

40TH PARLIAMENT



Report 45

STANDING COMMITTEE ON LEGISLATION

Agricultural Produce Commission Amendment Bill 2019

Presented by
Hon Dr Sally Talbot MLC (Chair)
September 2020

Standing Committee on Legislation

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EXECUTIVE SUMMARY

- 1 The Legislative Council referred the Agricultural Produce Commission Amendment Bill 2019 (Bill) to the Standing Committee on Legislation (Committee) with the power to inquire into policy.
- 2 The policy objectives of the Bill are to:
 - modernise the *Agricultural Produce Commission Act 1988* (APC Act)
 - improve the operation of the APC Act, the Agricultural Produce Commission (Commission) and producers' committees—for example, by implementing the recommendations made by a 2006 review of the Act
 - allow broadacre cropping and grazing industries to take advantage of the opportunities offered by the APC Act, if they so choose.
- 3 The third policy objective, sought to be implemented by clause 4(2) of the Bill, was the most contentious aspect of the Bill.
- 4 Currently, broadacre cropping and grazing industries are not able to establish producers' committees under the APC Act because they are specifically excluded from the definition of the term 'agricultural industry' in section 3(1). 'Broadacre cropping and grazing industries' is not defined in the APC Act but 'broadacre' has been defined elsewhere as:

a term used, mainly in Australia, to describe farms or industries engaged in the production of grains, oilseeds and other crops (especially wheat, barley, peas, sorghum, maize, hemp, safflower, and sunflower), or the grazing of livestock for meat or wool, on a large scale (i.e., using extensive parcels of land).
- 5 Clause 4(2) proposes to delete the exclusion of broadacre cropping and grazing industries so that they would have the same opportunity as any other agricultural industry to be prescribed as an 'agricultural industry' under the APC Act, and therefore, be able to utilise the benefits offered by the APC Act.
- 6 These benefits arise from the establishment of producers' committees. If established, a producers' committee exists to provide the producers of a particular type of agricultural produce with certain services, such as advertising and promoting the produce. These producers must pay a charge to cover the committee's costs of providing those services.
- 7 It is this APC Act charge which has led to most of the opposition to clause 4(2) and the Bill. Some broadacre producers oppose being required to pay an APC Act charge, arguing, among other things, that any such charge would duplicate other levies that they already pay.
- 8 The Committee has considered the merits of increasing the scope of the APC Act to include broadacre cropping and grazing industries. In doing so, the Committee has addressed each of the main concerns of the submitters opposed to the Bill and sought to dispel some of their misconceptions about how the APC Act will operate if and when the Bill is enacted.
- 9 The Committee has also discussed selected clauses in the Bill which, if enacted, will:
 - delegate legislative power to the Executive Government: clauses 4(2), 15(1) and 16(2)
 - introduce the concept of weighted voting to the polls held by the Commission: clause 22
 - allow for new powers of investigation: clause 26
 - allegedly provide a power of entry onto private property: clause 26 (proposed section 19D)

- remove the common law privilege against self-incrimination: clause 26 (proposed section 19F).

10 The Committee has made 10 findings and five recommendations.

11 Subject to satisfactory explanations being provided in relation to the recommendations made in this report, the Committee recommends that the Bill be passed.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 16

Enacting clause 4(2) of the Agricultural Produce Commission Amendment Bill 2019 will not automatically result in producers' committee charges being imposed on broadacre cropping and grazing producers.

FINDING 2

Page 17

The process for imposing or altering a producers' committee charge is flexible and collaborative, and is initiated and informed by the producers' committee.

FINDING 3

Page 21

Charges imposed under the *Agricultural Produce Commission Act 1988* are unlikely to duplicate other levies and charges.

FINDING 4

Page 21

The experience in some agricultural industries with existing producers' committee is that the funds raised through the payment of *Agricultural Produce Commission Act 1988* charges help to leverage other forms of funding, including those collected through federal levies.

FINDING 5

Page 22

Under the *Agricultural Produce Commission Act 1988*, it is not inevitable that a charge will be imposed for any particular agricultural industry, even if that industry has formed a producers' committee.

FINDING 6

Page 25

Stakeholders identified groups of producers not already covered by the *Agricultural Produce Commission Act 1988* which may want to take advantage of the Act.

FINDING 7

Page 25

Clause 4(2) of the Agricultural Produce Commission Amendment Bill 2019 will allow producers within broadacre cropping and grazing industries the opportunity to take advantage of the *Agricultural Produce Commission Act 1988*, should they wish to do so.

RECOMMENDATION 1

Page 26

The Minister for Agriculture and Food explain why it is necessary for clause 4(2) of the Agricultural Produce Commission Amendment Bill 2019 to insert the words 'prescribed for the purposes of this definition' into the definition of 'agricultural industry' in section 3(1) of the *Agricultural Produce Commission Act 1988*. This explanation should refer particularly to why the Act, instead of regulations, should not list the agricultural industries which want to be able to form producers' committees, with the list updated (via an amending Act) to include new industries as they arise.

RECOMMENDATION 2

Page 29

The Minister for Agriculture and Food explain why clause 15(1) of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 13(1A) of the *Agricultural Produce Commission Act 1988*) delegates the definition of a 'prescribed person' to regulations, rather than prescribing its own definition of that term.

FINDING 8

Page 29

Clause 16(2) of the Agricultural Produce Commission Amendment Bill 2019 (proposed clause 14(5) of the *Agricultural Produce Commission Act 1988*) authorises the making of regulations which may allow a producer to apply to the Agricultural Produce Commission to seek a waiver, refund or reduction of a charge. It does not authorise regulations which will allow a producer to unilaterally opt out of paying a charge.

RECOMMENDATION 3

Page 30

The Minister for Agriculture and Food explain how, once a particular producer group has indicated that it would like to take advantage of the waiver, refund and reduction measures contemplated in clause 16(2) of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 14(5) of the *Agricultural Produce Commission Act 1988*), the regulations will:

- (a) be drafted
and
- (b) deliver the measures in a timely way.

RECOMMENDATION 4

Page 34

The Minister for Agriculture and Food explain why, in clause 26 of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 19C of the *Agricultural Produce Commission Act 1988*), the words 'or is likely to be' should not replace the words 'or may be' in paragraph (d) of the definition of 'relevant record' in order to narrow the scope of the definition.

FINDING 9

Page 37

Clause 26 of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 19D of the *Agricultural Produce Commission Act 1988*) does not provide authorised officers with the power to enter private property.

FINDING 10

Page 41

Although some compliance powers already exist in the *Agricultural Produce Commission Act 1988*, numerous submissions from existing producers' committees were supportive of the proposed measures in clause 26 of the Agricultural Produce Commission Amendment Bill 2019 to extend the Agricultural Produce Commission's compliance powers to enhance fairness and equity.

RECOMMENDATION 5

Page 44

The Minister for Agriculture and Food explain how clause 26 of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 19F of the *Agricultural Produce Commission Act 1988*) will achieve an appropriate balance between compelling a person to provide information about compliance with the Act while providing adequate protection against self-incrimination.

1 Introduction

Referral and procedure

- 1.1 The Agricultural Produce Commission Amendment Bill 2019 (Bill) was referred to the Standing Committee on Legislation (Committee) on 11 June 2020, with a reporting date of 17 September 2020. The referral motion stated as follows:
 - (1) That the Agricultural Produce Commission Amendment Bill 2019 be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 17 September 2020.
 - (2) That the committee has the power to inquire into and report on the policy of the bill.¹
- 1.2 Pursuant to Standing Order 163, Hon Dr Steve Thomas MLC substituted Hon Nick Goiran MLC for the duration of the inquiry. The President of the Legislative Council reported the substitution to the House on 17 June 2020.
- 1.3 The Committee called for submissions from the stakeholders listed in Appendix 1 and advertised the inquiry in *The West Australian*. Submissions were received from 11 interested parties and the Committee held six public hearings.² Media statements and Facebook posts were made for the inquiry and its hearings.
- 1.4 The Committee extends its appreciation to those who made submissions and appeared at hearings.

Committee approach

Generally

- 1.5 The issues discussed in this report were largely guided by the evidence received over the course of this inquiry. The Committee was broadly informed by research material dealing with similar subject matter, but focussed its inquiry on the direct implications of the Bill.

Consideration of fundamental legislative principles.

- 1.6 As with previous inquiries, the Committee's method of scrutinising the Bill included an assessment as to whether its provisions are consistent with fundamental legislative principles (FLPs).³
- 1.7 FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.⁴ They fall under two broad headings:
 - Does the Bill have sufficient regard for the rights and liberties of individuals? (FLPs 1–11)
 - Does the Bill have sufficient regard to the institution of Parliament? (FLPs 12–16).
- 1.8 The Committee has routinely used FLPs as a convenient and informal framework for scrutinising proposed legislation since 2004. They are not enshrined in Western Australian

¹ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 11 June 2020, p 3513.

² The details of these submissions and hearings are listed in Appendix 1.

³ The fundamental legislative principles are listed in Appendix 2.

⁴ The fundamental legislative principles are based on principles set out in the *Legislative Standards Act 1992* (Qld), though other Parliaments often rely on similar principles.

law, and for some bills, many FLPs do not apply. The question the Committee asks is not whether there is strict compliance with FLPs, but whether a bill has sufficient regard to them.

- 1.9 The Committee has scrutinised the Bill and reported on selected clauses in section 5 of this report.
- 1.10 The Committee has identified FLPs 5, 6 and 12 as being relevant to the Bill. That is, whether:
- clause 26 (proposed clause 19D) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer in accordance with FLP 5
 - clause 26 (proposed clause 19F) provides appropriate protection against self-incrimination in accordance with FLP 6
 - the following matters about which regulations may be made are an appropriate delegation of legislative power in accordance with FLP 12:
 - Clause 4(2) (proposed amended definition of ‘agricultural industry’)—the prescription of agricultural industries by regulation.
 - Clause 15(1) (proposed section 13(1A))—the definition of ‘prescribed person’.
 - Clause 16(2) (proposed section 14(5))—the prescription of circumstances in which a charge may be waived, refunded or reduced.

Background of the Bill

- 1.11 The *Horticultural Produce Commission Act 1988* was enacted to provide for a Horticultural Produce Commission (HPC) to encourage growers of horticultural produce to form growers’ committees to provide services to those growers. It allowed horticultural industries to raise funds to finance nominated activities.
- 1.12 By 2000, several horticultural groups had formed growers’ committees (later renamed producers’ committees) under the HPC. The scope of the *Horticultural Produce Commission Act 1988* was amended to include other agricultural industries but excluded broadacre cropping and grazing industries.⁵ To reflect the increased role of the HPC, the name of the legislation was changed to the *Agricultural Produce Commission Act 1988* (APC Act).

Review of the *Agricultural Produce Commission Act 1988*

- 1.13 Section 26 of the *Agricultural Produce Commission Act 1988* required a review of the operation of the Act, the operation of the Commission and any producers’ committee, and the need for the Act to continue in operation. A section 26 review of the APC Act was finalised in 2006 (2006 Review).
- 1.14 The 2006 Review recommended that the APC Act should continue:
- as it is providing industry with a mechanism to finance activities which otherwise would not be available.⁶
- 1.15 It also made recommendations to increase the effectiveness and efficiency of the APC Act.
- 1.16 Notably, the 2006 Review did not make a recommendation in relation to the continued exclusion of broadacre industries due to ‘the polarisation of views of the two broadacre

⁵ *Horticultural Produce Commission Amendment Act 2000*.

⁶ Government of Western Australia, Department of Agriculture and Food, *Agricultural Produce Commission Act 1988, section 26 legislation review*, 23 August 2006, p 2.

grower organisations’⁷, being the Pastoralists and Graziers Association of Western Australia (Inc.) (PGA) and the Western Australian Farmers Federation (WAFarmers). This issue is discussed further in paragraphs 5.1–5.59.

- 1.17 In 2014–15, the Agricultural Produce Commission consulted with agricultural industry groups on the possible inclusion of broadacre industries in the scope of the APC Act. The responses were mixed. The results of that consultation were updated in 2019, when support for the proposal increased.

2 Agricultural Produce Commission

- 2.1 The Agricultural Produce Commission (Commission) is a Western Australian statutory authority which was established, and operates, under the APC Act. It consists of four members appointed by the Minister.
- 2.2 The main function of the Commission is to establish producers’ committees, in response to an industry request, so that funds raised by producers’ committees can be collected to provide services required by the producers covered by that committee.⁸

Producers’ committees

- 2.3 If established, a producers’ committee exists to provide the producers of a particular type of agricultural produce with certain services. Section 12 of the APC Act prescribes the types of services and functions which can potentially be delivered or performed by a producers’ committee (see paragraphs 3.19–3.21).
- 2.4 Producers’ committees can be established in relation to any agricultural produce, except the produce of broadacre cropping and grazing industries which are specifically excluded from the operation of the APC Act (see paragraphs 5.1–5.2). Amendments proposed by the Bill would delete the exclusion of these broadacre cropping and grazing industries,⁹ and these industries would have the same opportunity as any other agricultural industry to be prescribed and be able to utilise the benefits offered by the APC Act.
- 2.5 Producers’ committees may be established for:
- a particular kind or variety of agricultural produce in the entire State, or for a part of the State only,
 - different kinds or classes or varieties of agricultural produce
- or
- achieving specified objects for any agricultural produce.

An example of a producers’ committee with a specific focus is the APC Carnarvon Banana Producers’ Committee that is established only for banana producers in the Carnarvon area.

- 2.6 Currently, there are 11 producers’ committees operating. These are the:
- (i) APC Avocado Producers’ Committee
 - (ii) APC Carnarvon Banana Producers’ Committee
 - (iii) APC Beekeepers Producers’ Committee
 - (iv) APC Egg Producers’ Committee

⁷ *ibid.*, p 4.

⁸ *Agricultural Produce Commission Act 1988* ss 6, 7 and 8.

⁹ *Agricultural Produce Commission Amendment Bill 2019* cl 4(2).

- (v) APC Pome, Citrus and Stonefruit Producers' Committee
- (vi) APC Pork Producers' Committee
- (vii) APC Potato Producers' Committee
- (viii) APC Strawberry Producers' Committee
- (ix) APC Table Grape Producers' Committee
- (x) APC Vegetable Producers' Committee
- (xi) APC Wine Producers' Committee.

3 Establishing producers' committees

Preliminary requirements for establishing producers' committees

- 3.1 Appendix 3 contains a flowchart supplied by the Commission showing the process that it follows before it establishes a producers' committee.
- 3.2 At a Committee hearing, the Commission explained that the preliminary process for establishing a producers' committee consists of both formal and informal phases. The formal phases are prescribed in section 10 of the APC Act and the informal phase involves consulting and educating the industry.¹⁰
- 3.3 Section 10 of the APC Act sets out the formal preliminary requirements for the establishment of producers' committees. Currently, it requires the Commission to publish its intention to establish a committee, and in that notice:
 - explain the objects sought to be effected by the proposal
 - specify the agricultural produce which is the subject of the proposal
 - specify the part of the State in relation to which the producers' committee is proposed to be established
 - invite submissions from producers who may be affected by the proposal.¹¹
- 3.4 The notice must be published in a manner directed by the Minister.¹² The Commission advised the Committee that, currently, the notice is:

put into the major newspapers—*The West Australian* and any local newspapers in the area those producers would be, so if it is the whole of the state, to the whole of the state. We also work with the organisation who is requesting it. In the case of the wine industry,^[13] we worked with Wines of Western Australia and all the regional associations, because they were all part of that request, to make sure that that information is put out there. ... As to whether we would make changes for it in coming establishment polls, we would certainly look at doing it in a more social media sort of way, because social media has become very much the way that things are done now. ... We send out the notices to everybody that we understand is in that industry. The higher the return rate we can get, the better it is. Whichever way the vote ends up is the way the vote ends up, but we would like as high a

¹⁰ Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, pp 2–3.

¹¹ *Agricultural Produce Commission Act 1988* ss 10(1) and (2). These requirements will be enhanced if clause 9 of the *Agricultural Produce Commission Amendment Bill 2019* is enacted.

¹² *ibid.*, s 10(2)(a).

¹³ The most recently established producers' committee is the APC Wine Producers' Committee, which was formed in 2015.

return rate as possible, because that means that you have got genuine industry understanding, knowledge and involvement in what you looking for.¹⁴

- 3.5 The Department of Primary Industries and Regional Development (DPIRD) also advised that in tailoring its notifications to an industry, the Commission will also use other mechanisms like industry journals and mailing lists.¹⁵
- 3.6 Appendix 4 contains a table supplied by the Commission showing, among other things, the rate of voting in establishment polls for most of the industries which have undergone that process.
- 3.7 Once the Commission has published the notice of an intention to form a producers' committee, it then undertakes the informal phase of gauging the level of industry support for a producers' committee and educating that industry about the APC Act. This phase can occur over several years:

Dr RYAN: ... Before we think about starting the formal process [of conducting an establishment poll], we have a lot of discussion with the industry about who they are and what they want to do. That can take quite a deal of time. In the case of the wine industry, that took us nearly 10 years, because there were a whole lot of different groups and they had a whole lot of different agendas. Communication and the interaction with the industry before you start the formal process is very important and essential. The view of the commission is that there is no point in us going to a poll if it is going to be defeated, or, two, if it is going to divide the industry. The whole premise of the APC is that it is set up for the benefit of the industry. If the industry as a whole does not see that benefit, there is no point in going to a formal poll.^[16]

As I say, in the wine industry, it was particularly long, and that was a particularly complex structure, because it is a two-tiered structure. ... it took a lot of work and effort to get that to the point where we could go to a poll. Our view is that the poll is the end game, not the beginning of it. ... The other issue that we have to deal with is any particular regulations that you might need. In that situation, you sit down with the industry and work through it. ... and then we had to determine the level of contribution. ... All of that needs to happen before you go to a poll, because you need to make sure that the poll is based on the situation that is going to be in front of them going forward. The poll is the last of the processes. ...

...

Ms BEHR: ... yes, that is definitely a function that the commission takes on board as being extremely important in this process—that everybody understands that before a decision is made to go to a poll exactly what is involved, how a committee would work in their industry, what the current costs are in their industry, and where the effect would be, so that when something is said to them asking them to vote on this, they have all of that information leading up to that. With the wine industry, we did a lot. We went around the whole country, to all the different wine areas. We met with different associations. Wine producers themselves were invited to come to those meetings so that they could get a really good view of what it was, and also so that we could get the feedback to

¹⁴ Ingrid Behr, Chief Executive Officer, Agricultural Produce Commission, transcript of evidence, 7 August 2020, pp 5-6.

¹⁵ Angela Howie, Principal Legal Officer, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 6.

¹⁶ *Agricultural Produce Commission Act 1988* s 10(9). See also, *Agricultural Produce Commission Amendment Bill 2019* cl 9(6) (proposed section 10(8)).

understand what they required, so that at the end of it we could come up with something that works for them primarily, because it is their producers' committee. It is as much about us making sure they have the information as us getting feedback from them as to what they need and how they envisage it within their industry.

Dr RYAN: That also includes them understanding what they can and cannot do under the act and understanding how they need to structure their activities.¹⁷

- 3.8 For this important function of consultation, education and planning, DPIRD provides the Commission with funding of \$35 000 per year.¹⁸
- 3.9 The Commission may only conduct a poll for the establishment of a producers' committee if it is satisfied that its formation would not be 'materially to the financial detriment of a producer or producers who may be affected by the proposal'.¹⁹ It may only establish a producers' committee if the poll is in favour of the proposal.²⁰
- 3.10 The formal poll allows every producer in that industry to vote on the question of establishing a committee. For the purposes of conducting the poll, the Commission must compile a list of producers of the relevant agricultural produce.²¹ If and when a formal establishment poll is held, it can be another six to 12 months before the process is complete.²²
- 3.11 The decision to establish, or not establish, a committee is made by the Commission, based on the outcome of the establishment poll, which also determines the functions or services²³ the committee can provide. Appendix 4 contains the results of most of the establishment polls that have been held since the APC Act commenced.
- 3.12 The voting threshold for a successful poll is not prescribed and has, until recently, been taken to be a simple majority; that is, more than 50 per cent of the votes cast. For the purposes of establishment polls, the Commission has, since November 2019, insisted on a supportive vote of at least 60 per cent.²⁴
- 3.13 Notwithstanding that a poll of producers vote in favour of a proposal to establish a producers' committee, the Commission may refuse to establish, or defer the establishment of, a producers' committee if the Commission considers that, having regard to the circumstances of a particular case, it is not desirable or practicable to do so.²⁵ To date, the Agricultural Produce Commission has not relied on this reason to refuse to establish, or defer the establishment, of a producers' committee.²⁶

¹⁷ Dr William Ryan, Chair, and Ingrid Behr, Chief Executive Officer, Agricultural Produce Commission, transcript of evidence, 7 August 2020, pp 2–3.

¹⁸ Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 3.

¹⁹ *Agricultural Produce Commission Act 1988* s 10(3). To date, the Agricultural Produce Commission has not relied on this reason to avoid holding an establishment poll: Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 6.

²⁰ *Agricultural Produce Commission Act 1988* s 10(7). See also, Agricultural Produce Commission Amendment Bill 2019 cl 9(6) (proposed new section 10(7)(b)).

²¹ *Agricultural Produce Commission Act 1988* s 16. See also, Agricultural Produce Commission Amendment Bill 2019 cl 21 (proposed new section 16(1)).

²² Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 3.

²³ From section 12(1) of the *Agricultural Produce Commission Act 1988*.

²⁴ Agricultural Produce Commission, *Policy Number 2019/1—Producers' committee establishment polls*, 29 November 2019, p 4 (see Appendix 5).

²⁵ *Agricultural Produce Commission Act 1988* s 10(9). See also, Agricultural Produce Commission Amendment Bill 2019 cl 9(6) (proposed section 10(8)).

²⁶ Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 7.

Nomination, election and appointment of members

- 3.14 Section 11 of the APC Act is entitled 'Establishment of producers' committee'. In effect, section 11 prescribes how the members of a producers' committee must be nominated, elected and then appointed.
- 3.15 Where the Commission resolves to establish a producers' committee, it invites nominations from the producers concerned for appointment to the committee.²⁷ After receiving the nominations, the Commission decides how many members there shall be on the committee. The number of members on producers' committees ranges from three or four to 10, and will depend on the size and structure of each industry.²⁸
- 3.16 The Commission conducts a poll of the producers concerned to elect members if it is of the opinion that such a poll should be conducted.²⁹
- 3.17 The members appointed to a committee must be producers in that industry.³⁰ After the members are elected by the voting producers, the formal appointments to committees are made by the Commission.³¹
- 3.18 The Commission advised that, in practice, it is rare for an election poll to be conducted:

Dr RYAN: Members are elected, or appointed, from the nominations we receive. The reality is that we typically get enough nominations to fill the positions. It is pretty onerous, the work—a lot of people put a lot of time and effort into it. It is a major commitment from people, so we do not get overrun with people nominating. If we do, we can run a poll, but generally we work with the industry, one, to make sure we get some renewal—we bring younger people onto the committee. Quite often, they will identify people who are up and coming leaders who would benefit from a period on their committee.

The CHAIR: Generally speaking, do you avoid elections because you get the right number of nominations?

Dr RYAN: Yes. Some of the industries have their own constitutions and they run a process, but that is for them, not for us. Those people are nominated to represent particular segments.³²

Functions of, and services provided by, producers' committees

- 3.19 Section 12 of the APC Act sets out 14 functions and services that may potentially be performed or provided by producers' committees. These include:
- advertising and promoting the agricultural produce
 - controlling or developing the means of controlling pests and diseases
 - conducting research
 - conducting educational or instructional programmes

²⁷ *Agricultural Produce Commission Act 1988* s 11(1)(b).

²⁸ Ingrid Behr, Chief Executive Officer, Agricultural Produce Commission, transcript of evidence, 7 August 2020, pp 9-10.

²⁹ *Agricultural Produce Commission Act 1988* s 11(1a).

³⁰ This will change if clause 11 of the Agricultural Produce Commission Amendment Bill 2019 is enacted.

³¹ *Agricultural Produce Commission Act 1988* s 11(1c).

³² Hon Dr Sally Talbot MLC and Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, pp 7-8.

- developing and expanding markets for the agricultural produce in Western Australia and elsewhere
- establishing a voluntary insurance scheme for the benefit of producers of the agricultural produce including insurance relating to crops
- supporting (with or without financial aid) any scheme or activity capable of assisting in the promotion or sale of agricultural produce
- establishing a compensation scheme for the benefit of producers whose agricultural produce is destroyed as a result of action taken to control a pest or disease of that produce.

For ease of reference, this report will refer to these functions and services as ‘services’.

3.20 In order for a particular producers’ committee to provide a service listed in section 12, the service must first be prescribed by regulations to be a service that may be provided for its particular agricultural industry.³³ For example, in the beekeeping industry, its producers’ committees may provide only seven prescribed services:

- controlling or developing the means of controlling pests and diseases
- conducting research
- conducting educational or instructional programmes
- establishing systems of inspection for the agricultural produce
- providing such other services as may be prescribed
- establishing a compensation scheme for the benefit of producers whose agricultural produce is destroyed as a result of action taken to control a pest or disease of that produce
- arranging for the provision of all or any of the services, or the exercise of any of the functions, referred to in section 12(1) by another person or organisation, or in conjunction with the Commission or any other person or organisation.³⁴

3.21 A producers’ committee will tend to decide which prescribed services it will focus on for a particular period. For example, of the seven prescribed services the APC Beekeepers Producers’ Committee may provide, six are listed as its current areas of primary interest.³⁵ The current areas of primary interest then inform the committee as to what charge may be appropriate to impose on its constituency.

Charges imposed for delivering functions and services

3.22 An APC Act charge cannot be imposed by the Commission unilaterally.

3.23 Each producers’ committee, representing the interests of its industry, can request that a charge be imposed on its producers in return for the committee’s provision of services to those producers. If it makes such a request, the committee can provide a recommendation to the Commission about the costs of providing its services. Armed with that advice, the

³³ *Agricultural Produce Commission Act 1988* ss 12(1) and (3). One exception to this is where a producers’ committee conducts a poll of its producers and the poll is in favour of the committee providing an additional service: *ibid.* s 12(3).

³⁴ *Agricultural Produce (Prescribed Agricultural Industries and Services) Regulations 2001* reg 3(2).

³⁵ The APC Beekeepers Producers’ Committee has chosen not to focus on ‘such other services for the agricultural produce as may be prescribed’: Submission 4 from Agricultural Produce Commission, 16 July 2020, p 9, Attachment 2.

Commission determines the amount of the charge and, with the Minister's approval, imposes the charge.³⁶

- 3.24 The charge for each producers' committee can vary each year, with either an increase or decrease depending on activities for that year. Charges can also be suspended; for example, this occurred in 2010 with the APC Avocado Producers' Committee.³⁷ The Commission explained that the process for suspending a committee charge follows a defined process, similar to that for imposing a charge:

Ms BEHR: There is a process. When we talked to the avocado industry, we received representation that they would like to reduce their fee for service to zero. We went out to the industry and every avocado grower was asked the question: do you support this or do you not support this? They came back with very strong support towards that. The commission then looked at that. The commission makes a decision and that decision then goes to the minister and the minister has to make a decision. The final choice always comes down to the minister on every APC fee for service. It has to be approved by the minister. It went to the minister and got approved at that stage. So there is a very defined process.

Dr RYAN: There is a defined process. We have never had the minister come back and say no to the changes that occur in most years. Our view is that it is very much the industry's decision. As a commission, we need to understand that that is the view of the broader industry.

Hon COLIN de GRUSSA: Would that include if a fee for service was to be re-implemented or commenced again? Is it the same process?

Dr RYAN: Absolutely.

Hon COLIN de GRUSSA: Has that ever happened?

Ms BEHR: No. Sorry, the potato industry, which Bill mentioned earlier, had a specific charge for promotion that they decided not to collect at one stage, but about three years ago they went through a process where they wanted to re-implement that. So, yes, it did happen.³⁸

- 3.25 It is also possible that a producers' committee may never recommend imposing a charge. For example, the Commission has, to date, never imposed a charge on behalf of the APC Egg Producers' Committee. Any funds held by that committee were transferred from the Poultry Industry Trust Fund.³⁹
- 3.26 Appendix 6 contains a list of the current APC Act charges paid by the producers with existing producers' committees. With the exception of the beekeeping industry, the charges tend to be calculated on the quantities of produce sold, produced or processed.

³⁶ *Agricultural Produce Commission Act 1988* s 14. See paragraph 5.18 for a detailed theoretical example of the main steps required before a charge can be imposed.

³⁷ Submission 4 from Agricultural Produce Commission, 16 July 2020, p 8, Attachment 1; and William Ryan, Chairman, Agricultural Produce Commission, 'No committees for cropping or grazing', *Farm Weekly*, 22 July 2019. See: <https://www.farmweekly.com.au/story/6279396/no-committees-for-cropping-or-grazing/>. Viewed 16 July 2020.

³⁸ Hon Colin de Grussa MLC and Ingrid Behr, Chief Executive Officer and Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 18.

³⁹ Submission 4 from Agricultural Produce Commission, 16 July 2020, p 8, Attachment 1.

What are 'broadacre cropping and grazing industries'?

- 3.27 The term 'broadacre cropping and grazing industries' is not defined in the APC Act or its regulations.
- 3.28 The *Macquarie Dictionary* defines 'broadacre farming' as 'the farming of large tracts of land as a single operation resulting in economies of scale.' The Organisation for Economic Co-operation and Development defines 'broadacre' as:
- a term used, mainly in Australia, to describe farms or industries engaged in the production of grains, oilseeds and other crops (especially wheat, barley, peas, sorghum, maize, hemp, safflower, and sunflower), or the grazing of livestock for meat or wool, on a large scale (i.e., using extensive parcels of land).⁴⁰
- 3.29 In its submission, the PGA provided the following description of broadacre farming:
- As opposed to horticulture, vegetables, dairy, and wine production, broadacre agriculture includes those farms, pastoral leases, and industries engaged in the production of grains, oilseeds, and other crops, especially wheat, barley, oats, lupins and hay, or the grazing of livestock for meat or wool on a large scale. Many broadacre enterprises are mixed operations.⁴¹
- 3.30 Witnesses appearing before the Committee were unable to provide a conclusive definition for the term. The Commission discussed its difficulties with the lack of a definition:
- It is our understanding that the pastoral industry comes under broadacre cropping and grazing, but your question ... is one that we have asked as well because we have not been able to find a definitive definition of what broadacre cropping and grazing is. We have exactly the same issue when we look at it. We recently had a query from the dairy industry. It was interested in whether an APC committee would work for them, and it took a lot of work to try to find out whether they are under that act and what they do fall under. Eventually, we managed to identify that we did not think that they fell under that. The same issue arose with the hemp industry when we had some discussions with them about whether they are broadacre or something else. If someone can come up with a good definition, we would love it.⁴²
- 3.31 WAFarmers is also of the view that there is no clear definition of 'broadacre cropping and grazing industries':
- The definition of broadacre is probably getting broadened by the minute as we get far more sophisticated being able to use robotics or machinery to do what was once done by hand labour. Scale is also meaningless. There are lots of small broadacre farmers with 200 head of cattle which are far smaller than the big carrot growers or the massive potato growers. That is a very good reason why we should just remove the broadacre exemption because there is no clear definition either in Australian tax law or in Australian agriculture.⁴³

⁴⁰ Organisation for Economic Co-operation and Development, 2 November 2001, *Glossary of statistical terms: broadacre*. See: <https://stats.oecd.org/glossary/detail.asp?ID=235>. Viewed 10 August 2020.

⁴¹ Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 2.

⁴² Ingrid Behr, Chief Executive Officer, Agricultural Produce Commission, transcript of evidence, 7 August 2020, pp 17.

⁴³ Trevor Whittington, Chief Executive Officer Western Australian Farmers Federation, transcript of evidence, 7 August 2020, p 9.

- 3.32 DPIRD agreed that the phrase ‘broadacre cropping and grazing industries’ ‘probably ... lacks clarity’ and if it were to remain in the APC Act, it would need to be better defined.⁴⁴

4 Policy of the Bill

4.1 The policy objectives of the Bill are to:

- modernise the APC Act⁴⁵—for example, by modernising the language and drafting techniques used in the Act
- improve the operation of the APC Act, the Commission and producers’ committees⁴⁶—for example, by implementing the recommendations made by the 2006 Review, which included the addition of compliance powers⁴⁷
- allow broadacre cropping and grazing industries to take advantage of the opportunities offered by the APC Act, if they so choose⁴⁸—by removing the exclusion of those industries from the definition of the term ‘agricultural industry’.

4.2 These policy objectives were confirmed by DPIRD at its hearing with the Committee.⁴⁹

5 Scrutiny of selected clauses in the Bill

Clause 4(2)—proposed removal of exclusion of broadacre industries

5.1 Currently, broadacre cropping and grazing industries are not able to establish producers’ committees under the APC Act because they are specifically excluded from the definition of the term ‘agricultural industry’:

In this Act unless the context otherwise requires —

agricultural industry means a horticultural industry and such other agricultural industry as may be prescribed but excluding broadacre cropping and grazing industries;⁵⁰

5.2 This term is pivotal in the APC Act because, under the Act, producers’ committees may be established in relation to ‘agricultural produce’,⁵¹ which is defined as ‘the produce of an agricultural industry’.⁵² If an agricultural industry is not an ‘agricultural industry’ for the purposes of the APC Act, it will not be able to form a producers’ committee and the Act will have very little relevance to that industry.

⁴⁴ Ralph Addis, Director General, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 4.

⁴⁵ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 7 August 2019, p 5087.

⁴⁶ *ibid.*, pp 5087 and 5088.

⁴⁷ Government of Western Australia, Department of Agriculture and Food, *Agricultural Produce Commission Act 1988, section 26 legislation review*, 23 August 2006, pp 4 and 20.

⁴⁸ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 7 August 2019, p 5088.

⁴⁹ Ralph Addis, Director General, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 2.

⁵⁰ *Agricultural Produce Commission Act 1988* s 3(1).

⁵¹ *ibid.*, s 6(1)(a).

⁵² *ibid.*, s 3(1).

5.3 Clause 4(2) of the Bill seeks to amend the section 3(1) definition of 'agricultural produce'. It proposes to delete the exclusion of broadacre cropping and grazing industries so that they would have the same opportunity as any other agricultural industry to be prescribed as an 'agricultural industry' under the APC Act, and therefore, be able to utilise the benefits offered by the APC Act.

5.4 If clause 4(2) of the Bill is enacted, the definition of 'agricultural industry' would be as follows:

agricultural industry means a horticultural industry and such other agricultural industry prescribed for the purposes of this definition;

5.5 Therefore, an 'agricultural industry' would either be:

- a horticultural industry
- or
- such other agricultural industry prescribed for the purposes of this definition.

5.6 As broadacre cropping and grazing industries are not horticultural industries,⁵³ they would fall under the second arm of the definition; that is, they would still need to be prescribed by regulations as an 'agricultural industry' for the purposes of the APC Act if they wish to be able to form producers' committees. For example, the pork production industry, beekeeping industry and egg production industry have been prescribed as an 'agricultural industry'.⁵⁴

5.7 The WA Grains Group and the PGA were the only submitters to oppose clause 4(2) of the Bill.⁵⁵ Their opposition is based mainly on the following views:

- Once an agricultural industry comes within the purview of the APC Act, charges will automatically be imposed on the affected producers.
- Any charge imposed for the services provided by a producers' committee would have the potential to duplicate other levies which are already paid by broadacre farmers.
- The lack of a weighted voting system will allow a simple majority of smaller producers (that is, at least 50 per cent of the voting producers) to impose their preferences on larger producers who are in the minority.
- There will be no ability for broadacre farmers to opt-in or opt-out of any producers' committee charge imposed for their industry; that is, the charge will be compulsory.⁵⁶

Each of these views is discussed in paragraphs 5.17–5.58.

5.8 The PGA submitted that it remains opposed to clause 4(2), even if an opt-out provision is introduced or the pastoral industry is not prescribed as an 'agricultural industry'.⁵⁷

5.9 The WA Grains Group are also concerned that the inclusion of broadacre industries will provide the Government with an opportunity to reduce support and the provision of essential services to these industries.⁵⁸ However, WA Citrus submitted that the funding raised in relation to the APC Pome, Citrus and Stonefruit Producers' Committee has enabled its

⁵³ 'Horticulture' is defined as the 'commercial cultivation of fruit, vegetables, and flowers, including berries, grapes, vines and nuts': *Macquarie Dictionary*.

⁵⁴ *Agricultural Produce (Prescribed Agricultural Industries and Services) Regulations 2001* regs 2, 3 and 4.

⁵⁵ Submission 1 from WA Grains Group Inc., 13 July 2020, p 2; and Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 1.

⁵⁶ Submission 1 from WA Grains Group Inc., 13 July 2020, pp 2–3; and Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, pp 2, 3–4, 5 and 7.

⁵⁷ Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 1.

⁵⁸ Doug Smith, Chairman, WA Grains Group Inc., Letter, 13 August 2020, Enclosure 1, p 1.

industry to attract funding from the State Government.⁵⁹ The Western Australian strawberry producers and vegetable producers have, similarly, been able to attract State Government and/or other forms of funding in this way.⁶⁰

- 5.10 Despite historically opposing the inclusion of broadacre cropping and grazing industries, WAFarmers (and its national equivalent, the National Farmers Federation)⁶¹ now supports it. WAFarmers conducted an extensive consultation process in 2019 and found that:

an overwhelming number of growers plus our grains, dairy and livestock councils were strongly supportive of having the APC funding model opened to all farmers and pastoralists subject to two conditions:

- 1: producers not being forced to pay an additional levy with no opt out option; and
- 2: voting being on a basis that is proportional to production (ie a weighted voting system).⁶²

- 5.11 At a Committee hearing, WAFarmers added that:

We believe in freedom of choice and we believe that the current legislation excludes broadacre and that is unfair to the industry. All we are asking for is a level playing field.⁶³

- 5.12 This WAFarmers' support for the inclusion of broadacre industries appears to have been in existence since as early as the 2006 Review.⁶⁴ Despite the 2006 Review committee spending 'considerable time' on this issue,⁶⁵ it was unable to reach a consensus view:

Given the polarisation of views of the two broadacre grower organisations [that is, the PGA and WAFarmers], the Review Committee was unable to make a consensus recommendation on increasing the scope of the Act to include the broadacre industries.

Including an opt out provision and changing the voting system [to one which is weighted by production] would increase the support for expanding the scope of the Act. However, the inclusion of both of these conditions would not result in unanimous support for increasing the scope of the Act to include the broadacre industries.⁶⁶

- 5.13 In 2014-15, the Commission consulted with agricultural industry groups on the possible inclusion of broadacre industries. As noted in paragraph 1.17, the responses were mixed. The results of that consultation were updated in 2019, when WAFarmers advised the Minister that both its grains and livestock councils supported the inclusion.

- 5.14 In her Second Reading Speech for the Bill, the Minister acknowledged that, initially, there was no clear support for clause 4(2):

⁵⁹ Submission 6 from WA Citrus, 17 July 2020, p 1.

⁶⁰ Dr William Ryan, Chairperson, Agricultural Produce Commission, Letter, 29 July 2020, pp 1–2; and paragraph 5.35.

⁶¹ Submission 11 from National Farmers Federation, 24 July 2020, pp 1–2.

⁶² Submission 2 from Western Australian Farmers Federation, 16 July 2020, p 2.

⁶³ Trevor Whittington, Chief Executive Officer Western Australian Farmers Federation, transcript of evidence, 7 August 2020, p 2.

⁶⁴ Government of Western Australia, Department of Agriculture and Food, *Agricultural Produce Commission Act 1988, section 26 legislation review*, 23 August 2006, p 14.

⁶⁵ *ibid.*, p 2.

⁶⁶ *ibid.*, p 14.

This amendment was considered as part of the review of the act in 2006. Given there was no clear support for these amendments, the government initially drafted the bill without that extension of the scope of the legislation. Earlier this year, the Western Australian Farmers Federation asked for the exclusions to be removed BECAUSE its members now strongly support this proposed amendment to the act, subject to the inclusion of an opt-out clause. Given that WAFarmers is the industry body with the highest representation of broadacre farmers, the bill was drafted to include the removal of the exclusion of the broadacre cropping and grazing industries. It is important to note that this amendment does not mean that the broadacre cropping and grazing industries will necessarily be subject to a levy. It means that if, or when, a broadacre cropping or grazing industry is prescribed, it will have the same opportunity to use the act as any other agricultural industry.⁶⁷

- 5.15 In the Commission's view, clause 4(2) merely provides the broadacre cropping and grazing industries with an opportunity that is already available to all other agricultural industries:

the commission is of the view that the exclusion of the broadacre cropping and grazing industries from the Agricultural Produce Commission is in fact discriminatory against them. Whether they as an industry want to use it or not is up to the industry, but they have no option at the moment, whereas other industries can. It is the commission's strong view that the decision to have a committee or not is up to the industry, but that the current exclusion discriminates against those industries.⁶⁸

- 5.16 DPIRD offered the following reasons for removing the exclusion on broadacre industries:

Firstly, it is very much about creating opportunity and choice for industry. It is not a government-imposed thing. It is about empowering industry sectors and producer groups, by their own choice and through a reasonably clear process, to help themselves, essentially, to do various things that either protect or advance their particular parts of the agricultural sector.

The second point that I think is quite important to understand is the nature of our agricultural industries; that is to say there are thousands of producers in WA operating broadly in a very competitive market. Most of our food is exported—about 80 per cent—so we have to play in a pretty competitive way. The producers, compared to other industry sectors, have a high degree of shared interest in terms of things like food standards, production standards, soil protection, sustainability, pests and biosecurity matters—a whole raft of very substantial shared, I suppose, interests and issues. This is one way that producer groups can come together to take a proactive and responsible approach to some of those shared issues within defined producer groups. Without that, it is much more difficult for our producers to take on some of the problems that they face, and that is probably getting more and more important as the world and our markets evolve.⁶⁹

Automatic imposition of charges

- 5.17 Based on the WA Grains Group and the PGA's arguments against clause 4(2), it appeared to the Committee that they believe that once the exclusion on broadacre cropping and grazing industries is removed, producers' committee charges will automatically be imposed on the

⁶⁷ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 7 August 2019, p 5088.

⁶⁸ Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 2.

⁶⁹ Ralph Addis, Director General, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 2.

affected producers.⁷⁰ For the reasons discussed below, the Committee is of the view that this is clearly incorrect.

- 5.18 Even if clause 4(2) is enacted, a series of events must still occur before any charge can be imposed on a broadacre industry. The Committee considered a hypothetical example of broadacre wool producers in the location of XYZ wishing to establish a voluntary insurance scheme. In order for a XYZ wool producers' committee charge to be imposed for this purpose on affected producers, the following things would need to occur in the stated order:

Hypothetical—imposition of charge for XYZ Wool Producers' Committee

1. The Governor would need to make regulations prescribing the XYZ wool production industry as an 'agricultural industry' for the purposes of section 3(1) of the APC Act. This would bring the industry within the purview of the APC Act. However, as discussed in paragraphs 5.22–5.25, wool production industries, if they were defined as pastoral industries, may never be prescribed.
2. The Governor would need to prescribe which of the services listed in section 12 of the APC Act may be provided by the XYZ wool producers' committee, if one is established (this step may occur in conjunction with step 1 in this list). Given that the producers want its committee to establish a voluntary insurance scheme, the regulations should include the services referred to in section 12(1)(f).
3. At least one XYZ wool producer would need to approach the Commission with the proposal to establish a XYZ wool producers' committee. If clause 9(1) of the Bill is enacted, that producer would need to comply with the requirements of proposed sections 10(1A) and (1B) of the APC Act.
4. The Commission would need to publish notice of an intention to establish a XYZ wool producers' committee, according to section 10(2) of the APC Act. Among other things, the notice would be required to invite submissions from producers who may be affected by the proposal.
5. The Commission would need to consider any submissions made, and as discussed in paragraph 3.7, consult the XYZ wool production industry on its support for a committee, the charge which may be imposed and the services which may be provided, and educate the producers about the APC Act.
6. As long as the Commission is satisfied that the formation of a XYZ wool producers' committee would not cause any material financial detriment to any affected producers, the Commission would need to conduct an establishment poll. For the purposes of conducting the establishment poll, the Commission would need to compile a list of XYZ wool producers, as per section 16 of the APC Act.
7. If the establishment poll is successful, the Commission would need to seek nominations for, potentially hold an election for, and appoint members to, the XYZ wool producers' committee, according to section 11 of the APC Act.

⁷⁰ Submission 1 from WA Grains Group Inc., 13 July 2020, p 2; and Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 2.

8. The XYZ wool producers' committee would need to decide which of the prescribed services its producers wish for it to deliver. Under section 14 of the APC Act, the committee would then need to request that the Commission impose a charge for such services, and provide advice on the cost of delivering those services. It may also choose not to request that any charge be imposed; for example, if the voluntary insurance scheme will not be established straight away.
9. Under section 14(2), the Commission would need to determine the amount of the charge to be imposed on XYZ wool producers, having regard to the estimated cost of providing the services and any other relevant factors.
10. The Minister would need to approve the charge determined by the Commission.
11. Finally, the Commission would impose the charge and publish notice of the charge in accordance with the regulations specific to the XYZ wool production industry.

5.19 Clearly, the imposition of a charge for a particular producers' committee is not inevitable. This is also demonstrated by the fact that there are currently two producers' committees for which no charges are imposed under the APC Act.⁷¹

5.20 In practice, the process for imposing or altering a producers' committee charge appears to be flexible and collaborative, involving the affected producers, their committee and the Commission:

We had a situation about four years ago where the committee wanted to significantly increase their fee for service to pay for a big advertising and promotion campaign, and there was a section of the industry that did not think that was appropriate, so we sat down with them and went through it. It did not go ahead because our view was that there was sufficient disagreement within the industry that we would not approve the increase. So we said to them, "Look, work out what works for the whole industry." They wanted to increase their fee for service. At that stage I think they were paying \$6 per tonne for promotion. They wanted to take it to \$35, which was a significant increase. We sat down with them and said, "Work it out and come back to us when you have an agreement", and I think they came back at \$10. We step in as and when required ...⁷²

5.21 The Commission advised that opponents of the Bill are misinformed on this issue:

I think it is a misapprehension. ... yes, I think there has been a degree of misinformation put out, basically to promote the case against the removal of the exemption.⁷³

FINDING 1

Enacting clause 4(2) of the Agricultural Produce Commission Amendment Bill 2019 will not automatically result in producers' committee charges being imposed on broadacre cropping and grazing producers.

⁷¹ See paragraphs 3.24–3.25.

⁷² Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, pp 3–4.

⁷³ *ibid.*, p 5.

FINDING 2

The process for imposing or altering a producers' committee charge is flexible and collaborative, and is initiated and informed by the producers' committee.

Will the pastoral industry be a prescribed 'agricultural industry'?

- 5.22 Submissions from the PGA and the Kimberley Pilbara Cattlemen's Association drew the Committee's attention to a commitment from the Minister that the pastoral industry will not be prescribed as an 'agricultural industry' for the purposes of section 3(1) of the APC Act.⁷⁴ On 13 August 2019, the Minister stated that:

it has never been the government's intention to include pastoralism in this process. The government is well aware of the position of the Pastoralists and Graziers Association—not that it necessarily represents the majority of pastoralists—but we are quite clear that there has not been any expression of interest from that sector to be included in this. We are proposing the removal of an exemption. The next step will be the description, under a regulation, of the industry that potentially will be the subject of a producers committee. I give the member a firm commitment that pastoralism will be excluded from the definition in the regulations so that that does not even come within the four corners [of the APC Act]. After we have put in broadacre cropping and associated livestock in the farming areas, a producer will then have to approach the commission and say, "We want to do this." It then will have to go out to a vote of all those producers, and the majority of producers will have to vote in favour of it before a committee is established. That committee elected by the members will then go through a further process to determine whether it will include a levy. But it has not been the government's intention at all to include pastoralism in that. I am happy to give the member a commitment that the regulation will be phrased in such a way to exclude pastoralism.⁷⁵

- 5.23 At its hearing, DPIRD confirmed the Government's commitment:

Mr ADDIS: ... The minister has made it very clear: the government's position is that it will not prescribe pastoralists as being eligible to access the mechanism in the act. That is the current situation.

Hon Dr STEVE THOMAS: Why?

Mr ADDIS: Broadly, I think the minister has received very clear consistent feedback, as have we, that pastoralists are not really interested in it. They do not want to avail themselves of those opportunities. There is no point pushing on a door that does not want to open.⁷⁶

- 5.24 In response to the Minister's commitment, the PGA queried whether it would be practicable to exclude the pastoral industry from prescription, stating:

⁷⁴ Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 5; and Submission 8 from Kimberley Pilbara Cattlemen's Association, 17 July 2020, p 1.

⁷⁵ Answer to question without notice 810 asked in the Legislative Council by Hon Robin Scott MLC and answered by Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, *Parliamentary Debates (Hansard)*, 13 August 2019, p 5318.

⁷⁶ Hon Dr Steve Thomas MLC and Ralph Addis, Director General, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 4.

the Minister's comments are not as simple as drawing lines on a map. Many pastoral lease holders own freehold land in the agricultural areas, and there is a significant inter-regional trade between properties in the north and south of the State owned by the same person.⁷⁷

- 5.25 The Committee notes that if clause 4(2) is enacted, the APC Act will no longer contain any prohibition on the prescription of broadacre cropping and grazing industries as an 'agricultural industry'.

Duplication of existing levies

- 5.26 The WA Grains Group and the PGA advised the Committee that broadacre producers are already paying federal levies and state contributions which they submit could be duplicated by charges imposed under the APC Act.⁷⁸
- 5.27 The federal levies are compulsory payments imposed by various commonwealth taxing Acts⁷⁹ which operate alongside the *Primary Industries Research and Development Act 1989* (Cth) and are collected and administered by the Commonwealth Department of Agriculture, Water and Environment.⁸⁰ The levy rates are published online and tend to be calculated on the quantities of produce sold, produced or processed.⁸¹
- 5.28 These levies provide partial funding⁸² for 15 research and development corporations (RDCs), which are responsible for:
- planning, investing in and overseeing R&D activities designed to improve production, sustainability and profitability in each industry.⁸³
- 5.29 The Committee was advised by the WA Grains Group and the PGA that the RDCs relevant to broadacre industries are:
- the Grains Research and Development Corporation, which provides research and development services
 - Meat & Livestock Australia, which provides research, development and marketing services
 - Australian Wool Innovation, which provides research, development and marketing services.⁸⁴

⁷⁷ Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 5.

⁷⁸ Submission 1 from WA Grains Group Inc., 13 July 2020, p 2; and Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, pp 2 and 3–4.

⁷⁹ *Primary Industries (Customs) Charges Act 1999*, *Primary Industries (Excise) Levies Act 1999*, *National Residue Survey (Customs) Levy Act 1998* and the *National Residue Survey (Excise) Levy Act 1998* (Cth).

⁸⁰ Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 4 August 2020, p 1.

⁸¹ Government of Australia, Department of Agriculture, Water and Environment, *Levy and charge rates*, 16 July 2020. See: web address <https://www.agriculture.gov.au/ag-farm-food/levies/rates#animal-products>. Viewed 18 August 2020.

⁸² Approximately \$500 million per year. The Commonwealth Government provides matching funding of approximately \$300 million per year: Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 4 August 2020, p 1; and Government of Australia, Department of Agriculture, Water and Environment, *Report to levies stakeholders 2018-19*, May 2020, p v.

⁸³ Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 4 August 2020, p 1.

⁸⁴ Submission 1 from WA Grains Group Inc., 13 July 2020, p 2; and Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 4. See also, Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 4 August 2020, Appendix A.

- 5.30 The PGA submitted that the levies paid towards the above three RDCs currently account for 12–15 per cent of farmers' profits.⁸⁵ At its hearing on 7 August 2020, the PGA also tabled figures from two Western Australian broadacre producers showing that in 2019, they paid \$31 612 and \$45 063 in federal levies, respectively.
- 5.31 DPIRD informed the Committee that the RDCs do not publish detailed information regarding the federal levies.⁸⁶ However, an article reported that in 2016, approximately 31 per cent of the Grains Research and Development Corporation levies were paid by Western Australian producers but only 24 per cent of those levies were reinvested 'back on the ground' in this state.⁸⁷ In the State Government's submission to the federal review of the RDC system which commenced in 2019, concerns were highlighted about the lack of transparency in the investing of RDC funds, by region, State and outcome.⁸⁸
- 5.32 Some broadacre producers in Western Australia are also liable to pay annual contributions towards Industry Funding Schemes, which are established under the *Biosecurity and Agriculture Management Act 2007* (WA). These schemes are designed to raise funds to address pest and disease threats. Currently, there are three Industry Funding Schemes—one for cattle, one for sheep and goats and one for grains, seeds and hay.⁸⁹
- 5.33 The regulations establishing each Industry Funding Scheme allow affected producers to apply for a refund of their contribution.⁹⁰ Such regulations are authorised by section 144(2) of the *Biosecurity and Agriculture Management Act 2007*.
- 5.34 When the Committee queried witnesses about this issue of potential duplication of charges, WAFarmers made the point that some producers who are already within the APC Act framework also pay the federal levies.⁹¹ The Committee notes that the wine, egg and pork production industries and some of the horticultural industries each have established producers' committees under the APC Act and each of them pays federal levies towards a RDC relevant to their industry.
- 5.35 For example, Western Australian vegetable producers established, and pay a charge for the services provided by, the APC Vegetable Producers' Committee. They also pay a federal levy towards the RDC known as Horticultural Innovation Australia Limited (or Hort Innovation). The evidence from vegetablesWA, the peak vegetable industry association, is that there is no duplication between the APC Act charge and the federal levy:

I cannot imagine there being any duplication as such, and in fact I would strongly argue ...

...

⁸⁵ Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 4.

⁸⁶ Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 4 August 2020, p 1; This advice was confirmed by the Agricultural Produce Commission: Dr William Ryan, Chairperson, Agricultural Produce Commission, Letter, 29 July 2020, p 1.

⁸⁷ S Sinclair, 'GRDC warns that divestment cuts deep', *Farm Weekly*, 17 September 2018. See: <https://www.farmweekly.com.au/story/5658278/grdc-warns-that-divestment-cuts-deep/>. Viewed 13 August 2020.

⁸⁸ Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 4 August 2020, pp 1–2.

⁸⁹ *ibid.*, p 2.

⁹⁰ *Biosecurity and Agriculture Management Industry Funding Scheme (Cattle) Regulations 2010* regs 16 and 17; *Biosecurity and Agriculture Management Industry Funding Scheme (Sheep and Goats) Regulations 2010* regs 16 and 17; and *Biosecurity and Agriculture Management Industry Funding Scheme (Grains) Regulations 2010* regs 17 and 18.

⁹¹ Trevor Whittington, Chief Executive Officer Western Australian Farmers Federation, transcript of evidence, 7 August 2020, p 6.

... that the state-based fee for service has given us as an industry capacity to deliver on projects, which has enabled us to leverage the commonwealth levy, which we would never be able to leverage otherwise. I think in my submission, for every \$1 of APC funding that vegetablesWA receives for us as a baseline project, it is \$4.42 of additional funding from outside,⁹² whether that be through our national RDC or state government or other things. There is a range of projects that we undertake in Western Australia and deliver to improve the wellbeing of our industry, which are funded by Hort Innovation, our national RDC, and that would not happen unless there was an APC funding mechanism in the first place.⁹³

- 5.36 The Committee was advised by vegetablesWA that many of its producers report paying approximately twice as much federal levy as the APC Act charge.⁹⁴
- 5.37 Another example is the Western Australian egg production industry. The Committee notes that while its producers pay a federal levy towards the funding of Australian Eggs Limited (or 'Australian Eggs')⁹⁵ no APC Act charge has ever been imposed on these producers.⁹⁶
- 5.38 Pomewest, which represents apple and pear producers,⁹⁷ also refuted the claim that there would be a duplication of other levies:

Definitely not—and in our experience, it is quite the opposite. The fee-for-service collected by Pomewest actually helps us to leverage those levies from the federal levy system, so that, as growers, if we collect a fee-for-service in Western Australia and one of the strategic plan items is, say, export market access to a particular market, if we can go to one of the federal levy bodies that collects the levies on behalf of our industry and say to them that the growers in Western Australia want access to this particular market and the growers in Western Australia are willing to put up \$80 000, for instance, to help fund that market access work, can you help us? Usually, we would see at least a doubling or tripling in leverage of that money, so we would get a much better return to the Western Australian grower than the initial figure that we have done. Rather than duplicating it, it helps us to actually highlight those items that need funding and then actually be able to advocate for them on behalf of Western Australian growers and achieve them for them.⁹⁸

- 5.39 Similarly to vegetablesWA and Pomewest, DPIRD stated that:

One of the benefits that we see of the APC act is that it does allow grower groups, where they see the need, to raise funds to do a range of services that are important to them, and one of those things can be to be a player in the game of that broader [federal] R&D scheme by leveraging a small amount of money raised through this scheme against larger amounts of money that come back through the [federal] PIRD system.⁹⁹

- 5.40 It is understandable that broadacre farmers are wary of government levies and charges and wish to ensure that they receive value for any payments they make.

⁹² Submission 10 from vegetablesWA, 21 July 2020, p 1.

⁹³ John Shannon, Chief Executive Officer, vegetablesWA, transcript of evidence, 7 August 2020, p 2.

⁹⁴ John Shannon, Chief Executive Officer, vegetablesWA, email, 18 August 2020, p 1.

⁹⁵ Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 4 August 2020, Appendix A.

⁹⁶ Submission 4 from Agricultural Produce Commission, 16 July 2020, p 8, Attachment 1.

⁹⁷ Pomewest is a subcommittee of the APC Pome, Citrus and Stonefruit Producers' Committee.

⁹⁸ Mark Scott, Chair, Pomewest, transcript of evidence, 14 August 2020, p 2.

⁹⁹ Ralph Addis, Director General, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, pp 5–6.

- 5.41 However, it seems clear to the Committee that any imposition of charges is initiated and informed by the producers' committee, which represents its constituency. This is discussed in paragraphs 3.22–3.25 and 5.18–5.20, which culminate in Findings 1 and 2.
- 5.42 In the Committee's view, it seems very unlikely that a producers' committee would request the Commission to impose a charge if that charge would substantially duplicate another levy. It is more likely that the producers' committee would be aware of other levies and charges already being paid by its constituency and only request a charge if there is a gap in the services received by them. In fact, the experience in agricultural industries with existing producers' committee is that the funds raised through the payment of APC Act charges help to leverage other forms of funding.

FINDING 3

Charges imposed under the *Agricultural Produce Commission Act 1988* are unlikely to duplicate other levies and charges.

FINDING 4

The experience in some agricultural industries with existing producers' committee is that the funds raised through the payment of *Agricultural Produce Commission Act 1988* charges help to leverage other forms of funding, including those collected through federal levies.

Lack of weighted voting

- 5.43 Another criticism of the APC Act by the WA Grains Group and the PGA and is that it does not allow for weighted voting in relation to any of the polls which may be conducted under the Act.¹⁰⁰ The premise of that criticism is that larger producers in an industry will tend to pay the bulk of the charge, yet it may be the smaller, more numerous producers who constitute the majority who imposed the charge on the whole industry, but who pay less of the charge.
- 5.44 This scenario can currently occur in theory because each producer will have only one vote in each poll, regardless of the size of their production and the proportion of the charge they are likely to pay. However, the opportunity for weighted voting is proposed to be provided by clause 22 of the Bill, which seeks to insert section 16A (see paragraphs 5.84–5.97 for a discussion of proposed section 16A). Weighted voting specifically addresses the concern outlined in this scenario.

Compulsory nature of charge

- 5.45 Unlike the federal levies¹⁰¹ and the state Industry Fund Scheme contributions,¹⁰² APC Act charges are producer-led and are variable and flexible.¹⁰³ That is, the industry, through consultation and feedback to its producers' committee, determines whether particular services need to be provided by its producers' committee, and that service need will determine:
- whether or not a charge should be imposed

¹⁰⁰ Submission 1 from WA Grains Group Inc., 13 July 2020, p 2; and Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 7.

¹⁰¹ See paragraphs 5.27–5.31.

¹⁰² See paragraphs 5.32–5.33.

¹⁰³ See paragraphs 3.22–3.25 and 5.20.

- and
- the amount of the charge to be imposed.

FINDING 5

Under the *Agricultural Produce Commission Act 1988*, it is not inevitable that a charge will be imposed for any particular agricultural industry, even if that industry has formed a producers' committee.

Waiver, refund or reduction of the charge

- 5.46 If and when a charge is imposed for a particular agricultural industry, it must be paid by an affected producer. Currently, the APC Act does not provide any ability for a producer who is liable to pay a charge to 'opt out' of that obligation. However, clause 16(2) of the Bill seeks to insert proposed section 14(5) into the APC Act, which authorises the making of regulations to prescribe the circumstances in which a charge may be waived, refunded or reduced (see paragraphs 5.75–5.83 for a discussion about the appropriateness of placing these options in the regulations).
- 5.47 For the purposes of the following discussion, the Committee notes that the Minister¹⁰⁴ and stakeholders have referred to:
- proposed section 14(5) as the 'opt-out provision' or the 'opt-out clause'
 - the ability to apply for a waiver, refund or reduction of a charge as an ability to 'opt out'.
- 5.48 DPIRD explained that proposed section 14(5):
- is deliberately intended to ensure that there can be a more tailored approach to the different requirements of each of the producers. It is quite a common provision now where there is fee-for-service setting legislation in place that there can be opportunities for waiver, reduction or refund. That is quite common. The way that will be used in the regulations will really depend on each of the [producers'] committees. It may not be taken up by a committee. The committee may not seek a regulation with respect to waiver for their particular group. They might seek it for different reasons. For example, personal financial hardship might be one criteria. I think the different criteria will be borne out or unfold over time.¹⁰⁵
- 5.49 The Commission provided the following evidence of how a particular set of waiver, refund or reduction regulations may work in practice:
- Waive would be used if a committee was established—this is thinking ahead here—so if a committee was established, and they decided to go out and do something, spend a lot of money on organics, and you have somebody who was a GM person¹⁰⁶ and do not want their money spent there, you would look then at saying, "Okay, that makes a whole lot of sense. We can't take your money to spend it on something to which you are actually opposed." So that would be an example of trying to waive it.

¹⁰⁴ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 7 August 2019, p 5088.

¹⁰⁵ Miriam Sauley, Director, Legal Services, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 8.

¹⁰⁶ That is, a person who supports agricultural produce that is genetically modified.

Reduce it would be if there were some kind of an issue going on in the industry—if there was some reason why the person could not pay it. Otherwise, you could be looking to provide an incentive. You could say, “Well, if you pay on time, there will be a two per cent to three per cent or whatever per cent reduction because you have paid this on time.” Because some of the committees operate, cash flow is always something that everybody is looking at. You would like to get your money in as soon as you possibly can, so that might be a worthwhile thing to do to say in this case.

You could possibly reduce it in the case of talking to—I speak to a lot of producers at different times—as there are occasions where a producer will come through and say, “You know, I know that I need to pay this. I can’t pay it at this moment because of X, Y, Z. What can we do about that?” We then will say to them, “Informally at this time, the point is not to put you to any financial hardship, so we are not going to do it. We are going to reduce it for you. You do not have to pay this year. You do not have to do that.” This [proposed section 14(5)] would provide us with the ability to do that really in an aboveboard, official manner for those producers so that they know that if they are suffering hardship, something can be done for them.

...

Refund— ... Going back to the organic or the GM thing, if you went out and used somebody’s money towards the GM thing, and they did not realise it was being done and being used for GM, they then came to us and said “Listen; I am opposed” for whatever reason, you would look at that and say, “Okay, yes. We understand that. Therefore, you have paid \$50, \$500 this year, we will refund you this portion of that to do that.” So in every occasion, we would be trying to make it for the producer so that the producer is receiving what they should receive in the best possible way.¹⁰⁷

- 5.50 WAFarmers is supportive of proposed section 14(5) because its members see the ability to ‘opt out’ of paying a charge as a ‘crucial plank in this whole proposal’.¹⁰⁸
- 5.51 The WA Grains Group and the PGA were concerned that any regulations made under proposed section 14(5) would only allow producers to apply for a refund of a charge they had already paid, therefore adversely affecting a producer’s cash flow. This concern appears to stem from their experiences of the state Industry Funding Scheme contributions, which arise under the *Biosecurity and Agriculture Management Act 2007* and its regulations.¹⁰⁹
- 5.52 According to the WA Grains Group:
- the levy [that is, the charge imposed for a producers’ committee] should be an opt in and not an opt out choice. By ‘opt out’ we mean that the farmer does not pay the levy at all. This is not as happens for other levies where the payments are made and then it takes months to get the funds returned before having to opt out the following year and repeating the process all over again. The Skeleton Weed Levy is an example of the difficulty to opt out of a particular levy and the penalty to be able to access service when you opt back in. Under the current opt out of Skeleton Weed the levy is still paid and can take twelve months to get back by which time the next years levy is paid. All the while being on the overdraft incurring interest.¹¹⁰

¹⁰⁷ Ingrid Behr, Chief Executive Officer, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 15.

¹⁰⁸ Submission 2 from Western Australian Farmers Federation, 16 July 2020, p 3.

¹⁰⁹ These schemes are discussed in paragraphs 5.32–5.33.

¹¹⁰ Doug Smith, Chairman, WA Grains Group Inc., Letter, 13 August 2020, Enclosure 1, p 3.

5.53 The PGA submitted that:

Amendment [proposed section] 14(5) is not an Opt-Out provision. It allows for the possibility that the regulations may allow for under certain circumstances for a fee to be waived, refunded or reduced.

Regulations under the Act are specific to the committee being created, so there is a possibility that the one set of regulations for one particular commodity may allow for a refund, and another may not.

Given that most broadacre enterprises are mixed operations, this could mean not only are producers paying different rates, but may be able to Opt-Out of one, while being compulsory in another.

Further, under the Biosecurity Industry Funding Scheme producers can opt out of the scheme however they still have to pay the fees and then eventually apply to get the money refunded.¹¹¹

5.54 On this point, the Committee notes that, unlike proposed section 14(5) of the APC Act, the *Biosecurity and Agriculture Management Act 2007* authorises regulations to prescribe circumstances where contributions will be *refunded*—that Act does not authorise regulations which provide for the waiver or reduction of a contribution.¹¹²

5.55 Pomewest had a different perspective: it does not support offering individual producers the ability to apply for a waiver, refund or reduction of a charge.¹¹³ Pomewest explained that it would not be equitable to offer these options if all affected producers would directly benefit from the services being funded by a charge:

Pomewest's view is that we do not support the opt-out provisions. I will give you the example of currently we are helping fund a CSIRO project around trying to get new export protocols brought in for the apple industry to be able to export to China and Japan. We are [a subcommittee of a producers' committee] helping to fund those protocols. If it was only one or two large growers help fund those programs, there would be no way that if those protocols were brought in and people were allowed to export to those markets, it would not be just those two growers who would be allowed to export; it would be every grower in the state would be allowed to export under those protocols. If you have an opt-out provision, you have people basically free-riding on the work that is done by the organisation. As such, if all growers are going to benefit from the work, be it market access, marketing or any of those things we do, then we believe that it is fair that all growers should pay weight, as per their production, their fee-for-service.¹¹⁴

5.56 In the Committee's view, regulations made under proposed section 14(5) will not have the power to provide producers with the ability to 'opt out' of paying a charge. An ability to opt out of an activity involves a unilateral decision to not participate in that activity. On the contrary, the options that the regulations may prescribe in this instance will involve a producer applying to the Commission to seek a waiver, refund or reduction of a charge—a producer will not simply be able to decide that they do not wish to pay a charge.

5.57 The Committee notes that proposed section 14(5) will provide a discretionary power to make regulations. Its purpose is to enable the Government to make appropriate regulations in

¹¹¹ Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 5.

¹¹² *Biosecurity and Agriculture Management Act 2007* s 144(2).

¹¹³ Mark Scott, Chair, Pomewest, email, 2 September 2020, p 2.

¹¹⁴ Mark Scott, Chair, Pomewest, transcript of evidence, 14 August 2020, p 3.

response to an agricultural industry which wishes to offer its producers the opportunity to apply for a waiver, refund or reduction.

- 5.58 For ease of reference, the finding relating to this discussion is presented at paragraph 5.75, under the section on clause 16(2) (proposed section 14(5)).

Examples of potential producers' committees

- 5.59 As discussed earlier, if clause 4(2) were enacted, the option to form producers' committees, and with that the ability to raise funds to address local issues, would become available to broadacre cropping and grazing industries. DPIRD and WAFarmers provided the Committee with lists of potential producers' committees and/or funding projects which could be established if the broadacre industries were brought within the purview of the APC Act. Their respective lists are reproduced at Appendices 7¹¹⁵ and 8.¹¹⁶

FINDING 6

Stakeholders identified groups of producers not already covered by the *Agricultural Produce Commission Act 1988* which may want to take advantage of the Act.

FINDING 7

Clause 4(2) of the Agricultural Produce Commission Amendment Bill 2019 will allow producers within broadacre cropping and grazing industries the opportunity to take advantage of the *Agricultural Produce Commission Act 1988*, should they wish to do so.

Clause 4(2)—prescription of agricultural industries by regulation

- 5.60 Clause 4(2) will amend the definition of 'agricultural industry' in section 3(1) of the APC Act as follows:

agricultural industry means a horticultural industry and such other agricultural industry prescribed for the purposes of this definition~~as may be prescribed but excluding broadacre cropping and grazing industries~~;

- 5.61 That is, clause 4(2) will preserve the ability for regulations to prescribe which agricultural industries (as opposed to horticultural industries)¹¹⁷ are an 'agricultural industry' for the purposes of the APC Act. In other words, the regulations will continue to be able to alter the scope of the APC Act because they will still determine which agricultural industries can take advantage of the ability to form a producers' committee under the Act. If an agricultural industry is not prescribed, the APC Act will have very little relevance to that industry.
- 5.62 When read with section 25 of the APC Act, clause 4(2) delegates the prescription of agricultural industries to the Governor in Executive Council¹¹⁸ and therefore, raises FLP 12:

Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

¹¹⁵ Submission 9 from Department of Primary Industries and Regional Development, 17 July 2020, p 4.

¹¹⁶ Submission 2 from Western Australian Farmers Federation, 16 July 2020, pp 4–5.

¹¹⁷ Horticultural industries are already prescribed by section 3(1) of the *Agricultural Produce Commission Act 1988* as an 'agricultural industry'. 'Horticulture' is defined as the 'commercial cultivation of fruit, vegetables, and flowers, including berries, grapes, vines and nuts': *Macquarie Dictionary*.

¹¹⁸ *Interpretation Act 1984* s 60.

- 5.63 While clause 4(2) stops short of allowing regulations to amend provisions in the APC Act, it will maintain the Executive Government's ability to alter the scope of the APC Act via regulations.
- 5.64 The Explanatory Memorandum for the Bill does not provide a justification for delegating the prescription of agricultural industries to regulations. When the Committee queried DPIRD why the prescribed agricultural industries cannot be set out in the APC Act instead, it explained that:

Broadly speaking, ... it is really difficult to foresee at the point of making an act what sorts of definitions around relevant producer groupings might occur in the future. There are a range of producer types now that we would not have foreseen 10 and 20 years ago. The act establishes the framework, the broad mechanisms, and the regulation provides for the more detailed definition around relevant producer groupings as they arise. I think it is a good mix that provides the flexibility to deal with what is ultimately a changing world, if that makes sense.¹¹⁹

RECOMMENDATION 1

The Minister for Agriculture and Food explain why it is necessary for clause 4(2) of the Agricultural Produce Commission Amendment Bill 2019 to insert the words 'prescribed for the purposes of this definition' into the definition of 'agricultural industry' in section 3(1) of the *Agricultural Produce Commission Act 1988*. This explanation should refer particularly to why the Act, instead of regulations, should not list the agricultural industries which want to be able to form producers' committees, with the list updated (via an amending Act) to include new industries as they arise.

Clause 15(1) (proposed section 13(1A))—definition of 'prescribed person'

- 5.65 Clause 15 will amend section 13 of the APC Act as follows:

13. ~~Power to require statistical information~~~~Power to require information~~

(1A) ~~In this section —~~

prescribed person means a person prescribed for the purposes of this definition.

- (1) For the purposes of facilitating the establishment or operation or both the establishment and operation of a producers' committee the Commission may by notice served on a producer, or a prescribed person, require the producer or prescribed person to furnish in writing in producer require the producer to furnish in writing in the form of a form specified by the Commission within the time specified by the Commission such prescribed statistical information as is specified in the notice.

- (2) A person must not without reasonable excuse fail to comply with a requirement in a notice under this section.

Penalty for this subsection: a fine of \$1 000.

- (2) ~~A person who —~~

¹¹⁹ Ralph Addis, Director General, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 4.

- ~~(a) without reasonable cause refuses or fails to comply with a requirement in a notice under this section; or~~
- ~~(b) furnishes to the Commission under this section any information which to the person's knowledge is false or misleading in a material particular;~~

~~is guilty of an offence against this Act.~~

~~Penalty: \$1 000.~~

- 5.66 Currently, section 13(1) of the APC Act allows the Commission, by notice, to request that a producer provide it with 'prescribed statistical information'¹²⁰ that has been specified in the notice. That information can only be requested for the purposes of facilitating the establishment and/or the operation of a producers' committee.
- 5.67 Clause 15(2) of the Bill will allow the Commission to request 'prescribed statistical information' from a 'prescribed person', not just a producer. Clause 15(1), which will insert proposed section 13(1A), delegates the formulation of the definition of 'prescribed person' to the Governor in Executive Council¹²¹—that is, the definition of 'prescribed person' will be contained in regulations.
- 5.68 Clause 15(1) raises FLP 12:
- Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
- 5.69 The PGA objected to section 13 generally:
- If included under the APC, broadacre producers would be compelled to provide any statistical information requested by the Commission, even before a committee would be set up.
- The PGA opposes producers being compelled to hand over their private and commercial information.¹²²
- 5.70 The Explanatory Memorandum explains why there is a need for the Commission to be able to require statistical information from people other than producers. However, it does not explain why these other people cannot be prescribed within the APC Act rather than in regulations:
- The amendment to this provision will allow the Commission to obtain prescribed statistical information from prescribed persons as well as producers. This is included because it is necessary for the Commission to obtain information from people who have obligations under the regulations for the collection and remittance of charges for services.¹²³
- 5.71 The Committee sought justification from DPIRD for delegating the definition of 'prescribed person'. Again, the response provided justifies the need to authorise the Commission to

¹²⁰ The information currently prescribed in regulations tend to relate to the quantity of production and/or sales, the identification and contact details of the producer, the geographical location of their production activities and the variety of their produce: *Agricultural Produce (Egg Production Industry) Regulations 2006* reg 6; *Agricultural Produce (Horticultural Industry) Regulations 2001* reg 4; *Agricultural Produce (Pork Production Industry) Regulations 2004* reg 6; and *Agricultural Produce (Wine Industry) Regulations 2016* reg 5. There is no 'prescribed statistical information' in the *Agricultural Produce (Beekeeping Industry) Regulations 2003*.

¹²¹ See also, *Agricultural Produce Commission Act 1988* s 25 and *Interpretation Act 1984* s 60.

¹²² Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, pp 6–7,

¹²³ *Agricultural Produce Commission Amendment Bill 2019, Explanatory Memorandum*, Legislative Council, p 4.

request statistical information from other persons, but does not address the reasons why these other persons are not to be prescribed by the APC Act:

Essentially, there has been a gap for the commission in being able to ensure that service fees are collected from all producers. There have been some situations in which it is not clear that all the service fees have been paid by all of the producers who are getting the benefit. One of the reasons for that is because in a couple of the industries involved, there are all different collection mechanisms, depending on the producer group. Some of them will have a middle person, such as a dealer, collecting those service fees, deducting them from the price of the produce and then remitting them to the committee. It is those people who will likely be prescribed, because they are the ones at the moment for whom there is no mechanism for obtaining information from them. So with the opportunity to obtain that information, there will be some clarity around ensuring all of the service fees are being collected and being remitted properly.¹²⁴

- 5.72 DPIRD touched on the fact that each agricultural industry will have a slightly different method for collecting the charge for its producers' committee. In some industries,¹²⁵ the charge is paid by the producer directly to the Commission. In other industries, the charge is collected by a middle person. It is these middle persons who are expected to be defined in the regulations as 'prescribed persons'.
- 5.73 The middle persons, or charge collectors, are readily identifiable, as follows:
- Horticultural industries—a 'dealer'¹²⁶ or a local government where the producers' committee provides a service within its district.¹²⁷ Some producers may also pay the charge directly to the Commission.¹²⁸
 - Beekeeping industry—the Director General of DPIRD.¹²⁹
 - Pork production industry—abattoir owners who buy pigs from pork producers for slaughter.¹³⁰
- 5.74 Respecting that the current arrangements are functioning well, the Committee nevertheless would always prefer matters to be prescribed within the primary legislation. For this reason, the Committee invites the Minister to explain why the definition of a 'prescribed person' should not be contained in the Act.

¹²⁴ Miriam Sauley, Director, Legal Services, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 8.

¹²⁵ The egg production industry, wine industry and, in certain circumstances, the horticultural industries: *Agricultural Produce (Egg Production Industry) Regulations 2006* reg 4; *Agricultural Produce (Wine Industry) Regulations 2016* reg 7; and *Agricultural Produce (Horticultural Industry) Regulations 2001* reg 5(2).

¹²⁶ *Agricultural Produce (Horticultural Industry) Regulations 2001* reg 6A. A 'dealer' is 'any person who — (a) purchases any horticultural produce direct from a producer wholesale for resale; or (b) receives horticultural produce from a producer for wholesale sale on behalf of the producer; or ... (e) receives any horticultural produce from a producer or wholesaler for processing': *ibid.* reg 2.

¹²⁷ *Agricultural Produce (Horticultural Industry) Regulations 2001* reg 6.

¹²⁸ *ibid.*, reg 5(2).

¹²⁹ *Agricultural Produce (Beekeeping Industry) Regulations 2003* reg 5.

¹³⁰ *Agricultural Produce (Pork Production Industry) Regulations 2004* reg 4.

RECOMMENDATION 2

The Minister for Agriculture and Food explain why clause 15(1) of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 13(1A) of the *Agricultural Produce Commission Act 1988*) delegates the definition of a 'prescribed person' to regulations, rather than prescribing its own definition of that term.

Clause 16(2) (proposed section 14(5))—waiver, refund or reduction regulations

- 5.75 Paragraphs 5.46–5.58 discuss the merits of providing producers with the ability to seek a waiver, refund or reduction of a charge. For ease of reference, the finding relating to that discussion is presented here:

FINDING 8

Clause 16(2) of the Agricultural Produce Commission Amendment Bill 2019 (proposed clause 14(5) of the *Agricultural Produce Commission Act 1988*) authorises the making of regulations which may allow a producer to apply to the Agricultural Produce Commission to seek a waiver, refund or reduction of a charge. It does not authorise regulations which will allow a producer to unilaterally opt out of paying a charge.

- 5.76 This part of the report deals with the issue of placing these options in regulations rather than the APC Act. Clause 16(2) raises FLP 12:

Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

- 5.77 As noted in paragraph 5.47, for the purposes of the following discussion, the Committee notes that the Minister¹³¹ and stakeholders have referred to:
- proposed section 14(5) as the 'opt-out provision' or the 'opt-out clause'
 - the ability to apply for a waiver, refund or reduction of a charge as an ability to 'opt out'.
- 5.78 An ability to 'opt out' of paying a charge that is imposed for the purposes of a producers' committee is one of WAFarmers' two prerequisites for supporting the Bill.¹³² WAFarmers would prefer that the options be contained within the APC Act¹³³ but appear to accept the method of prescription contemplated in proposed section 14(5):

We note the advice provided by the State Solicitor's Office of the legal merits of placing the opt out provisions in the regulations and accept that it is the most workable approach ...¹³⁴

- 5.79 DPIRD explained that the decision was made to place the options in regulations to allow for flexibility and the differing needs of each agricultural industry:

¹³¹ Hon Alannah MacTiernan MLC, Minister for Agriculture and Food, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 7 August 2019, p 5088.

¹³² Submission 2 from Western Australian Farmers Federation, 16 July 2020, p 2.

¹³³ Trevor Whittington, Chief Executive Officer Western Australian Farmers Federation, transcript of evidence, 7 August 2020, p 8.

¹³⁴ Submission 2 from Western Australian Farmers Federation, 16 July 2020, p 3.

that is really to customise it for each of the ways that producer groups do their business and exist and where they are. Again, it will depend on what that user group actually requires in terms of utilising a regulation of that nature or seeking it.¹³⁵

5.80 DPIRD also explained that it is the regulations applicable to each agricultural industry which prescribe the manner in which a charge is payable so it is appropriate that the circumstances in which a charge may waived, refunded or reduced are also located in these regulations.¹³⁶

5.81 WAFarmers urged the Government to fast-track the waiver, refund or reduction regulations:

Ideally, they should take effect at the same time as the amendments to the Act. Otherwise, opponents of the Bill will (perhaps rightly) suggest that there is no guarantee that the opt out will be implemented. For WA farmers, this is a crucial plank in this whole proposal, so it is critical that the Government is very clear about its intentions in this regard.¹³⁷

5.82 In response, DPIRD advised that there was no definite time frame for the development of such regulations:

We cannot say when a regulation will be made until we hear that a particular producer group would like to take advantage of the waiver reduction and refund regulation that could be made.¹³⁸

5.83 Given that the effective operation of proposed section 14(5) is important to industry, the Committee invites the Minister to explain how, once a particular producer group has indicated that it would like to take advantage of the waiver, refund and reduction measures, the regulations will be drafted and how they will deliver the measures in a timely way.

RECOMMENDATION 3

The Minister for Agriculture and Food explain how, once a particular producer group has indicated that it would like to take advantage of the waiver, refund and reduction measures contemplated in clause 16(2) of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 14(5) of the *Agricultural Produce Commission Act 1988*), the regulations will:

- (a) be drafted
- and
- (b) deliver the measures in a timely way.

Clause 22 (proposed section 16A)—weighted voting

5.84 Weighted voting is one of WAFarmers' two prerequisites for supporting the Bill.¹³⁹

5.85 The 2006 Review considered the option of introducing weighted voting but stopped short of recommending it:

¹³⁵ Miriam Sauley, Director, Legal Services, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 9.

¹³⁶ *ibid.*

¹³⁷ Submission 2 from Western Australian Farmers Federation, 16 July 2020, p 3.

¹³⁸ Miriam Sauley, Director, Legal Services, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 9.

¹³⁹ Submission 2 from Western Australian Farmers Federation, 16 July 2020, p 2.

Weighted voting on production is meritorious but given the safeguards in the current Act and the administration difficulties in implementing such a system, the Review Committee recommends the current polling Regulations remains unchanged.¹⁴⁰

- 5.86 The 2006 Review committee noted why, in some circumstances, it would be appropriate to utilise weighted voting:

During debate of the original Bill [in 1988] the Minister for Agriculture stated, "there is clearly a discretion [for the Commission] not to proceed with a poll when a minority, even a minority of one is being detrimentally affected by setting up a scheme and going ahead with a levy". "If one grower produced 80 per cent to 90 per cent of the produce and the other 99 of the 100 growers produced 10 per cent of the produce, we would have to be very careful about proceeding with a scheme when it was opposed by the person producing 90 per cent of the produce".

- 5.87 Among other things, clause 22 of the Bill proposed to insert section 16A, which would allow for weighted voting in any poll held under the Act. Currently, a poll *must* be held for establishing a producers' committee and *may* be held for the election of members to a producers' committee.¹⁴¹

- 5.88 If the Bill is enacted, a poll *must* also be held for allocating additional responsibility for agricultural produce to an existing committee¹⁴² and *may* also be held for:

- electing additional members after a producers' committee is allocated additional responsibilities¹⁴³
- removing responsibility from an existing committee¹⁴⁴
- dissolving a committee.¹⁴⁵

- 5.89 Proposed section 16A would read as follows:

16A. Weighted voting

- (1) The Commission may in compiling a list of producers of agricultural produce [under section 16], determine in writing the number of votes each producer is to have in a poll of the producers of the agricultural produce.
- (2) In determining the number of votes each producer is to have in the poll, the Commission is to ensure that each producer —
 - (a) has at least 1 vote; and
 - (b) has such number of votes as is proportionate to the percentage of the relevant agricultural produce produced in the State, or the relevant part of the State, that was produced by the producer in the 3 year period preceding the year in which the determination is made.
- (3) The Commission must not make a determination under subsection (1) unless it is satisfied that —

¹⁴⁰ Government of Western Australia, Department of Agriculture and Food, *Agricultural Produce Commission Act 1988, section 26 legislation review*, 23 August 2006, p 15.

¹⁴¹ *Agricultural Produce Commission Act 1988* ss 10(3) and 11(1a), respectfully.

¹⁴² *Agricultural Produce Commission Amendment Bill 2019* cl 11 (proposed section 11B(1)).

¹⁴³ *ibid.*, cl 11 (proposed section 11D(2)).

¹⁴⁴ *ibid.*, cl 17 (proposed section 14A).

¹⁴⁵ *ibid.*, cl 18 (proposed section 15(1)).

- (a) there is sufficient industry data available to the Commission for it to make the determination; and
- (b) it is in the best interests of the agricultural industry to do so.

(4) As soon as practicable after making a determination under subsection (1), the Commission must give a copy of the determination to each producer of the agricultural produce concerned.

(5) In a poll for which a determination has been made under subsection (1), the number of votes a producer has is to be in accordance with the determination.

5.90 Proposed section 16A gives the Commission a discretion to employ weighted voting. That discretion may only be exercised if the Commission is satisfied that:

- it has sufficient industry data available to it to determine each producer's level of production
- and
- it is in the best interests of the agricultural industry to employ weighted voting in that particular case.¹⁴⁶

5.91 The Commission submitted that:

Following discussion with some industries the Commission came to the view that this [weighted voting] might be the most appropriate voting mechanism to use for industries where it could be demonstrated that if a producers' committee is established a significant proportion of the charge would be paid by the largest producers within that industry.¹⁴⁷

5.92 The Committee queried whether weighted voting should be made mandatory. However, it was clear from the responses received from witnesses that their strong preference is that weighted voting should remain discretionary. For example, DPIRD stated that:

broadly ... [the discretion is given] ... because different poll circumstances will be quite different in nature. There will be some where you have got, as I described before, one dominant producer in terms of scale and a long, small tail. Then there are other instances where there is a much more homogenous grower profile. There is different, I suppose, availability and reliability of information about producer values. You have to assess that on a case-by-case basis. It would be difficult or problematic to prescribe it one way or the other.¹⁴⁸

5.93 The Commission agreed that flexibility is required:

you would sit down with the industry and work through it.

...

... my view is, again, the more of the process that you can give ownership to the industry ... , the better it would be.¹⁴⁹

¹⁴⁶ *ibid.*, cl 22 (proposed section 16A(3)).

¹⁴⁷ Submission 4 from Agricultural Produce Commission, 16 July 2020, p 5.

¹⁴⁸ Ralph Addis, Director General, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 11.

¹⁴⁹ Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 16.

- 5.94 WAFarmers did not have any objection to mandating weighted voting but observed that, in many cases where it is clear that all of the affected producers are committed to, for example, establishing a producers' committee for a particular project, weighting votes would not be necessary or beneficial:

We would not have a problem with it being mandated. ... But why would you go to the additional cost of mandating a weighted voting when a small group of growers who are in the eastern wheatbelt and would like to put together a project to increase the volume of water that is coming down through the country water supply scheme because they are missing out want to do the economic work to build the case for Water Corp to invest further in that, because Water Corp has got a vested interest in not doing it and the government of the day does not want to do that? We do not have the funds, and to do any sort of project these days to convince government to invest public funds, you cannot just make a submission to Parliament and send a few letters to MPs and run a social media campaign.¹⁵⁰

- 5.95 Pomewest, which is the pome¹⁵¹ subcommittee of the APC Pome, Citrus and Stonefruit Producers' Committee, identified its industry as one which would be suitable for conducting weighted voting:

we feel that it is not an unreasonable request given that in our industry we have two growers produce nearly 50 per cent of the fee-for-service paid to us. There are only 13 growers who pay 80 per cent of the fee-for-service, but we have 150 growers total. So, you have 120 growers, if everybody has a single vote, who can basically ride overshoot over the 13 growers who pay 80 per cent of the fee-for-service. To us, a weighted voting system is a reasonable and fair solution to the problem.¹⁵²

- 5.96 The Committee is satisfied that the ability to utilise weighted voting during polls should remain discretionary.
- 5.97 The Committee notes that clause 22 (proposed section 16A) will specifically address the concern outlined in paragraphs 5.43–5.44.

Clause 26 (proposed section 19C)—definition of 'relevant record'

- 5.98 Proposed section 19C is a definitions clause for various terms. It defines a 'relevant record' as follows:

relevant record means a record^[153] that —

- (a) is required to be kept or given under this Act; or
- (b) relates to the production, processing, sale or purchase of agricultural produce in relation to which a charge is payable; or
- (c) relates to the payment or collection of a charge; or
- (d) contains any information that is, or may be, relevant for compliance purposes. (underlining added)

¹⁵⁰ Trevor Whittington, Chief Executive Officer Western Australian Farmers Federation, transcript of evidence, 7 August 2020, p 7.

¹⁵¹ 'the characteristic fruit of the apple family, as an apple, pear, quince, etc.': *Macquarie Dictionary*.

¹⁵² Mark Scott, Chair, Pomewest, transcript of evidence, 14 August 2020, pp 1–2.

¹⁵³ '**record** includes a receipt, return or other document': Agricultural Produce Commission Amendment Bill 2019 cl 26 (proposed section 19C).

- 5.99 Authorised officers may, for ensuring compliance with the APC Act, direct a 'relevant person'¹⁵⁴ to produce a relevant record. The Committee notes that paragraph (d) of the definition of 'relevant record' is broad. By using the term 'or may be', paragraph (d) of the definition appears to allow an authorised officer to conduct an investigation without adequate parameters. Replacing the words 'or may be' with 'or is likely to be' would narrow the scope of the definition.

RECOMMENDATION 4

The Minister for Agriculture and Food explain why, in clause 26 of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 19C of the *Agricultural Produce Commission Act 1988*), the words 'or is likely to be' should not replace the words 'or may be' in paragraph (d) of the definition of 'relevant record' in order to narrow the scope of the definition.

Clause 26 (proposed section 19D)—power of entry?

- 5.100 Clause 26 seeks to insert compliance provisions into the APC Act. Proposed Part 3A ('Compliance') will contain authority for the Commission to employ or engage 'authorised officers' who will carry out compliance functions. Proposed Part 3A, Division 2 (consisting of proposed sections 19C–19F) will contain the powers of authorised officers and related matters.
- 5.101 The PGA alleged that proposed Part 3A, Division 2 would provide authorised officers with a power to enter properties without a warrant.¹⁵⁵ The PGA's allegation raises FLP 5:
- Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
- 5.102 Proposed section 19D will allow authorised officers to obtain information and 'relevant records' for 'compliance purposes':

19D. Obtaining information and relevant records

- (1) An authorised officer may, for compliance purposes,^[156] do 1 or more of the following —
- (a) direct a relevant person^[157] —

¹⁵⁴ '**relevant person**' means a person who is or was — (a) a producer of agricultural produce for which a producers' committee has responsibility; or (b) a person required under this Act to pay or collect a charge; or (c) a person required under this Act to give information, or produce a record, relating to the production, processing, sale or purchase of agricultural produce or the payment or collection of a charge; or (d) a person required to comply with a requirement in a notice under section 13': Agricultural Produce Commission Amendment Bill 2019 cl 26 (proposed section 19C).

¹⁵⁵ Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 6; Sheldon Mumby, Media Communications Director, Pastoralists and Graziers Association of Western Australia (Inc.), transcript of evidence, 7 August 2020, p 6.

¹⁵⁶ '**compliance purposes**' means the following purposes — (a) monitoring compliance with a requirement under this Act to pay or collect a charge; (b) monitoring compliance with a requirement under this Act to give information, or produce a record, relating to the production, processing, sale or purchase of agricultural produce or the payment or collection of a charge; (c) monitoring compliance with a requirement in a notice under section 13; (d) investigating a suspected contravention of a requirement referred to in paragraph (a), (b) or (c) or an offence under this Act': Agricultural Produce Commission Amendment Bill 2019 cl 26 (proposed section 19C).

¹⁵⁷ '**relevant person**' means a person who is or was — (a) a producer of agricultural produce for which a producers' committee has responsibility; or (b) a person required under this Act to pay or collect a charge; or (c) a person required under this Act to give information, or produce a record, relating to the production, processing, sale or

- (i) to give any information as is required; or
 - (ii) to answer a question put to the person;
- (b) direct a relevant person to produce to the authorised officer a relevant record¹⁵⁸ in the person's custody or under the person's control.
- (2) An authorised officer may examine and make a copy of a record produced in response to a direction under subsection (1)(b), and retain the record for as long as is reasonably necessary.
- (3) A direction under subsection (1)(a) —
 - (a) may be given orally or in writing; and
 - (b) must specify the time at, or within which, the information or answer must be given to the authorised officer; and
 - (c) may require that the information or answer —
 - (i) be given orally or in writing; or
 - (ii) if it is directed to be given in writing, be given by means specified in the direction; or
 - (iii) be verified by statutory declaration.
- (4) A direction under subsection (1)(b) —
 - (a) must be in writing given to the person required to produce the record; and
 - (b) must specify the time at, or within which, the record is to be produced; and
 - (c) may require that the record be produced to the authorised officer —
 - (i) at a place specified in the direction; and
 - (ii) by the means specified in the direction.

5.103 Both DPIRD and the Commission refuted the PGA's allegation. In its submission, the Commission stated that:

This section does not provide powers of entry onto any property or any business and no power of entry is sought. The Commission is only seeking to have the ability to ensure that payments which should be made, or payments which have been deducted from producers, are paid and remitted in accordance with the relevant regulations.¹⁵⁹

purchase of agricultural produce or the payment or collection of a charge; or (d) a person required to comply with a requirement in a notice under section 13': Agricultural Produce Commission Amendment Bill 2019 cl 26 (proposed section 19C).

¹⁵⁸ '**relevant record** means a record [including a receipt, return or other document] that — (a) is required to be kept or given under this Act; or (b) relates to the production, processing, sale or purchase of agricultural produce in relation to which a charge is payable; or (c) relates to the payment or collection of a charge; or (d) contains any information that is, or may be, relevant for compliance purposes': Agricultural Produce Commission Amendment Bill 2019 cl 26 (proposed section 19C).

¹⁵⁹ Submission 4 from Agricultural Produce Commission, 16 July 2020, p 7.

5.104 DPIRD advised that:

it is important to indicate that a power of entry, being such a significant legislative power to provide, it must be provided very expressly. There is certainly no such power here. There is no indication whatsoever. It would not be accepted that an authorised officer could enter into a premises validly on the way that these mechanisms are drafted, which are all about, as the director general has indicated, seeking information.¹⁶⁰

5.105 The Committee agrees with DPIRD and the Commission that the allegations are unfounded.

5.106 It is well recognised at common law that the owner or occupier has a fundamental right to exclude others from entering onto their property and other tortious conduct.¹⁶¹ Where others *do* enter onto private property, that entry will be a trespass unless it is authorised by law—that is, with the owner or occupier’s permission, or with legislative or some other lawful authority.¹⁶² In *Entick v Carrington*, it was stated that:

our law holds the property of every man so sacred, that no man can set his foot upon his neighbour’s close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour’s ground, he must justify it by law.¹⁶³

5.107 Under the principle of legality, a court which is interpreting a piece of legislation will not impute to the Parliament an intention to interfere with any fundamental common law rights unless there are clear and unambiguous words in the legislation to that effect.¹⁶⁴ A more recent explanation of the principle stated that:

The requirement of the principle of legality is that a statutory intention to abrogate or restrict a fundamental freedom or principle or to depart from the general system of law must be expressed with irresistible clearness. That is not a low standard. It will usually require that it be manifest from the statute in question that the legislature has directed its attention to the question whether to so abrogate or restrict and has determined to do so.¹⁶⁵

5.108 In the Committee’s view, proposed section 19D does not contain words which clearly interfere with an owner or occupier’s right to exclude others from their private property. If enacted, proposed section 19D will not, in itself, permit authorised officers to enter onto private property. It merely authorises such officers to direct people to give them information or records, or answer questions. Once a record is provided to an authorised officer, they may then examine it or make a copy of it. There is no explicit authority for these officers to enter onto any private property in order to exercise their powers.

5.109 It has been acknowledged by the High Court that the presumption against statutes interfering with fundamental rights might be displaced by necessary implication, but this would only occur if it were necessary to prevent a statutory provision from becoming

¹⁶⁰ Miriam Sauley, Director, Legal Services, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 12.

¹⁶¹ *Coco v R* (1994) 179 CLR 427; *Kuru v New South Wales* (2008) 236 CLR 1; and *Simon v Condron* [2013] NSWCA 388 at [44]. ‘Tortious’ means ‘of the nature of or relating to a tort’. A ‘tort’ is ‘a civil injury, actionable by a private individual, as opposed to a criminal wrong, actionable by the state’: *Macquarie Dictionary*.

¹⁶² *Entick v Carrington* (1765) 95 ER 807 at 817 per Lord Camden LCJ; *Morris v Beardmore* [1980] 2 All ER 753 at 763 per Lord Scarman; *Halliday v Nevill* (1984) 155 CLR 1 at 10 per Brennan J; *Plenty v Dillon* (1991) 171 CLR 635 at 647 per Gaudron and McHugh JJ; *Johnson v Buchanan* (2012) 223 A Crim R 132 at 144 per Bell J.

¹⁶³ (1765) 95 ER 807 at 817 per Lord Camden.

¹⁶⁴ For example, *Coco v R* (1994) 179 CLR 427 at 437–8; and *Al-Kateb v Godwin* (2004) 219 CLR 562 at [19]–[20].

¹⁶⁵ *X7 v Australian Crime Commission* [2013] 248 CLR 92 at [158] per Kiefel J.

inoperative or meaningless. In the court's view, such a case would be rare where general, rather than specific, words are used.¹⁶⁶

- 5.110 Applying that reasoning, the Committee is of the view that a power of entry cannot be implied from proposed section 19D because authorised officers could clearly exercise their powers under that provision without entering onto private property.

FINDING 9

Clause 26 of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 19D of the *Agricultural Produce Commission Act 1988*) does not provide authorised officers with the power to enter private property.

Clause 26 (proposed section 19F)—self-incrimination not an excuse

- 5.111 A failure to comply with a direction to produce information or a record, or give an answer,¹⁶⁷ without reasonable excuse will be an offence and may lead to a fine of up to \$1 000.¹⁶⁸ Under proposed section 19F, the possibility that the information, answer or record to be given may incriminate the person may not be used as an excuse:

19F. Self-incrimination not an excuse

- (1) An individual is not excused from complying with a direction under section 19D(1) to provide information or answer questions, or to produce a record, on the ground that the information, answer or record might incriminate the individual or make the individual liable to a penalty.
 - (2) However, any information or answer provided, or record produced, by an individual in compliance with a direction under section 19D(1) is not admissible in evidence in any proceedings against the individual other than proceedings for perjury or an offence against section 19G(2) [‘False or misleading information’].
- 5.112 Proposed section 19F abrogates the common law privilege against self-incrimination and raises FLP 6: does the Bill provide appropriate protection against self-incrimination?
- 5.113 Privilege against self-incrimination entitles a person to refuse to answer any question, or produce any document, if the answer or the production of the document would tend to incriminate that person¹⁶⁹ or expose them to a civil or administrative penalty.¹⁷⁰ The privilege against self-incrimination protects not only from direct incrimination, but also from making a disclosure that may lead indirectly to incrimination or to the discovery of other evidence of an incriminating nature. It is one of several immunities that, together, make up what is commonly referred to as ‘the right to silence’.¹⁷¹

¹⁶⁶ *Coco v R* (1994) 179 CLR 427 at 437.

¹⁶⁷ Under proposed section 19D(1).

¹⁶⁸ Proposed section 19E.

¹⁶⁹ *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328 at 335.

¹⁷⁰ Australian Law Reform Commission, report 102, *Uniform Evidence Law*, December 2005, paragraph 15.89. In that paragraph, the Australian Law Reform Commission added that the privilege also encompasses a third distinct privilege, a privilege against self-exposure to the forfeiture of an existing right.

¹⁷¹ Queensland Law Reform Commission, report 59, *The abrogation of the privilege against self incrimination*, December 2004, paragraphs 1.3–1.4.

5.114 Proposed section 19F(1) expressly removes an individual's common law right to refrain from providing information, an answer or record on the basis that they could incriminate themselves or make themselves liable to a penalty.

5.115 The PGA objected to proposed section 19F:

Even a police officer does not have this power and must interview a suspect under caution.¹⁷²

5.116 However, the Committee notes that proposed section 19F(2) provides a common statutory protection of restricting how the information, record or answer can be used against the person. The information, record or answer can only be used as evidence against the person in proceedings for:

- perjury—which attracts a maximum jail sentence of 14 years¹⁷³
- or
- an offence of providing false or misleading information—which attracts a maximum fine of \$1000.¹⁷⁴

5.117 The Committee notes that similar provisions exist in other Acts relating to primary food production industries.¹⁷⁵

Is the abrogation justified?

5.118 The Committee heard evidence that the proposed increase in compliance powers for the Commission¹⁷⁶ were drafted as a result of requests from the existing producers' committees:

These changes to the act came about not at the initiative at [sic] the commission, but at the initiative of some of our committees, who wanted the commission to have slightly more teeth, if you like, in ensuring compliance. About three years ago the minister came to us and said could we survey all our current producers' committees and determine whether they were in favour of increasing the compliance capability. They were unanimous in their support for increasing the compliance capability. These changes have resulted from that. As Ingrid said, it is basically to increase the capability but not take it too far.¹⁷⁷

5.119 The Commission emphasised that while it may be given increased compliance powers if the Bill is enacted, it is ever mindful of the need to preserve its long-held and highly-valued relationships with producers, wholesalers and other parties within the APC Act system:

The commission is very aware that they would not want to overstep the mark. It is always a very important relationship for us, with both our producers as well as the dealers who are paying on behalf of growers, because the dealers who pay, so somebody at the Perth markets or whatever, when they are paying, they are doing a job for which effectively—and they often remind us of this—they are not getting paid. They buy carrots off a carrot grower; they are required to take whatever the amount is out and remit that to us. They do not get any actual definitive payment

¹⁷² Submission 7 from Pastoralists and Graziers Association of Western Australia (Inc.), 17 July 2020, p 6.

¹⁷³ And 'If the offender commits the crime in order to procure the conviction of another person for a crime punishable with imprisonment for life, he is liable to imprisonment for life': *The Criminal Code* s 125.

¹⁷⁴ Agricultural Produce Commission Amendment Bill 2019 cl 27 (proposed section 19G(2)).

¹⁷⁵ For example, *Biodiversity Conservation Act 2016* s 229; *Biosecurity and Agriculture Management Act 2007* s 93, *Fish Resources Management Act 1994* ss 249(5) and (6); and *Food Act 2008* s 39.

¹⁷⁶ Agricultural Produce Commission Amendment Bill 2019 cls 26 and 27.

¹⁷⁷ Dr William Ryan, Chair, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 11.

for that. The relationships that we have with both the producers who are paying it as well as the dealers who are remitting it is very, very important. What the commission is not looking for is to go in there and ruin that relationship. We need that; it is a long-term relationship. The longest producers' committee we have got is the table grape committee; that has been running for 29 years. You have to make sure you are maintaining those relationships in the course of that period. It is not a case of just upsetting that relationship; it is making sure that under the act we do what we can do, what we are supposed to do.¹⁷⁸

- 5.120 When the Committee asked Pomewest whether it had any concerns with the proposed compliance powers for the Commission, its response was emphatic:

Mr SCOTT: I would suggest the opposite ... Compliance is something that we have been asking the commission for for quite a while. It is our understanding at the moment that the commission does not have the power of audit and does not have to ask people to show what they have done, which is different. The levies management unit on the federal scene actually does have an audit power. I know from personal experience that they come through about every three years and audit our books to make sure that we are declaring the proper amount of levies. The APC do it voluntarily. They send out a letter saying, "This is what has been collected; is that correct?" But they cannot actually go to the growers. Yes, as Steve pointed out, we have one or two people who are continually needing encouragement from the commission to pay their bill at the end of the season.¹⁷⁹

- 5.121 VegetablesWA responded similarly:

Mr SHANNON: I have got no problems [with the proposed compliance powers], and in fact I am strongly in support of improving the compliance mechanisms available to the APC, because at this point the act enables the APC to essentially ask really nicely, and there is not really much in the way of their ability to engage. From a government perspective, imagine if we were to take the WA Treasury and give them the existing powers, so, like, just the Treasurer asks nicely, "Could I have my taxes?" It is untenable the way it is. The way the APC acts and behaves is such that they are really good at asking nicely, but I believe that the way that these additional powers would be effected is actually not necessarily to use them, but just to have that up your sleeve as a way of asking nicely, but, like, asking a little harder.

...

Hon COLIN de GRUSSA: Just on this compliance question then, John, are you aware of any examples where there have been issues with producers not paying their fees, and have they been difficult to resolve?

Mr SHANNON: Yes, certainly that has occurred in the past, and I guess the APC itself is probably in the best position to talk about it, because it is not something that I am directly involved with at all. Again, a little bit back of the envelope, but from some of the data that I have seen float through the Perth markets and comparing that to what the APC data is, I think there is a level of noncompliance and these powers would be most beneficial in resolving those.¹⁸⁰

¹⁷⁸ Ingrid Behr, Chief Executive Officer, Agricultural Produce Commission, transcript of evidence, 7 August 2020, p 11.

¹⁷⁹ Mark Scott, Chair, Pomewest, transcript of evidence, 14 August 2020, p 6.

¹⁸⁰ Hon Colin de Grussa MLC and John Shannon, Chief Executive Officer, vegetablesWA, transcript of evidence, 7 August 2020, pp 4–5.

5.122 DPIRD confirmed that there is general support amongst the industries for greater compliance powers for the Commission:

There has been, I think, in the conduct of the reviews, a gap identified. There have been some issues with nonpayment by some producers and difficulty ascertaining those at times. These provisions actually introduce a formal governance around the collection and remittance of charges so that records of produce transactions are accurate and service charges are paid as required. For the most part, that is in support of the producers in the producer group so that we do not have some producers making payment and some maybe not. It is generally seen as a positive.¹⁸¹

5.123 It also confirmed that these additional powers to compel the provision of information will be funded through the Commission's usual budget process, not through charges collected in relation to producers' committees.¹⁸² The additional powers are not expected to result in an increase to the Commission's operating costs because:

The Commission will adjust current compliance processes to allow for the improved measures. Staff will be provided with further training in compliance to enable them to fulfil the role of authorised officers.¹⁸³

5.124 The Committee acknowledges that there are apparent problems with non-payment and non-collection of APC Act charges and therefore there is support for greater, consistent compliance powers for the Commission.

5.125 However, the Committee observes that there are already prescribed offences for:

- not paying a charge¹⁸⁴
- not collecting a charge and/or not remitting that charge to the Commission¹⁸⁵
- not providing certain prescribed information (for example, production or sales figures) to the Commission.¹⁸⁶

These offences are contained in some of the regulations relevant to agricultural industries which already have a producers' committee.

5.126 There are also existing powers under section 13 of the APC Act for the Commission to require the provision of 'prescribed statistical information' for the purposes of facilitating the establishment and/or the operation of a producers' committee. Such information already includes producers' production and/or sales figures.¹⁸⁷ If clause 15(1) of the Bill is enacted, both producers and other 'prescribed persons' can be requested to provide the information,

¹⁸¹ Miriam Sauley, Director, Legal Services, Department of Primary Industries and Regional Development, transcript of evidence, 14 August 2020, p 11.

¹⁸² *ibid.*

¹⁸³ Ralph Addis, Director General, Department of Primary Industries and Regional Development, Letter, 21 August 2020, p 1.

¹⁸⁴ *Agricultural Produce (Egg Production Industry) Regulations 2006* reg 4.

¹⁸⁵ For example, *Agricultural Produce (Horticultural Industry) Regulations 2001* reg 6A; and *Agricultural Produce (Pork Production Industry) Regulations 2004* reg 4.

¹⁸⁶ For example, *Agricultural Produce (Egg Production Industry) Regulations 2006* reg 5; *Agricultural Produce (Horticultural Industry) Regulations 2001* reg 8; *Agricultural Produce (Pork Production Industry) Regulations 2004* reg 5; and *Agricultural Produce (Wine Industry) Regulations 2016* regs 8 and 9.

¹⁸⁷ See footnote 120.

and would face a maximum fine of \$1 000 if they failed to comply with the request without a reasonable excuse.¹⁸⁸

- 5.127 The Committee noted that some compliance powers already exist. However, numerous submissions from existing producers' committees were supportive of the proposed measures in the Bill to extend the Commission's compliance powers to enhance fairness and equity.

FINDING 10

Although some compliance powers already exist in the *Agricultural Produce Commission Act 1988*, numerous submissions from existing producers' committees were supportive of the proposed measures in clause 26 of the *Agricultural Produce Commission Amendment Bill 2019* to extend the Agricultural Produce Commission's compliance powers to enhance fairness and equity.

Benchmarks for determining whether the removal of the privilege is justified

- 5.128 A previous Queensland scrutiny of legislation committee has adopted the following benchmarks¹⁸⁹ to determine whether removal of the privilege against self-incrimination is justified:
- (i) If the matters are peculiarly within the knowledge of the persons denied the benefit of the privilege, and which it would be difficult or impossible to establish via any other alternative means.
 - (ii) The bill prohibits use of the information obtained in prosecutions against the person.
 - (iii) In order to secure this restriction on the use of information obtained, the person should not be required to fulfil any condition such as formally claiming the right.
- 5.129 In the Committee's view, proposed section 19F satisfies benchmarks (i) and (iii). The Committee considers benchmark (ii) at paragraphs 5.135–5.140.
- 5.130 The Queensland Law Reform Commission considered that there are two broad justifications for removing the privilege against self-incrimination:
- There is a public interest in disclosing the information that would be compelled. That is, the information:
 - concerns an issue of major public importance that has a significant impact on the community in general or on a section of the community.
 - For example, an inquiry or investigation into allegations of major criminal activity, organised crime or official corruption or other serious misconduct by a public official in the performance of his or her duties might justify the abrogation of the privileges. Abrogation might also be justified where there is an immediate need for information to avoid risks such as danger to human life, serious personal injury or damage to human health, serious damage to property or the environment, or significant economic detriment, or where there is a compelling argument that the information is necessary to prevent further harm from occurring.¹⁹⁰

¹⁸⁸ See discussion at paragraphs 5.65–5.74.

¹⁸⁹ Parliament of Queensland, Legislative Assembly, Scrutiny of Legislation Committee, *Alert digest no. 8*, 2001, p 8.

¹⁹⁰ Queensland Law Reform Commission, report 59, *The abrogation of the privilege against self incrimination*, December 2004, paragraphs 6.50–6.51.

- The provision of compelled information relates to a regulatory scheme in which the person has voluntarily taken part.¹⁹¹
- 5.131 With respect to the first of the justifications described above, the Committee has previously recognised that the public benefit gained from a negation of the privilege needs to outweigh the resultant harm.¹⁹² In the Committee's view, it is important for producers participating in the APC Act system to ensure that all participants are complying with the Act, particularly in relation to the payment of the charge.
- 5.132 The Committee's research revealed 93 Acts which currently abrogate the privilege against self-incrimination. The following is a sample of 17 of those Acts:
- (i) *Auditor General Act 2006.*
 - (ii) *Biodiversity Conservation Act 2016.*
 - (iii) *Biosecurity and Agriculture Management Act 2007.*
 - (iv) *Children and Community Services Act 2004.*
 - (v) *Contaminated Sites Act 2003.*
 - (vi) *Corruption, Crime and Misconduct Act 2003.*
 - (vii) *Environmental Protection Act 1986.*
 - (viii) *Equal Opportunity Act 1984.*
 - (ix) *Fish Resources Management Act 1994.*
 - (x) *Food Act 2008.*
 - (xi) *Human Reproductive Technology Act 1991.*
 - (xii) *Misuse of Drugs Act 1981.*
 - (xiii) *Public Health Act 2016.*
 - (xiv) *Radiation Safety Act 1975.*
 - (xv) *Royal Commissions Act 1968.*
 - (xvi) *Terrorism (Extraordinary Powers) Act 2005.*
 - (xvii) *Workers' Compensation and Injury Management Act 1981.*
- 5.133 This sample provides an indication of the significance of the matters for which the Parliament has deemed it necessary to abrogate the privilege. The Committee notes that the compliance powers in the Bill, to ensure that APC Act charges are properly paid, collected and remitted, are wide-ranging and place those powers alongside the matters regulated by the above Acts.
- 5.134 Regarding the Queensland Law Reform Commission's second basis for removing the privilege against self-incrimination, the Committee notes that there will be some individuals who are directed and compelled to provide information even though they did not voluntarily submit to the APC Act system. These individuals would include:
- producers who voted unsuccessfully against the establishment of a producers' committee

¹⁹¹ *ibid.*, paragraphs 6.48–6.56.

¹⁹² Parliament of Western Australia, Legislative Council, Standing Committee on Legislation, report 25, *Custodial Legislation (Officers Discipline) Amendment Bill 2013*, 11 November 2014, p 41.

- dealers of affected produce (such as those who purchase produce in a wholesale capacity) who are often the parties tasked with collecting an APC Act charge.

Protection against self-incrimination

5.135 In the interests of informing debate, the Committee draws the attention of the House to the following observations.

5.136 Proposed section 19F(2) only partially protects the person giving the information against the 'direct use' of the information. In common law, direct use immunity:

prevents the subsequent admission of evidence of the fact of a disclosure made under compulsion, or of the information disclosed, in a proceeding against the individual who was compelled to provide the information.¹⁹³

5.137 Proposed section 19F(2) falls short of this—it provides some protection only in relation to the information that is provided, not in relation to the fact that information was given. The proposed section also differs from the statutory protection against self-incrimination that is provided in, for example, section 93(2) of the *Biosecurity and Agriculture Management Act 2007*:

However, ... neither the information given by the person, nor the fact that it was given by the person, is admissible in evidence in any civil or criminal proceedings against the person except in proceedings for perjury or for an offence under this Act arising out of the person's giving false or misleading information. (underlining added)

5.138 Proposed section 19F(2) also fails to protect the individual giving the information against 'derivative use' or 'indirect use' of the information. In common law, derivative use immunity prevents the use of information gained under compulsion to 'uncover other evidence against the individual who provided the information'.¹⁹⁴

5.139 The Committee's research identified nine Acts in Western Australia which provide protection against self-incrimination that resembles derivative use immunity.¹⁹⁵ The most comprehensive of these protections were located in Acts regulating the mining and petroleum sectors. For example, section 30 of the *Mining Rehabilitation Fund Act 2012* provides as follows:

30. Incriminating information

- (1) An individual is not excused from giving information, answering a question or producing a record when directed to do so under section 29(1) on the ground that the information, answer to the question, or production of the record, might tend to incriminate the individual or make the individual liable to a penalty.
- (2) However —
 - (a) the information or answer given or record produced; or

¹⁹³ Queensland Law Reform Commission, report 59, *The abrogation of the privilege against self incrimination*, December 2004, p 18.

¹⁹⁴ *ibid.*, p 19.

¹⁹⁵ *Associations Incorporation Act 2015* s 80(4); *Criminal Property Confiscation Act 2000* s 110; *Mining Rehabilitation Fund Act 2012* s 30(2); *Offshore Minerals Act 2003* s 373; *Petroleum and Geothermal Energy Resources Act 1967* s 109(3) and Schedule 1, item 55(2); *Petroleum and Geothermal Energy Safety Levies Act 2011* s 19(2); *Petroleum Pipelines Act 1969* Schedule 1, item 55(2); *Petroleum (Submerged Lands) Act 1982* s 115(3) and Schedule 1, item 56(2); and *Telecommunications (Interception and Access) Western Australia Act 1996* s 15(1).

- (b) giving the information, answering the question or producing the record; or
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, answering the question or producing the record,

is not admissible in evidence against the individual —

- (d) in any civil proceedings; or
- (e) in any criminal proceedings other than proceedings for perjury or an offence against section 31 [‘False or misleading information’].
(underlining added)

5.140 The Committee notes that the above provision provides both direct use (paragraphs (2)(a) and (b)) and derivative use (paragraph 2(c)) immunity.

RECOMMENDATION 5

The Minister for Agriculture and Food explain how clause 26 of the Agricultural Produce Commission Amendment Bill 2019 (proposed section 19F of the *Agricultural Produce Commission Act 1988*) will achieve an appropriate balance between compelling a person to provide information about compliance with the Act while providing adequate protection against self-incrimination.

6 Conclusion

- 6.1 Subject to satisfactory explanations being provided in relation to the recommendations made in this report, the Committee recommends that the Bill be passed.



Hon Dr Sally Talbot MLC
Chair

APPENDIX 1

STAKEHOLDERS, SUBMISSIONS RECEIVED AND PUBLIC HEARINGS

Stakeholders contacted

Number	From
1.	Department of Primary Industries and Regional Development
2.	Pastoralists and Graziers Association of Western Australia
3.	WAFarmers
4.	National Farmers Federation
5.	Agricultural Produce Commission (APC)
6.	APC Avocado Producers' Committee
7.	APC Carnarvon Banana Producers' Committee
8.	APC Beekeepers Producers' Committee
9.	APC Egg Producers' Committee
10.	APC Pome, Citrus and Stonefruit Producers' Committee
11.	APC Pork Producers Committee
12.	APC Potato Producers' Committee
13.	APC Strawberry Producers Committee
14.	APC Table Grape Producers' Committee
15.	APC Vegetable Producers' Committee
16.	APC Wine Producers' Committee
17.	WA Citrus
18.	Dried Fruits Australia
19.	Fruit West Co-operative Ltd
20.	Vegetables WA
21.	Potato Growers' Association Western Australia
22.	Western Australian Pork Producers Association
23.	Turf Producers Australia
24.	Turf Growers Association of Western Australia
25.	Wines of Western Australia

Number	From
26.	Grain Industry Association of Western Australia
27.	AgConnectWA
28.	Wheatbelt Business Network
29.	Women in Farming Enterprises
30.	Western Australia No Tillage Farmers Association
31.	Agricultural Women Wheatbelt East Group
32.	The Facey Group
33.	Mingenew-Irwin Group
34.	Rural Edge
35.	West Midlands Group
36.	Stirlings to Coast Farmers
37.	South East Premium Wheat Growers Association
38.	Liebe Group
39.	Grower Group Alliance
40.	Corrigin Farm Improvement Group

Submissions received

Number	From
1.	WA Grains Group
2.	WA Farmers Federation
3.	Sweet as Apiary
4.	Agricultural Produce Commission
5.	Pomewest
6.	WA Citrus
7.	Pastoralists and Graziers Association of WA
8.	Kimberley Pilbara Cattlemen's Association
9.	Department of Primary Industries and Regional Development
10.	Vegetables WA
11.	National Farmers Federation

Public hearings

Date	Participants
7 August 2020	Agricultural Produce Commission Dr William Ryan, Chair Ingrid Behr, Chief Executive Officer
	Pastoralists and Graziers Association of WA Tony Seabrook, President Sheldon Mumby, Media Communications Director
	WA Farmers Trevor Whittington, Chief Executive Officer
	Vegetables WA John Shannon, Chief Executive Officer
14 August 2020	Pomewest Mark Scott, Chair Nardia Stacy, Executive Manager
	Department of Primary Industries and Regional Development Ralph Addis, Director General Dr Mark Sweetingham, Managing Director Miriam Sauley, Director – Legal Services Angela Howie, Principal Legal Officer

APPENDIX 2

FUNDAMENTAL LEGISLATIVE PRINCIPLES

Does the Bill have sufficient regard to the rights and liberties of individuals?

1. Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?
2. Is the Bill consistent with principles of natural justice?
3. Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?
4. Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
5. Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?
6. Does the Bill provide appropriate protection against self-incrimination?
7. Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?
8. Does the Bill confer immunity from proceeding or prosecution without adequate justification?
9. Does the Bill provide for the compulsory acquisition of property only with fair compensation?
10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?

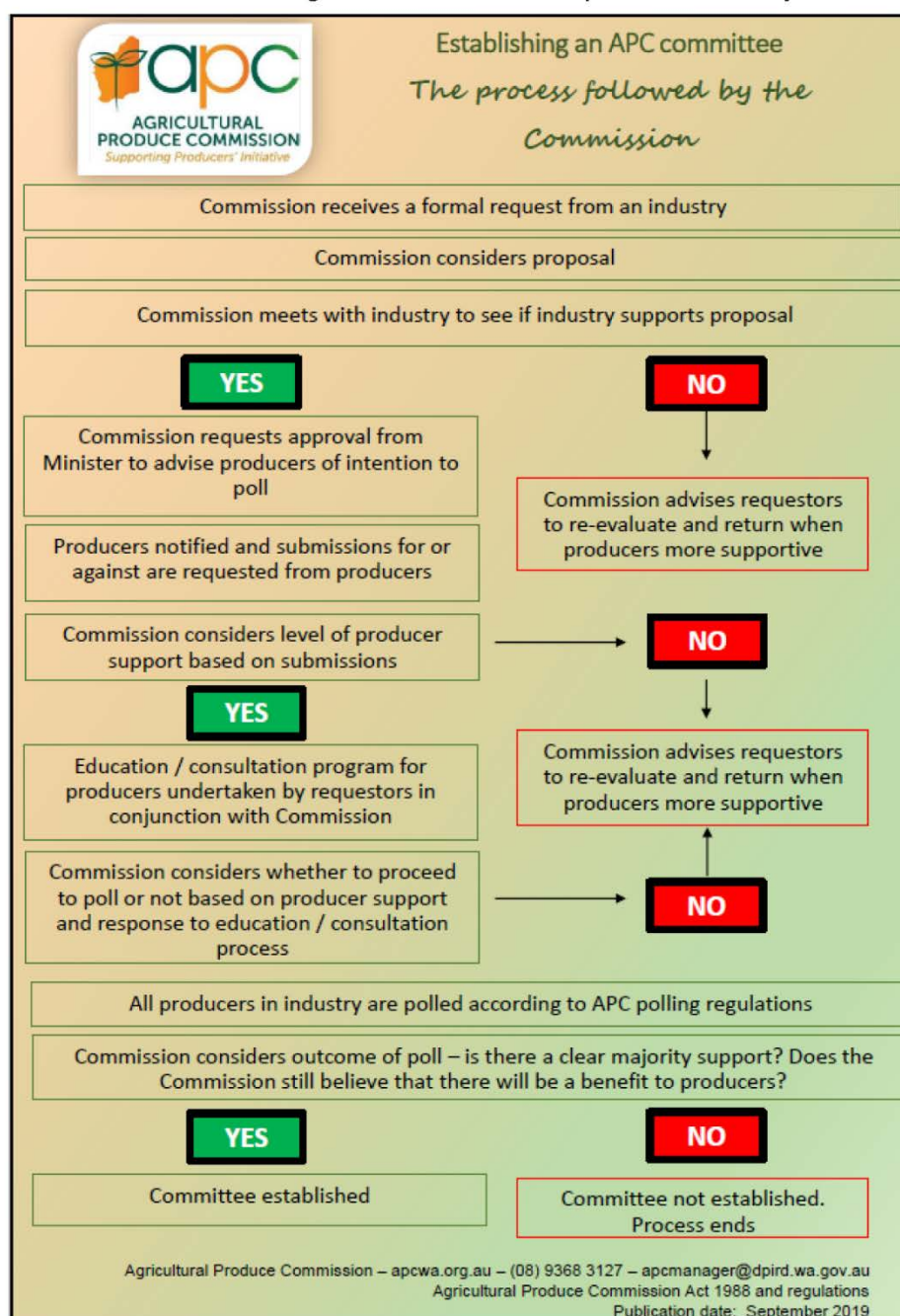
Does the Bill have sufficient regard to the institution of Parliament?

12. Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?
13. Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?
14. Does the Bill allow or authorise the amendment of an Act only by another Act?
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?

APPENDIX 3

FLOWCHART—PRELIMINARY REQUIREMENTS FOR ESTABLISHING A PRODUCERS' COMMITTEE

Attachment 3 - Establishing an APC committee – the process followed by the Commission



Agricultural Produce Commission – 3 Baron-Hay Court, South Perth, 6151

Agricultural Produce Commission Act 1988

APPENDIX 4

RESULTS OF ESTABLISHMENT POLLS FOR PRODUCERS' COMMITTEES

APC SUCCESSFUL POLLS

Industry	No of ballot papers issued	No of ballot envelopes received	No of informals	Valid votes	No of 'Yes'	No of 'No'	%Yes	% No	% voted	Year
Avocado	124	51	1	50	50		100.00%	0.00%	41.13%	2002
Beekeepers	513	211	8	203	148	55	72.91%	27.09%	41.13%	2003
Carnarvon Banana	120	57	4	53	49	4	92.45%	7.55%	47.50%	1999
Egg	108	65	0	65	55	10	84.62%	15.38%	60.19%	2002
Pome, Citrus & Stone	No data found									1994
Pork	272	85	0	85	71	14	83.53%	16.47%	31.25%	2001
Potato	189	87	2	85	77	8	90.59%	9.41%	46.03%	2000
Strawberry		19	0	19	17	2	89.47%	10.53%		1995
Table Grape	No data found									meeting not postal
Vegetable	412	172	1	171	139	32	81.29%	18.71%	41.75%	1991
Tomato (to add to vege)	266	117	9	108	98	10	90.74%	9.26%	43.98%	2004
Wine Grapes	495	156	1	155	105	50	67.74%	32.26%	31.52%	2009
Average % Participated in Vote									42.72%	2015

There was also a carrot committee which eventually rolled into the vege committee but no polling data available on the carrot committee.
Fruit Fly Baiting Committees not included above

APC FAILED POLLS

Industry	No of ballot papers issued	No of ballot envelopes received	No of informals	Valid votes	No of 'Yes'	No of 'No'	%Yes	% No	% voted	Year
Turf	49	46	3	43	21	22	48.84%	51.16%	93.88%	1999
Vegetable	810	224	8	216	27	189	12.50%	87.50%	27.65%	1999

APPENDIX 5

POLICY NUMBER 2019/1—PRODUCERS' COMMITTEE ESTABLISHMENT POLLS



PRODUCERS' COMMITTEE ESTABLISHMENT POLLS

Policy Number: 2019/1

Approved by the Commission: 29 November 2019

Review Date: November 2022

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1. PRODUCERS' COMMITTEE ESTABLISHMENT POLLS

The establishment of an APC producers' committee is a significant undertaking for any Western Australian agricultural industry that is eligible under the Act.

The Commission is aware of, and takes seriously, its responsibility in establishing producers' committees.

This policy seeks to ensure that an impartial, consistent and professional process is followed each and every time that the Commission conducts a committee establishment poll.

It also seeks to ensure that the process leading up to the poll provides producers:

- every opportunity to understand and interrogate what is proposed
- clear information on how the proposed committee would operate for producers and within the industry.
- an understanding of their rights and responsibilities in relation to the formal poll

The policy will optimise and clarify the committee establishment process for all concerned.



William Ryan
Chairperson, Agricultural Produce Commission

2. PURPOSE

This policy establishes the Commission's position on certain aspects of the of producers' committees establishment polling process.

Matters addressed in this policy are those that are not already addressed in the Agricultural Produce Commission Act 1988 (the Act), the Producers' Committees (Polling) Regulations 1990 (the regulations) or any other applicable legislation.

This policy should be read in conjunction to and is additional to these documents, is subsidiary to them and is not a replacement for them.

3. 'POLL' DEFINED

The regulations define a poll as: *'a poll which the Commission is required or authorised to conduct or which is conducted on behalf of a producers' committee'*.

The Commission can, or is required to, conduct polls in relation to various matters as required by the Act or relevant regulations.

This policy is specific to a poll conducted for the establishment of a producers' committee.

Polling, in this sense therefore, is as defined in the Cambridge Dictionary as *'the process in which a large number of people are asked for their opinions about a subject (or person)'*.

4. SCOPE

This policy applies to the Commission and its operating environment.

5. POLICY

The regulations¹ require that the Commission undertake a poll of relevant producers before a producers' committee can be established.

There are a number of areas on which neither the Act nor the regulations provide clarity.

Commission communication leading up to and including poll

The provision of accurate, comprehensive information on the poll proposal, the APC legislation and the APC producers' committee operating environment is vital to enable producers to make an informed decision on the proposal and to encourage producers to exercise their right to choice via the establishment poll.

The Commission, working with the parties requesting the poll and the industry producers will, before any poll is undertaken:

- Provide face-to-face opportunity for consultation, discussion and education via in person meetings in primary locations. Where possible these meetings will also be available via web based meeting conferencing apps. Meetings will be notified via industry bodies' communication channels, local newspapers, relevant websites, Twitter and direct communication with producers.
- Provide comprehensive information on the proposal, which includes the opportunity for feedback, via the APC website, any peak industry body website / newsletter / magazine.
- Nominate contact persons within the APC and the requesting body who producers can contact for discussion.
- Direct communication with producers will include (where details are able to be obtained) email, post and telephone. All methods will be employed – no one method will be relied upon solely.
- That a formal poll will be undertaken and that this provides the opportunity for producers to exercise their right in relation to the proposal will be consistently and repeatedly notified at meetings and in communications.

Producer turnout (response) to poll

An APC committee establishment poll is a non-compulsory polling process.

The communication, consultation and education methods above are designed to encourage participation to achieve a maximum turnout rate.

The APC average response rate (from all establishment polls held to date, where data is available) for establishment polls at the date of this publication was 42.72%.

Western Australian Electoral Commission (WAEC) average response rate for non-compulsory voting in Local Government Ordinary Elections (in 2015 and 2017) averaged at 34.5%².

¹ Act s10 (7) 'the Commission shall not establish a producer's committee in relation to agricultural produce unless the Commission as after complying with subsections (1) and (2) conducted a poll among the producers of agricultural produce the subject of the notice referred to in subsections (1) and (2) and, if the proposal to establish the producers' committee is in relation to a particular part of the State, in the part of the State in question, and the poll is in favour of the proposal'.

² 2017 Local government Ordinary elections – Election report – March 2017

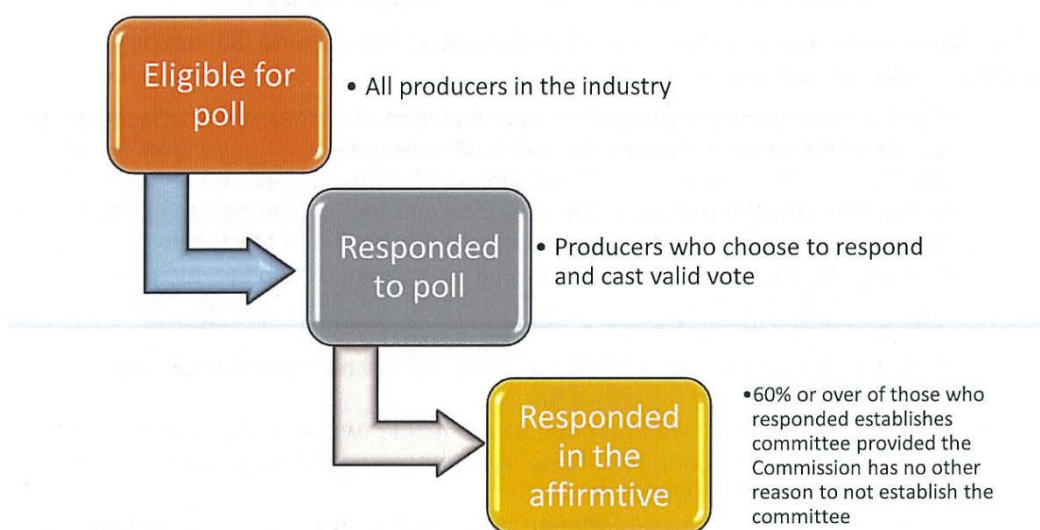
This supports the Commission belief that the response rate for APC establishment polls is above average, indicating effective producer involvement in the establishment process.

Given the above, the Commission will continue to operate on the basis that those who do not respond to the poll, have chosen not to do so as they have no strong sentiment either for or against the proposal.

Producer support for poll proposal / Deciding on committee establishment

The Commission to date has not established a committee with a supportive vote of less than 67.74%.

Policy Statement: The Commission will not establish a committee unless a supportive vote of 60% of those that respond to the poll has been achieved.



6. ROLES AND RESPONSIBILITIES

Members of the Commission and Commission staff -

- Will uphold and observe this policy's agreed principles.
- Will uphold and observe the spirit of the policy, which is to ensure an impartial process which delivers an outcome representative of, and in the interests of, relevant producers.
- Will ensure that all participants, stakeholders and relevant bodies are aware of this policy and all other relevant and supporting legislation or policies which relate to producers' committee establishment.

7. MANAGING DISPUTES

An efficient, fair and accessible dispute management process is important to ensure that producers concerns are addressed as well as to provide the Commission with the opportunity to improve processes.

- The Act³ allows for producers who are aggrieved in relation to their inclusion or omission from the poll list to apply to the State Administrative Tribunal for a review of the decision.
- Complaints or disputes should be directed to:
 - the Manager in the first instance, and if a resolution is not found
 - to the Commission, and if a resolution is not found
 - to the Minister

8. RELATED / SUPPORTING POLICIES

The following are Commission policies or documents which relate to or support this policy:

- Agricultural Produce Commission Act 1988
- Producers' Committees (Polling) Regulations 1990

³ Act Sec 16(2)

APPENDIX 6

CURRENT CHARGES FOR PRODUCERS' COMMITTEES



If further information or explanation is required please contact Ingrid Behr at the APC
– apcmanager@agric.wa.gov.au, 9368 3127.

APC Industry Committee	Rate 2019/20 year unless otherwise stated
Avocado	\$0.00 per kilogram
Beekeepers	\$25.00 per beekeeper per annum (calendar year 2020) plus \$1.20 per hive per annum (calendar year 2020)
Carnarvon bananas	\$0.0230 per kilogram
Citrus – fresh, excluding exported	\$0.020 per kilogram
Export (fresh or processing)	\$0.0027 per kilogram
Citrus – processing	\$0.010 per kilogram
Citrus – fresh, processing or export - biosecurity	\$0.0009 per kilogram
Pome Fruit	\$0.017 per kilogram
Pome Fruit - processing	\$0.006 per kilogram
Pork	\$0.008 per kilogram carcass weight
Potatoes	\$6.00 per tonne
Processing	\$6.00 per tonne
Ware export	\$8.00 per tonne
Domestic ware	\$2.50 per tonne
Ware Marketing	\$6.00 per tonne (\$150 per hectare based on average yield of 25 tonnes per hectare)
Seed	
Strawberries	\$0.01 per kilogram
Stone Fruit	\$0.015 per kilogram
Stone Fruit - processing	\$0.006 per kilogram
Table Grapes	\$0.007 per kilogram
Vegetables incl tomatoes	
Vegetables applies to all vegetables except herb, potato, mushroom, and Kununurra vegetables	See following tables
Wine	See tables following

APC Vegetable Rates effective 19/20

2019/20	Category A	Category B	Category C	Category D	Category E	Category F	Category G	Category H
\$ RATE PER KILO	0.005	0.0009	0.0024	0.0065	0.004	0.0035	0.0008	0.01
BAMBOO SHOOTS		BEEETROOT	BRUSSEL SPROUTS	ARTICHOKES	CHOKO	BROCCOLI	CARROTS	OTHER VEGETABLES
BEANS - BROAD		GOURDS	CABBAGE	ASPARAGUS	COURGETTES	BROCCOLINI		
BEANS - FAVA		MELONS - WATERMELON	CAULIFLOWER	BABYLEAF - ALL VARIETIES	CUCUMBER	CELERIAC		
BEANS - OTHER		PARSNIPS	CAULIFLOWER - AULI	CHICORY	CUCUMBER - LEBANESE	CELERY		
BEANS - RUNNER		PUMPKIN - BUTTERNUT	CAULIFLOWER - FANCY	ENDIVE	MARROW	CHARD		
BEANSHOOTS		PUMPKIN - JAP	CAULIFLOWER - ROMESCO	KALE	MELONS - HONEYDEW	GARLIC		
BOK CHOY		PUMPKIN - KENT	ONIONS	KOHL RABI	MELONS - ROCKMELON	LEEKS		
CAPSICUMS		PUMPKIN - OTHER	RADISH	LEAFY GREENS	MELONS - OTHER	SHALLOTS		
CHILLIES		PUMPKIN - OLD BLUE	RHUBARB	LETTUCE		SPRING ONION		
CHOYSUM		SWEDES		LETTUCE - MIXED SALAD		SQUASH		
DAIKON - RADISH TOP		SWEET POTATOES		MICRO GREENS		SQUASH - SPAGHETTI		
EGGFRUIT		TURNIPS		OKRA		SWEET CORN		
FENNEL				ROCKET		WHITLOF - CHINESE CABBAGE		
HORSERADISH				SPINACH - ENGLISH		ZUCCHINI		
LUFFA				TARO		RADDICIO		
PAK CHOY				WATERCRESS				
PAPRIKA								
PAPRIKA - RED								
PEAS								
RADISH - CHINESE								
SILVERBEET								
SNOW PEAS								
SPROUTS								
TOMATOES								
WASABI								
WATER SPINACH								
WONG BOK								

This charge to apply to all vegetables except herbs, potato, mushroom and Kununurra vegetables.

APC Wine rates effective Vintage 2020

The wine FFS charge is a two tier charge paid on tonnes at the point of crush.

All producers pay the WOWA rate which is for state wide services, plus the relevant GI rate for where the grapes were grown.

For example, 12 tonnes Blackwood grapes would attract a charge of \$388.76 with \$150 for regional (Blackwood), \$238.16 for state services and \$0.60 for biosecurity. If grapes are from more than one GI location then each location's charge rate is paid for the tonnes from that particular GI location.

Tonnage Range	WOWA Base Rate	WOWA Volume Rate (per tonne)	Blackwood Base Rate	Geographe Base Rate	Geographe Volume Rate (per tonne)	Great Southern Base Rate	Great Southern Volume Rate (per tonne)
Up to 2	\$78.75	\$0.00	\$150	\$200	\$0.0000	\$75	\$0.0000
Over 2 - 5	\$105.00	\$0.00	\$150	\$200	\$0.0000	\$100	\$0.0000
Over 5 - 10	\$173.25	\$0.00	\$150	\$250	\$0.0000	\$160	\$0.0000
11-29	\$236.25	\$13.16	\$150	\$250	\$3.9474	\$225	\$13.8889
30-49	\$498.75	\$11.88	\$150	\$350	\$1.3158	\$475	\$11.8421
50-99	\$748.13	\$7.60	\$150	\$400	\$0.4016	\$700	\$1.0204
100-199	\$1,147.13	\$5.70	\$150	\$400	\$0.4016	\$750	\$0.5050
200-299	\$1,745.63	\$4.28	\$150	\$500	\$0.2145	\$800	\$0.5051
300-499	\$2,194.50	\$3.80	\$150	\$500	\$0.2146	\$850	\$0.7537
500-749	\$2,992.50	\$1.90	\$150	\$500	\$0.2146	\$1,000	\$0.4016
750-999	\$3,491.25	\$1.52	\$150	\$500	\$0.2146	\$1,100	\$1.6064
1000-1999	\$3,890.25	\$1.05	\$150	\$650	\$0.0500	\$1,500	\$0.5005
2000-3999	\$4,987.50	\$0.95	\$150	\$650	\$0.0500	\$2,000	\$0.5003
4000-5999	\$6,982.50	\$0.71	\$150	\$800	\$0.0334	\$3,000	\$0.5003
6000-9999	\$8,478.75	\$0.36	\$150	\$800	\$0.0334	\$4,000	\$0.2501
10000+	\$9,975.00	\$0.00	\$150	\$1,000	\$0.0000	\$5,000	\$0.0000

Tonnage Range	Margaret River Base Rate	Margaret River Volume Rate (per tonne)	Peel Base Rate	Perth Hills Voume Rate (per tonne)	Swan Volume Rate (per tonne)	Wine Industry Southern Forests Base Rate	Wine Industry Southern Forests Volume Rate (per tonne)	Biosecurity per tonne
Up to 2	\$130	\$0.00	\$125	\$10	\$1.50	Nil	\$1.70	.05 cents per tonne
Over 2 - 5	\$130	\$0.00	\$125	\$10	\$1.50	\$100	\$1.70	
Over 5 - 10	\$293	\$0.00	\$125	\$10	\$1.50	\$150	\$1.70	
11-29	\$292.50	\$17.11	\$125	\$10	\$1.50	\$200	\$1.70	
30-49	\$617.50	\$15.44	\$125	\$10	\$1.50	\$250	\$1.70	
50-99	\$926.25	\$9.88	\$125	\$10	\$1.50	\$300	\$1.70	
100-199	\$1,420.25	\$7.41	\$125	\$10	\$1.50	\$350	\$1.70	
200-299	\$2,161.25	\$5.56	\$125	\$10	\$1.50	\$400	\$1.70	
300-499	\$2,717.00	\$4.94	\$125	\$10	\$1.50	\$450	\$1.70	
500-749	\$3,705.00	\$2.47	\$125	\$10	\$1.50	\$500	\$1.70	
750-999	\$4,322.50	\$1.98	\$125	\$10	\$1.50	\$550	\$1.70	
1000-1999	\$4,816.50	\$1.36	\$125	\$10	\$1.50	\$550	\$1.70	
2000-3999	\$6,175.00	\$1.24	\$125	\$10	\$1.50	\$550	\$1.70	
4000-5999	\$8,645.00	\$0.93	\$125	\$10	\$1.50	\$550	\$1.70	
6000-9999	Nil	Nil	\$125	\$10	\$1.50	\$550	\$1.70	
10000+	Nil	Nil	\$125	\$10	\$1.50	Nil	\$1.70	

APPENDIX 7

POTENTIAL PRODUCERS' COMMITTEES—DEPARTMENT'S LIST¹⁹⁶

Potential examples that DPIRD believes could eventuate are:

For 'industry good' functions through existing organisations such as:

- A producer committee funding producer-benefit functions via Grain Industry Association of WA, Western Australian Farmers Federation or Pastoralists and Graziers Association of WA (or all three); or
- A producer committee partnering with DPIRD, Grains Research and Development Corporation or other existing bodies to fund development/operation of support services for crop insurance schemes or production and market forecasting services directly beneficial to contributing WA producers.

In the broadacre cropping/fodder sector:

- Allowing a more formal framework for grower groups to fund research work or other activities identified as a priority for its members.
- If there are specific overseas markets that need to be accessed for Western Australian crops, a State based support strategy may be needed to develop market access packages as national mechanisms may not see a State based issue as a priority (e.g. Noodle wheat to Japan or South Korea, lupin access to China, state breach of GM in wheat);
- Fund state based market development and education (e.g. Noodle wheat technical workshops, soft wheat, lupins for food, new wheat processing methods); and
- Hay producers funding development of an export hay market strategy for China.

In the grazing sector the APC could be utilised to:

- Allow local or regional livestock groups to address specific parasite, nutritional, fertility and meat quality issues that are not of interest or priority to national funding bodies;
- Support local or regional cattle business benchmarking, training and optimisation groups could be established, and take hold of their own direction, rather than the current system of top down national or state based development;
- Look at specific issues in Northern grazing systems and the Kimberley that could be supported by creation of a local body;
- Allow product-specific livestock producers (e.g. specific meat-sheep breeds, goat producers) to use the fee-for-service mechanism to deliver collective benefits, where a corporate mechanism is not available to them; or
- Enable sheep and/or cattle producers to fund development and implementation of appropriate freedom-to-operate/social licence related promotion campaigns beneficial to all contributors.

¹⁹⁶ Source: Submission 9 from Department of Primary Industries and Regional Development, 17 July 2020, p 4.

APPENDIX 8

POTENTIAL PRODUCERS' COMMITTEES—WAFARMERS' LIST¹⁹⁷

The following are all possible future APC funding schemes that have been proposed to WA farmers as part of their consultation process:

- Sheep producers that wish to raise funds to undertake an independent animal welfare review into heat stress or stocking densities on live export ships.
- Grain growers that are interested in addressing the claims made against the safety of glyphosate.
- Indigenous Northern Cattle producers who are interested in developing an Indigenous Kimberly Marketing Brand.
- Grain growers on the Tier 3 Line wanting to examine the costs and benefits of sub leasing the Tier 3 lines.
- Growers wishing to undertake a review of the merits of funding their own mobile phone towers to address black spots.
- Growers looking for a mechanism to fund the recycling of hay bale wrap and grain bags.
- Organic grain growers looking to develop a branded product and market it up the value chain.
- Broadacre farmers who support Farmers for Climate Action and AgZero2030 wanting a mechanism to develop a carbon calculator.

¹⁹⁷ Source: Submission 2 from Western Australian Farmers Federation, 16 July 2020, pp 4–5.

GLOSSARY

Term	Definition
2006 Review	The review of the operation of the <i>Agricultural Produce Commission Act 1988</i> , the operation of the Agricultural Produce Commission and any producers' committee, and the need for the Act to continue in operation. The review was conducted pursuant to section 26 of the Act.
APC Act	<i>Agricultural Produce Commission Act 1988</i>
Bill	Agricultural Produce Commission Amendment Bill 2019
Commission	Agricultural Produce Commission (formerly known as the Horticultural Produce Commission)
Committee	Standing Committee on Legislation
DPIRD	Department of Primary Industries and Regional Development
FLP	fundamental legislative principle (see Appendix 2)
HPC	Horticultural Produce Commission (later known as the Agricultural Produce Commission)
PGA	Pastoralists and Graziers Association of Western Australia (Inc.)
RDC	a research and development corporation funded partially by federal levies paid by primary producers
WAFarmers	Western Australian Farmers Federation

Standing Committee on Legislation


Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'4. Legislation Committee

- 4.1 *A Legislation Committee* is established.
 - 4.2 The Committee consists of 5 Members.
 - 4.3 The functions of the Committee are to consider and report on any Bill referred by the Council.
 - 4.4 Unless otherwise ordered, any amendment recommended by the Committee must be consistent with the policy of the Bill.'
- 



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