs. For example, poultry certification schemes like RSPCA and FREIPA introduced by supermarkets as a point of difference attracted incentive payments to farmers as compensation for higher production costs. However, since those products have become ubiquitous and widespread, and are no longer considered 'premium' products, farmers are no longer paid additional incentives, regardless of the additional costs of production.
- A refusal by supermarkets to brand-label produce, especially fruit and vegetables, which reduces producer brand awareness amongst consumers. This has the effect of homogenising all goods in the eyes of consumers, reducing the choice available to a single good with a single price. Producers are therefore unable to differentiate their products, a critical aspect of competition in a health market, and negotiate on price or quantity<sup>33</sup>.

In addition, it is not just supermarkets where market power by large players in the supply chain enables them to manipulate prices. The experiences of the poultry growers, where processors are both the monopoly suppliers of farm inputs and chicks, and the monopsonist buyers of chickens for those same farmers has led to a situation where farm profits have been eroded on both ends. Processor control over supply chains and data further means that growers have little understanding of the methodologies that processors use to determine pricing and payment for poultry. Therefore, growers have very little trust that the prices they receive are fair<sup>34</sup>. As a result, NSWFA have joined calls for a mandatory Poultry Code of Conduct that includes, amongst other provisions against unfair trading practices, effective contract dispute resolution mechanisms, and greater price and data transparency and oversight.

## Public Interest Test

While the NCP lists several important public interest factors to consider when making a policy decision pertaining to competition, NSWFA considers that, to date, the public interest tests have not been successful in achieving food security for the nation<sup>35</sup>. For example, a National Food Plan in 2013 was abandoned by a subsequent Government, which replaced it with a Agricultural Competitiveness White Paper that foreshadowed greater engagement by the ACCC in agriculture (including the appointment of a specific agricultural commissioner), the implementation of several industry codes of

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<sup>33</sup> NSWFA – Submission to the ACCC Supermarkets Inquiry, 2024-25.

<sup>34</sup> National Farmers Federation – Exploring the potential for a Code of Conduct to increase market transparency and competition in Australian poultry meat supply chains, 2024

<sup>35</sup> NSWFA – Submission to the National Food Security Inquiry, 2022

conduct, and investments in farm productivity, but stopped short of direct intervention in market structure with the exception of a two-year pilot program to educate farmers on collective bargaining.

The COVID-19 Pandemic laid bare some of the vulnerabilities facing Australian farmers as a result of the failure to properly consider food security as an overriding interest in public policy. During COVID, the number of people struggling to meet their food needs increased by 50%, including some 370,000 children just in NSW and ACT. Research has found that 28% of Australians experiencing food insecurity in 2020, compared to 17% in 2019<sup>36</sup>, despite ABARES claiming that there was no production issue at the farm-gate<sup>37</sup>. Clearly there are structural issues in the paddock-to-plate supply chain that creates unacceptable shortages and prices for Australian households that should be addressed by a revitalised NCP.

## Potential New Matters for the NCP

### Promoting Competition

In addition to being a monopolist provider of many goods, Government expenditure accounts for 38.08% of Gross Domestic Product, making the Government the single largest consumer of goods and services by an overwhelming margin. It is therefore also a monopsonist purchaser of many goods and services, particularly in local markets. While the previous NCP has diminished Government's role in monopolies somewhat, the share of government expenditure to GDP has remained steady since about 1985, although it was only about 23% in 1960<sup>38</sup>. Therefore, it is clear that the conduct of Government business (both as a seller and buyer) necessarily shapes competition in the market, regardless of whether or not it seeks to. Clearly, when Government decisions as both a buyer and seller have the potential to increase or diminish the competitiveness or dynamism of the domestic economy, the overall policy lean should be towards promoting competition.

NSW Farmers also considers that an explicit requirement to promote competition in the economy should also recognise the full array of policy solutions available to Government, including both behavioural and structural remedies. Currently in Australia, there is a predisposition towards behavioural remedies, with a reliance on voluntary and mandatory codes of conduct to address a range of poorly functioning markets. The Dairy, Horticulture, and Food and Grocery Codes of Conduct demonstrate, again, the vulnerability of agriculture to distortions arising from market power. However, it should be recognised that behavioural remedies such as Codes of Conduct usually do not address underlying market concentration, and impose an ongoing cost to government associated with oversight. The general experience of agriculture has been that while they are a valuable policy response, their implementation is cumbersome, and it is difficult to use them to address issues such as a fear of retribution against suppliers that speak out<sup>39</sup>. As such they are important interventions, but cannot on their own resolve all of the issues for suppliers and need to be complemented by other competition reforms.

It is noted that in the current policy context, divestiture powers tend to be discussed without recognition of the fact that structural interventions encompass a wide range of potential policy

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<sup>36</sup> Louie, S., Shi, Y., & Allman-Farinelli, M. (2022). The effects of the COVID-19 pandemic on food security in Australia: A scoping review. *Nutrition & Dietetics*, 79(1), 28–47. <https://doi.org/10.1111/1747-0080.12720>

<sup>37</sup> ABARES – Analysis of Australia's food security and the COVID-19 pandemic, <https://www.agriculture.gov.au/abares/products/insights/australian-food-security-and-COVID-19>

<sup>38</sup> International Monetary Fund – Government expenditure, percent of GDP - <https://www.imf.org/external/datamapper/exp@FPP/AUS>

<sup>39</sup> Australian Government – Treasury – Food and Grocery Code of Conduct Review 2023–24.

responses ranging from less invasive to absolute. Therefore, a new NCP should outline the spectrum of structural remedies that should be considered, and where they are appropriate, including:

- Accounting separation
- Creation of a wholesale business division
- Virtual separation
- Physical business separation
- Business separation with localised incentives
- Business separation with separate governance arrangements
- Creation of a separate legal entity
- Full ownership separation<sup>40</sup>.

Currently in Australia, structural remedies are typically only available to the ACCC in the case of merger or acquisition that is deemed unlawful. As outlined in table 2, Australia is an outlier compared to other comparable countries when it comes to establishing the use of structural remedies into law for its competition authority. As the experience in Canada and Germany illustrates, the overall trend had been towards allocating more powers to intervene structurally in the market, not less<sup>41</sup>.

*Table 2: Legal and institutional settings of international jurisdictions that incorporate structural remedies into competition policy, irrespective of whether or not a merger has taken place.*

Country	Legal Instruments
<b>United States</b>	Sherman Act allows a court to restructure an unlawful monopoly to enhance competition. Clayton Act allows the court to control mergers where they substantially lessen competition. Courts may order divestiture or some assets before authorising a merger.
<b>United Kingdom</b>	Enterprise Act authorises the Competition and Markets Authority to undertake market studies, from which it can make a package of orders for behavioural or structural intervention, that can include divestiture.
<b>European Union</b>	Regulation 1/2003 gives the European Commission the power to impose structural remedies. Used primarily in the energy market, divestiture remedies have been used to enhance competition.
<b>Germany</b>	Competition Enforcement Act authorises the Federal Cartel Office, modelled on the UK CMA, to make market sector inquiries that may lead to limits on further market growth, behavioural remedies, and structural remedies including divestiture – even in the absence of proven or alleged wrongdoing. Divestiture powers are intended as an option of last resort.
<b>Canada</b>	Competition Act (2024 Amendments) allows the Competition Tribunal to order the divestiture of assets or shares necessary to overcome the anticompetitive effects of an agreement or merger(s) that have occurred in the past.
<b>Iceland</b>	Competition Act is enforced by the Icelandic Competition Authority which has the power to order the split-up of a business and other remedies, irrespective of a merger if it can be shown that no practical behavioural remedy exists.
<b>Japan</b>	Antimonopoly Act enables the JFTC to dissolve or divest a company based on barriers to market entry, costs to consumers, and unreasonable profits.
<b>Spain</b>	Law for the Defence of Competition is enforced by the National Commission for Markets and Competition, which can impose structural remedies, regardless of whether or not a merger is in effect.

<sup>40</sup> OECD – The Divestiture of assets as a competition remedy, Stocktaking of international experiences, 2019 <https://www.oecd-ilibrary.org/docserver/792cbd71-en.pdf?expires=1725854312&id=id&accname=guest&checksum=75B6918AC7F135B16C01EA0C5DD377AD>

<sup>41</sup> Mergerfilers, Global Legal Guides (<https://mergerfilers.com/guide.aspx>), various countries  
 OECD (2019) The divestiture of assets as a competition remedy – stocktaking of international experiences  
 Bonne G. et al (2024) Germany’s New Tool to Strengthen Competition: A Comparison with the UK’s Market Regime, European Competition Law Review  
 Herch C. et al (2024) Three Years and three sets of amendments later: The State of Canada’s Competition Act. Norton Rose Fullbright

<b>Mexico</b>	Federal Economic Competition Law allows the Mexican Federal Economic Competition Commission to make investigations that may result in divestment orders in response to monopolistic practices or abuse of market power.
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## Consumer Empowerment

As noted above, the Government itself is the largest consumer of goods and services in the Australian economy. Therefore, ensuring that government procurement considers its role in shaping markets is crucial to maintaining a dynamic, diverse, and competitive economy. It is acknowledged that decisions on procurement are made by many different branches of government, with very little communication between agencies and departments on who is winning which share of supply contracts. However, in the event that many different agencies end up favouring a few suppliers, it is inevitable that those suppliers will gain a considerable market advantage over time. In addition, when contracts are awarded on a nation-wide or state-wide basis, this can also lead to a significant advantage being conferred to a single supplier<sup>42</sup>.

If government, as a consumer, was empowered to understand the concentration of its procurement across all levels and branches, then it would be in a better position to understand if awarding another contract to a company that already supplies it elsewhere had the effect of substantially lessening competition in a market. In addition, consideration should be given to the size of a contract, and whether or not sub-dividing it in such a way that may allow more smaller competitors to bid for a share of the opportunity may support overall competition and cost-effectiveness.

Households too, are crucial stakeholders in the agricultural supply chain, and their behaviour ultimately determines the level of market power prevalent, particularly at the retail level, which has flow-on implications for the dynamics throughout the rest of the supply chain. Despite this, according to the ABS, only 6.1% of adults and 8.5% of children are consuming the recommended amount of fruit and vegetables. In addition, research shows that advertising alone is not enough to lift fresh fruit and vegetable consumption, requiring intervention programs targeted at specific demographics and behavioural cohorts. NSWFA therefore considers that the Government has a role in supporting and empowering households to consume healthy, nutritious food – including ensuring that demand-side frictions and barriers to access are addressed<sup>43</sup>. The Government also has a role in ensuring that market power, particularly in the retail sector, do not artificially limit the range and quantity of fresh food and vegetables available to households in order to extract monopolistic profits<sup>44</sup>.

## Market Design and Stewardship

Governments in Australia are increasingly turning to markets as a design solution to various issues of allocation, for example the establishment of water markets for both allocations and entitlements, carbon credit markets, biodiversity credit markets, and nature repair. The design, operation, and competitiveness of many of these markets has direct implications for agriculture.

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<sup>42</sup> See, for example, the awarding of a statewide contract to supply milk to hospitals in NSW The Lismore App – Political row erupts as Norco is dumped from our local hospitals, 2024. <https://lismoreapp.com.au/NewsStory/political-row-erupts-as-norco-is-dumped-from-our-local-hospitals/66c6bc54b58ea002362ad341>

<sup>43</sup> NSWFA – Submission to the National Food Security Inquiry, 2022

<sup>44</sup> NSWFA – Submission to the ACCC Supermarkets Inquiry, 2024-25

The development of water markets provides a particular case study of issues in market design<sup>45 46 47</sup>, which should be considered in any revitalised NCP, including:

- A lack of transparency and trust in the available water market information, leading to an inability to find accurate and timely price information
- The proliferation of speculative investment in the water market without proper oversight or regulation to ensure that limited natural resources are not hoarded or concentrated in a few hands
- Involvement of Government in the very markets that it purports to regulate, such as in the purchase of environmental water, conferring an unfair disadvantage on other market participants, and altering the dynamics (especially the price) of water
- The presence of negative externalities arising from water trades, in particular, the reallocation of entitlements to the Southern Murray Darling Basin over time causing congestion issues at hotspots like the Barmah Choke.

In addition, there are concerns relating to the unintended consequences of the growing reliance on carbon offsets where they result in land being taken out of production. For example, in July 2024 Gas giant Woodside purchased 3,740ha of land in Southern NSW, in addition to the 4,300ha it already owns through three previous purchases for carbon offsets<sup>48</sup>. The increased competition for agricultural land is pushing up prices and locking farmers out of opportunities to grow and develop their businesses, as well as reducing the dynamism of the agricultural supply chain as fewer and fewer farms remain in the region. It is crucial that existing and new markets for carbon offsets or nature repair consider the impact to farmland availability and the unintended consequences of taking productive land out of the food supply chain. The same applies to policies that support the development of renewable or other energy infrastructure on agricultural land.

NSWFA considers that any revitalised NCP should take into consideration the social, economic, and environmental consequences of market design, oversight, and engagement. These principles extend beyond water markets, and to other government-designed markets that address policy issues.

## Facilitating Competition through Data Sharing

A general requirement to support data sharing by government and the private sector would assist in facilitating competition and addressing several of the issues already raised throughout this paper. As demonstrated in the sections above, data sharing is a prerequisite for market and price transparency, which itself is necessary to address the significant information asymmetries that enable incumbents in highly concentrated markets to manipulate prices and enforce unfair trading practices.

NSWFA seeks a highly competitive, transparent, and efficient agricultural supply chain – however as demonstrated by several case studies outlined above in the inputs, processing, transport and logistics, and wholesale/retail markets, these goals have remained out of reach. The position of the Government as both the holder of vast amounts of data, and the steward of institutions that can facilitate data dissemination, means that the NCP should consider the ability for the Government to do so in a way that addresses information asymmetries and improves competition, for example by:

- Establishing a right to repair through the provision of digital access and information with respect to software.

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<sup>45</sup> NSWFA – Submission to the Murray-Darlin Basin Water Markets Inquiry, 2019

<sup>46</sup> NSWFA – Submission to the Department of Planning Industry and Water, Transparency in the New South Wales Water Market, 2020

<sup>47</sup> NSWFA – Submission to the Inquiry into the Status of Water Trading in NSW, 2022

<sup>48</sup> ABC - [Gas giant Woodside buys grazing properties in southern NSW to offset carbon emissions](#), 2024

- Enhancing market transparency throughout the agricultural supply chain, including prices for inputs (fertiliser, agrichemicals, water, etc), and outputs at each stage between paddock to plate.
- Sharing procurement information between government agencies and levels to provide information on the extent to which government purchasing substantially lessens competition in the market, for example, with respect to government purchases of agricultural produce for hospitals, or the procurement of human services for regional areas through third-party providers.

## **Institutional Arrangements**

Within the agricultural sector, responsibility for the oversight of competition arrangements has been fragmented between different levels and branches of Government. The ACCC Agriculture Unit, established in 2016 extended the scope of the agency to examine issues of concern arising in the sector. More recently, independent Agriculture Commissioners have been announced in NSW and Queensland, specifically targeting supply chain issues arising from market power and concentration. While the Queensland Food and Farmers Commissioner is targeted at improving price transparency and fairness in the food supply chain, the NSW Agriculture Commissioner is targeted at addressing land use issues (specifically, those related to the transition to Net Zero, described in previous sections) and food security. While NSWFA considers that it is appropriate that institutions with specialist sector knowledge and experience of agriculture are used by Government to oversee competition policy, it is recognised that these arrangements are relatively new and the challenges they face increasingly complex.

Therefore, if a body responsible for overseeing the implementation of a new NCP is created (like the National Competition Council that advanced the original NCP) or expand (such as the ACCC), it would be appropriate for that body to contain within its remit a unit dedicated to the assessment of issues within agriculture and providing recommendations to address them. As a co-ordinating national body, it would have throughput to the various other bodies responsible for market oversight and regulation relevant to agriculture and therefore enhance its own, and other agencies, regulatory effectiveness and alignment. NSWFA considers that the ACCC Agriculture Unit is well-placed to receive greater resourcing and regulatory powers to address many of the issues raised in this submission.

# APPENDIX A: Collated recommendations

The following tables summarise various recommendations made and key concerns raised with regard to competition issues throughout the agricultural supply chain.

## NSWFA Association Policy Paper - Competition policy & Food Supply Chains: Time for a rethink

Solutions and recommendations:
<p><b>Limiting supermarket power: Review of unconscionable conduct provisions</b>                      A review of unconscionable conduct provisions is required to provide practical avenues to challenge the monopsony power of supermarkets and processors within food supply chains. The Harper Review into competition noted that a review was not required as the provisions were working as intended, highlighted by the successful prosecution of Coles by the ACCC. The subsequent Woolworths case casts doubt on the decision not to review the provisions, as does the continued abuse of market power through unfair contracts in the Poultry Industry despite the ACCC review of unfair contract terms post the PAG Inquiry.</p>
<p><b>A fair go for small business: The principle of fairness included in National Competition Policy</b>                      A review of the principles of the National Competition Policy is required, including exploring the incorporation of principles fairness within the framework. Other jurisdictions, such as the European Union, have specific fairness provisions that look at bargaining power and ensuring viable supply chains. The review should also explicitly determine the relative benefits of the focus on consumer benefit above and beyond ensuring the process of competition, and the creation of value across the economy.</p>
<p><b>Effective enforcement: Adequate resourcing of the ACCC</b>                      Without adequate enforcement and compliance, it is difficult to instil the healthy competitive norms and culture within markets. The lack of enforcement is of particular concern within food supply chains, where many farmers and suppliers are reluctant to come forward against powerful organisations for fear of being locked out of supply chains. This makes the investigative work of the ACCC, particularly via the ACCC Agriculture Unit, vital in uncovering any potential systemic breaches of competition provisions.</p>
<p><b>Enabling 3rd party enforcement: Cost effective dispute resolution and access to justice</b>                      Access to justice for small businesses and farmers is essential for the functioning of Australia's competition law. It is recommended that consideration be given to the introduction of:</p> <ul style="list-style-type: none"> <li>• a no cost order mode of litigation for small businesses and farmers where a prima facie review demonstrates that the litigation is not frivolous or vexatious; and</li> <li>• alternate low cost options for small business and farmers for competition related arbitration and dispute resolution processes.</li> </ul>
<p><b>Government support for a unified farming sector: Collective bargaining &amp; 'national champions'</b>                      Australia is in the bottom half of OECD countries with respect to investment in its food and agricultural sectors by government. While this paper is not suggesting wholesale introduction of farming subsidies, targeted investments will create a step-change in the agricultural sector.                      Federal and state governments must provide significant investment in promoting and helping establish voluntary collective bargaining unions and 'national champion organisations' for primary producers to do their bidding in international markets and with other large and powerful organisations.</p>
<p><b>Challenging coercive power: Agriculture Commissioner &amp; Dairy Advocate</b></p>

## NSWFA submission to the Inquiry into promoting economic dynamism, competition and business formation

Recommendations:
Increased auditing of compliance against the relevant Codes of Conduct covering the agriculture sector.
Increased reporting of performance of the relevant Codes of Conduct, similar to the reporting completed by the Independent Reviewer of the Food and Grocery Code.
All recommendations of the ACCC Perishable agricultural goods inquiry be implemented as a matter of urgency, including that: <ol style="list-style-type: none"> <li>a. The business-to-business unfair contract terms framework should be strengthened;</li> <li>b. An economy-wide provision covering unfair trading practices be introduced;</li> <li>c. The Food and Grocery Code of Conduct be strengthened and made mandatory.</li> </ol>
Reduce arbitrary quality requirements of fruit and vegetables based on aesthetics by supermarkets.

Task an independent organisation with collecting, analysing, and publishing market data in a timely and usable fashion to help inform market participants, especially in the horticulture industry.
Conduct supply chain profit analysis, with a focus on markups and potential price gouging by supermarkets.
Improve supply chain data collection across the grains industry, including more detailed reporting required by relevant parties in the Wheat Ports Code.
The ACCC conduct a market inquiry into the grains supply chain to validate and diagnose inefficiencies.
Conduct an immediate review of the Wheat Port Code as recommended by the ACCC in their latest monitoring report.
Implement a mandatory Code of Conduct in the poultry meat industry.

### **NSWFA submission to the Inquiry into local government sustainability**

<b>Recommendations:</b>
Cessation of cost shifting from Federal and State Governments to Local Government.
Whole of life funding for infrastructure projects provided by the Federal Government to Local Government.
Lifting the annual Commonwealth tax revenue allocation to the Financial Assistance Grants funding pool to 1%
Publicly available information on the scope of responsibility by local councils regarding defined essential services responsibilities and their performance against these.

### **NSWFA submission to the ability of local government to fund infrastructure and services**

<b>Recommendations:</b>
Pause on special variation rate (SVR) applications. Should a Council make an application this must trigger an independent, multi-year financial review against a specified set of criteria to validate both necessity and community impact.
The removal of local council rate exemptions on Crown Lands especially if used for commercial purpose to provide equity for rate payers – especially those in regional, rural, and remote lgas.
NSW Government support for an uplift of the Commonwealth tax revenue to the Financial Assistance Grants funding pool to an annual allocation of 1%.
The NSW Government prioritise indexed block grants over special purpose grants to Local Government.
The NSW Government strengthen requirements for financial and administrative training to aid the administrative functions of local government councils and appropriate employees.
Publicly available information on the scope of responsibility by local councils regarding defined essential services responsibilities and their performance against these.

### **NSWFA submission to the inquiry into artificial intelligence (AI) in NSW**

<b>Recommendations:</b>
That the NSW Government support research, development, extension and adoption of agricultural technologies.
That the NSW and Australian Governments support both domestic and foreign investment in agricultural technology development in Australia.
That the NSW Government support education and upskilling to encourage uptake and support ongoing use of agricultural technology.
That the NSW Government facilitate improvements to the quality of regional connectivity to support the agricultural sector realise the benefits of artificial intelligence and other technologies.
That the NSW Government invests to maintain and increase the delivery of education and vocational skills in regional NSW to continually develop and upskill the agricultural workforce
That the NSW Government prioritises and accelerates funding to stimulate industry and regional digital capacity and capability through investments in infrastructure and skills.
That the NSW Government supports programmes that assist farmers to increase their skills, knowledge and confidence to adopt new digital technologies that meet the needs of their business.
That the NSW Government and Australian Government ensure regulatory frameworks support the commercialisation of emerging technologies rather than hindering, whilst ensuring user safety.
That the NSW and Australian Governments consult industry on artificial intelligence regulations to ensure they are fit-for-purpose and practical to enhance adoption of technology.

That legislation and regulation ensures the privacy and security of user information and data, whilst supporting adoption of technology.

### NSWFA submission to the inquiry into the 2024 Regional Telecommunications Review

Recommendations:
That the Federal Government and telecommunications companies accelerate improvements to connectivity infrastructure to ensure regional, rural and remote communities in New South Wales have access to quality and reliable telecommunications.
That dedicated technical support for regional, rural and remote customers is available to ensure that connectivity challenges can be readily resolved.
That State and Federal Governments prioritise funding to accelerate industry and regional digital capabilities and literacy through investments in skills and support services.
That the Federal Government provide ongoing funding for the provision of independent and reliable telecommunications information to regional customers including continuation of the Regional Tech Hub and supporting greater awareness and usage of these services.
That State and Federal Governments support programs that assist farmers to innovate and adopt new digital technologies that meet their business needs.
That the Universal Service Obligation continues beyond 30 June 2032 and be extended to all telecommunications services including voice, mobile and data.
That the Federal Government prioritises investment to overcome challenges for continued poor mobile service coverage including regional connectivity programs to reduce black spots with the aim of 100% mobile phone coverage in NSW.
That the Federal Government ensures that the shutdown of the 3G network does not result in a loss of mobile service coverage for rural, regional and remote New South Wales, and that 4G coverage must at minimum be equivalent to, if not better than that provided by the existing 3G network.
That the ongoing role of the 4G network and rollout of the 5G network delivers better connectivity outcomes for regional, rural remote communities.
That any future shutdown of the 4G network is informed by learnings from the shutdown of the 3G network to ensure that regional communities and farm businesses have certainty and are not adversely impacted.
That ongoing innovations to continue advancing broadband capabilities in rural and remote areas be a priority, ensuring that network capacity and reliability keeps pace with demand.
The Government and private investment prioritise network resilience programs to better support service continuity during periods of natural disaster.
That mobile roaming be made available on all wireless telecommunications structure to improve connectivity for disaster resilience and emergency response.
That a regional, rural and remote telecommunications investment planning connectivity strategy be developed including the establishment of a dedicated fund to resource long-term and ongoing investments.
That feasible infrastructure sharing arrangements for regional, rural and remote areas be encouraged to deliver better connectivity for users and efficient asset use.

### NSWFA submission to the Second Review of the Wheat Port Code

Recommendations:
<p><b>Dis-allow exemptions for port terminal service providers.</b> Exemptions should be completely removed. This would mean both more of the market would be covered and the exemptions process would be removed for PTSPs. The most important market participants to cover are the larger players, who are mostly exempt. In large seasons in particular, the level of competition at ports even where there are multiple PTSPs is constricted, meaning the code should still operate.</p>
<p><b>Streamline and simplify participation in the code, including amending reporting requirements so they are not burdensome to participants.</b> The information provided as part of the code by PTSPs should as much as possible be information that they gather as part of their normal operations. This will reduce the regulatory burden on them. It is unclear how many of the provisions listed above are outside normal operating procedures, but they do not seem too onerous. For example, they should always know their own capacity and be able to report on that, so exporters know what is available to them and don't get excluded.</p>
<p><b>Expand coverage to include other major bulk grains, including barley and canola, in addition to wheat.</b></p>

### NSWFA submission to the Review of the National Freight and Supply Chain Strategy

Recommendations:
A better road funding model. This should involve proper funding allocation for local government which maintains 87% of the road network, as well as better coordination of funding by the three different levels of government.
Upgrading the rail network by improving connectivity between the lines, with initiatives such as upgrading the network to 25 Total Axle load (TAL).
Improving port efficiency, performance time and infrastructure connectivity.

### NSWFA submission to the Freight Policy Reform

Recommendations:
The Freight Policy Reform recognise <ul style="list-style-type: none"> <li>a. the importance of a resilient and adaptable freight network to the agriculture industry</li> <li>b. the specific freight needs of the agriculture industry, characterised by a cyclical demand and periods of high intensity underpinned by variable seasonal conditions, and perishable products</li> <li>c. the exposure of agriculture to global and local macroeconomic and climate conditions that have increased the volume and volatility of agricultural freight demand over time</li> </ul>
Planning of large-scale land use developments, such as mining, infrastructure, new manufacturing zones, and renewable energy zones take into account their individual and cumulative impact on freight capacity, the risk of conflicting with periods of high agricultural demand on the network, and their sensitivity to adverse events.
Due to the cyclical and perishable nature of agricultural freight requirements, priority be given to agricultural freight over other classes of goods during periods of congestion or disruption on the freight network.
Funding of local roads transitions away from a reliance on temporary competitive grants, towards a significant, permanent and broad-based increase in Regional Road Block Funding, adjusted annually for the Road and Bridge Construction Price Index.
Funding for Fixing Country Rail return to the average rate over the 2015/16-2019/20 financial years and increase year-on-year indexed for the civil construction cost index and the construction of new rail infrastructure.
Technological advancements in the tracking and transport of agricultural goods are considered within the roadmap of other technological advancements in freight to improve integration, lower complexity, cost, and increase efficiency.
Freight Policy Reforms map the governance arrangements, including roles and responsibilities, for the entire freight and agricultural supply chain networks to identify and eliminate clashes and overlaps, and increase clarity.
The Freight Policy Reform investigate the fitness-for-purpose of the provisions within the Grains Harvest Management Scheme, and other heavy vehicle freight access schemes such as the Farm Gate Access and Livestock Loading Schemes, to ensure that they do not unduly restrict the movement of farm produce, and are harmonised across States.
Increased competition throughout the freight transport and storage network, including ports, be considered a priority outcome for the Freight Policy Reform.
Maintaining biosecurity is a priority outcome of the Freight Policy Reform, and that funding for infrastructure, operational and technological responses to biosecurity threats be fully funded.
Data gaps with respect to historical road closures due to flooding and other natural disasters be addressed in order to inform future investment decisions.
A whole-of-government approach, exemplified by the Queensland Flood Risk Management Framework, be investigated as an example of best-practice and the learnings reflected in the Freight Policy Reforms.

### NSWFA submission to the ACCC Supermarkets Inquiry 2024-25

Recommendations, that the ACCC:
Collect data on the average costs of large supermarket chains in Australia, and conduct an empirical analysis into the presence of economies of scale in supermarket operations for the purpose of attributing the cause of supermarket concentration in Australia to 'natural monopolies' or anti-competitive practices.
Investigate the claims of anti-competitive practices by supermarkets that exclude competitors from entering the market, including land-banking and excessive control over tenancy agreements.

<p>Subject to an empirical review into economies of scale of supermarket firms in Australia, identify the ‘minimum viable firm’ which is likely to be profitable in Australia for the purposes of calibrating possible actions to increase competition in the sector, including enforced divestiture of sites and limitations on the number of sites that supermarket chains may lease or purchase within a given area</p>
<p>Collects data on the distribution (amount and frequency) of unit-prices paid to farmers for a range of major product groups in order to determine the extent to which information asymmetries account for distortions in the market – noting that a large spread of unit prices paid to farmers (after controlling for transport costs and seasonal variations) is evidence of market manipulation arising from information asymmetry.</p>
<p>Moves to address information asymmetries in the market for agricultural produce, for example, by establishing an independent online database akin to the Petrol Price Portal and the USDA National Weekly Cattle Net Price Distribution report, paid for and contributed to by major supermarket chains which publishes distribution of unit prices paid to suppliers on an annual basis.</p>
<p>Investigates claims of aggressive and anti-competitive price competition that served to exclude competitors from entering the market, limits the ability of suppliers to negotiate on price, and pushes the costs of sales and discounts onto suppliers.</p>
<p>Investigate the claims of anti-competitive non-price tactics used by supermarkets used in the supply chain process against producers, including quality and packaging controls, the imposition of onerous food safety and ESG requirements without compensation, and control over branding.</p>
<p>Investigate how monopolistic power exercised by supermarket chains has meant that increasing producer costs and declining Farmer Terms of Trade, and increasing consumer costs of living, have failed to translate to a decline in supermarket profitability, especially during the 2020-2023 period corresponding to global supply-chain disruptions due to COVID-19 and geopolitical unrest.</p>
<p>Investigate why the CPI for some agricultural product groups increased over 20% in the period 2021-23, and the extent to which monopolistic power exercised by supermarket chains, and specific vulnerabilities experienced by producers and suppliers (especially for perishable goods) in those markets have contributed to those price increases.</p>
<p>Investigate and collect a large sample of contracts and agreements offered to farmers, and scrutinise those contracts for evidence of uncompetitive, onerous packaging and ESG requirements, and unfair terms of trade that disadvantage producers and increase supermarket profits.</p>
<p>Investigate allegations of explicit or implicit examples or threats of retribution leveraged against farmers in retaliation for registering a complaint under the Food and Grocery Code of Conduct, or supplying other chains.</p>
<p>Investigate the issues raised by and consider the impact of implementing Option 4 from the Commonwealth Treasury’s Consultation Regulatory Impact Statement on Unfair Trading Practices.</p>
<p>Collect data on the extent and incidence of breaches of the FGCC from a wide sample of farmers, and make such data collection a regular part of the review of the FGCC.</p>
<p>Investigate the extent to which the issues noted above contribute to and exacerbate issues with trading terms and practices between farmers and supermarket chains, and appropriate policy responses to those, in particular to: i. recognise and address the specific vulnerabilities faced by suppliers who supply perishable goods including agricultural produce. ii. make mandatory the FGCC for all retailers and wholesalers. iii. have the ability to apply significant civil pecuniary penalties when it is breached including necessary enforcement tools for the ACCC to protect suppliers against signatories that fail to comply with its requirements. iv. ensure a genuinely independent dispute process to resolve supplier complaints. v. enable the appropriate enforcement tools to be available to the ACCC to act on issues identified.</p>
<p>Consider the range of options available to it to administer financial and non-financial penalties on supermarkets found to have engaged in anti-competitive behaviours, and whether they are providing an adequate disincentive against those behaviours. Furthermore, that ACCC should evaluation any additional powers and funding necessary to undertake enforcement activities to act as a disincentive against harmful behaviour.</p>
<p>Consider the effect of a lack of divestiture enforcement mechanism against supermarket retail chains on the behaviour of participants in the market, and the case for the introduction of divestiture powers which can be used in cases of gross market power imbalances that are against the national interest.</p>
<p>Examine the impact of the current mergers and acquisitions framework, and the extent to which it acts as an appropriate disincentive to the types of anti-competitive practices outlined in this submission. Furthermore, the ACCC should consider the effect of adopting of a formal mergers and acquisitions framework that identifies the ACCC as the primary decision maker and that decisions take into account structural market conditions.</p>

### NSWFA submission to the National Food Security Inquiry

Key Issues:
Input costs which are increasing at a faster rate than prices, reducing the profitability of food producers and their ability to make productivity-enhancing investments
A decreasing number of agricultural professionals entering the workforce, lack of available and fit-for-purpose training services, and immediate labour shortages
Insufficient development and uptake of agtech due poor rural and remote connectivity and stagnating research, development, and extension spending
Market power imbalances which lead to producers bearing an unfair amount of risk, information asymmetries, and inability to make productivity-enhancing investments
Inefficient ports and supply chains which decrease the international competitiveness of producers and lower farmgate prices
A biosecurity system which is reactive in the face of an increasingly high risk profile
A lack of long-term, strategic investment and assistance for agriculture to reach net zero emissions
High levels of food waste at the farmgate caused by issues further up the supply chain such as restrictive quality specifications by retailers
Impositions on landholders and regional communities from large scale renewable developments and transmission lines without any assistance for producers to adopt renewable energy solutions
Increasing frequency of natural disaster events such as droughts and floods
Producers bearing the costs of managing the environment while the benefits accrue to others in the supply chain

### NSWFA Submission - Right to repair agricultural machinery

Key issues of concern:
The importance of access to machinery diagnostics, codes, and schematics.
The challenges of significant reduction of dealer networks across regional areas.
The need to support qualified mechanics to make non-critical repairs without voiding warranties.
Inadequate consumer law protections for agricultural machinery.

### NSWFA submission to the National Food Security Inquiry

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A biosecurity system which is reactive in the face of an increasingly high risk profile

### NSWFA submission to the Murray-Darling Basin Water Markets Inquiry

Recommendations:
All water market information to be provided through a single centralised online portal or trading platform.
The ACCC must ensure that changes to the market are implemented to ensure that market information is readily available in accessible forms, that there are market products available to meet the needs of all types of water users and that rules are fair and well designed, so that effective participation in the market and good risk management is fairly available to all farmers who rely on the resource.

Water brokers should be licenced and required to comply with best practice standards that are applicable to other commodity brokers, to maintain the integrity of all trading and to ensure that vulnerable market participants are not disadvantaged.
The current market regulations and trade rules be reviewed throughout the Murray Darling Basin and redrafted to make them more responsive to increased risks associated with changes in crop type, changes in land use and increased water demand downstream of constraints.

**NSWFA submission to the Transparency in the NSW Water Market Inquiry**

<b>Recommendations:</b>
A single source of water market information would improve market function, provide market participants the information to make informed decisions in the water market and increase trust in the operation of the market. The complexity of water management systems and terminology that makes information difficult to interpret, and the prevalence of misinformation also contribute to the inaccessibility of water market information.
Improvements to transparency of water ownership and trade, however recommends that there must be a balance between sufficient publicly available information and the protection of privacy and personal/sensitive information.
The Department of Planning, Industry and Environment-Water is proactive in ensuring optimal communication of information, focusing on reducing the likelihood of incorrect interpretations or misunderstandings, to reduce the risk of misinformation. DPIE-Water should take more accountability and responsibility to counter misinformation, alongside just having the detailed information available.

**NSWFA submission to the Status of Water Trading Inquiry**

<b>Recommendations:</b>
Full accounting of transmission losses for all traded water
Prevention of distortion of water markets by Managed Investment Schemes; prevention of government intervention in water markets and/or Federal or State water policies that could undermine the integrity of water property rights as enshrined in the National Water Initiative
Protection of the viability of existing irrigation communities
Reinforcement of the existing principle that water entitlement can only be traded within connected systems
That government activities in the water market be conducted under full price disclosure within 24hours of contract signing
That there be a free and readily accessible public register of all water licence holding in NSW
That the public register and disclosure of ownership of water is applied equitably, inclusive of water ownership held by any entities or individuals of government, public service or consultants to government.