

Agricultural Industry Services Regulation 2009

Regulatory Impact Statement



**NSW DEPARTMENT OF
PRIMARY INDUSTRIES**

May 2009

Agricultural Industry Services Regulation 2009 Regulatory Impact Statement

© State of New South Wales through the NSW Department of Primary Industries 2009
NSW Department of Primary Industries
161 Kite Street, Orange
Locked Bag 21, Orange NSW 2800
www.dpi.nsw.gov.au

This regulatory impact statement is accessible at www.dpi.nsw.gov.au, or copies may be obtained by telephoning Julia Trethowan at NSW DPI on 02 6391 3618.

Information sources

In the preparation of this regulatory impact statement information was sourced from numerous officers of the NSW Department of Primary Industries.

Disclaimer

While every reasonable effort has been made to ensure this document is correct at the time of printing, the State of New South Wales, its agencies and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

TABLE OF CONTENTS

Executive summary	4
Public consultation and process for submissions	5
How to make a submission	5
What will happen with submissions	5
1.0 Introduction	6
1.1 Subordinate legislation requirements	6
1.2 Better regulation principles	6
2.0 Outline of the regulatory proposal	8
2.1 Title of the proposed statutory rule and authority	8
2.2 Name of proponent and responsible Minister	8
2.3 Legislative background	8
2.4 Need for Government action	9
2.5 Objective for government action	9
2.6 The four current Regulations	9
2.7 The proposed Regulation	11
3.0 Options	12
3.1 Option 1: No regulation	12
3.2 Option 2: Make the proposed combined Regulation	13
4.0 Cost-benefit analysis	14
4.1 Methodology	14
4.2 Machinery clauses	14
4.3 Competition policy	15
4.4 Costs and benefits of Option 1	15
4.5 Costs and benefits of Option 2	16
4.6 Qualitative analysis	17
4.6.1 Developing and promoting draft contract provisions (Wine Grapes Marketing Board)	18
4.6.2 Contribution to the Queensland fruit fly program	18
4.6.3 Research and technology transfer	19
4.6.4 Product promotion and market research (market access)	19
4.7 Preferred option	19
5.0 Compliance and enforcement	20
6.0 Consultation and review	21
Appendix 1: Multi-criteria analysis	22
Appendix 2: Parties potentially affected by the regulatory proposal	23
Appendix 3: Current budgets of committee services	24

Executive summary

The *Agricultural Industry Services Act 1998* provides for the establishment of agricultural industry committees to provide services for growers of agricultural products in specified areas of NSW. The committees provide a range of services for their constituents such as marketing and promotion, and control of product-specific pests.

There are currently four regulations under the Act. These are:

Agricultural Industry Services (Polls and Elections) Regulation 2005;

Agricultural Industry Services (Interstate Arrangements) Regulation 2004;

Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003; and

Agricultural Industry Services (Riverina Citrus) Regulation 2007.

The *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003* and the *Agricultural Industry Services (Interstate Arrangements) Regulation 2004* are both due for staged repeal under the *Subordinate Legislation Act 1989*, and the NSW Government is taking this opportunity to combine the four Regulations into one principal regulation. It is proposed that the combined Regulation be made with minor, machinery, amendment to the provisions of the existing Regulations.

The principal cost of the proposed Regulation is a financial impost levied on all sales of wine grapes and citrus fruit, payable by all growers in the Murrumbidgee Irrigation Area (MIA) for deliveries made to wineries, and citrus packers and processors. The fact that growers have consistently voted in favour of their committees' operational budgets for the rate of levy clearly indicates that constituents perceive there are net benefits accruing to them through the arrangements.

The service functions benefit the wider community through the rectification of market failure without imposing any additional costs on the community.

The costs and benefits of the proposed Regulation have been assessed and compared with the option of having no regulation.

Overall, the proposed statutory rule is considered to be the most effective means of achieving the objectives of the *Agricultural Industry Services Act*, and provides the highest net benefit to the community. It is therefore recommended that the proposed statutory rule be made.

Public consultation and process for submissions

The regulatory impact statement (RIS) provides interested stakeholders, including industry members and members of the wider community, with an opportunity for direct input into the regulatory development process.

Public notice of the exhibition of this RIS has appeared in *The Sydney Morning Herald* and the *Area News* (Griffith and Leeton) newspapers and the *NSW Government Gazette*.

The RIS has also been distributed to The Wine Grapes Marketing Board, 182 Yambil Street, Griffith, NSW 2680 and to Riverina Citrus, Shop 1, 490 Banna Avenue, Griffith, NSW 2680, where individuals may consult the document and obtain a copy.

The RIS and the draft Regulation are accessible at www.dpi.nsw.gov.au, or copies may be obtained by telephoning Julia Trethowan at NSW DPI on 02 6391 3618.

How to make a submission

Interested parties are invited to submit written comments on the proposed Regulation or the regulatory impact statement to the NSW Department of Primary Industries in any of the following ways:

Post

Mr Tony Moody
Senior Policy Analyst
DPI
Locked Bag 21
Orange NSW 2800

Facsimile

02 6391 3650, attention Tony Moody.

Email

tony.moody@dpi.nsw.gov.au

<p>The closing date for submissions is 15 June 2009 at 5.00pm</p>
--

What will happen with submissions?

The NSW Department of Primary Industries will review all submissions received by the closing date and, based on this review and the requirements of the Act, the proposed Regulation may be amended as necessary.

A copy of the regulatory impact statement and all written comments and submissions received will be provided to the Legislation Review Committee of the NSW Parliament.

1.0 Introduction

1.1 Subordinate Legislation Act 1989 requirements

Under the *Subordinate Legislation Act 1989*, statutory rules such as regulations are subject to automatic repeal five years after being made.

When a regulation is due for repeal, the responsible agency must review the regulation and consider its social and economic impacts and whether the regulation remains relevant and necessary. The purpose of conducting regular reviews under the Staged Repeal program is to ensure that the regulation continues to provide a net benefit to the community, and that any regulatory burden imposed on industry is justified. This review will assist the agency to make a decision about whether the regulation should be remade, either with or without amendments, or be allowed to lapse.

Under the *Subordinate Legislation Act 1989*, the Regulatory Impact Statement (RIS) must include:

- a statement of the objective(s) sought to be achieved by the proposed Regulation, and the reasons for these objectives;
- consideration of whether these objectives: are reasonable and appropriate; accord with the objectives, principles, spirit and intent of the enabling Act; and are consistent with the objectives of other Acts, statutory rules and stated government policies;
- alternative options (both regulatory and non-regulatory) by which those objectives can be achieved, either wholly or in part;
- evaluation of the costs and benefits of the proposed Regulation, including the costs and benefits relating to resource allocation, administration and compliance;
- assessment of the costs and benefits of each alternative option (to the making of the proposed Regulation), including the costs and benefits relating to resource allocation, administration and compliance. This assessment must include the option of not proceeding with any action;
- assessment as to which of the alternative options involves the greatest net benefit or least net cost to the community; and
- a statement of the consultation program to be undertaken.

This RIS sets out the analysis of the impact of the proposed *Agricultural Industry Services Regulation 2009*. The preparation of the RIS involved identifying and assessing the relevant costs and benefits of the regulation, other than those parts that deal with matters of a machinery nature.

1.2 Better Regulation Principles

In accordance with the Better Regulation Office's *Guide to Better Regulation* (April 2008), this RIS also addresses the seven better regulation principles. These are:

- Principle 1: The need for government action should be established;
- Principle 2: The objective of government action should be clear;
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;
- Principle 4: Government action should be effective and proportional;
- Principle 5: Consultation with business and the community should inform regulatory development;
- Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered;
- Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

2.0 Outline of the regulatory proposal

2.1 Title of proposed statutory rule and authority

The proposed Regulation is the *Agricultural Industry Services Regulation 2009* under the *Agricultural Industry Services Act 1998* (the Act).

2.2 Name of proponent and responsible Minister

The Minister for Primary Industries is the Minister responsible for making the proposed Regulation.

2.3 Legislative background

The objective of the Act is the constitution of committees to provide services for the benefit of growers of primary products in the whole of, or specified areas of, NSW.

Under the Act, constituencies such as the wine grape and citrus growers in the Murrumbidgee Irrigation Area (MIA), may request the establishment of the services committees for the benefit of growers. It is considered that these services could not be provided effectively without collective action by the whole industry.

Sections 4 and 5 of the Act prescribe the process for the constitution of service committees. The proposed Regulation will be made under section 5(1)(a) and will continue the two existing services committees. The Wine Grapes Marketing Board had previously been constituted as a marketing board under the *Marketing of Primary Products Act 1983*, while Riverina Citrus had previously been constituted as a marketing committee under the same Act. Both bodies were reconstituted under the *Agricultural Industry Services Act 1989* following Competition Policy reviews.

There are currently four separate regulations made under the Act:

Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003

Agricultural Industry Services (Interstate Arrangements) Regulation 2004

Agricultural Industry Services (Polls and Elections) Regulation 2005, and

Agricultural Industry Services (Riverina Citrus) Regulation 2007.

Two of the Regulations are due to be repealed on 1 September 2009: the *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003* and the *Agricultural Industry Services (Interstate Arrangements) Regulation 2004*.

As well as seeking to remake the two Regulations due for staged repeal, the opportunity is being taken to combine the four Regulations under the Act into one, to be known as the *Agricultural Industry Services Regulation 2009*. The effect of combining these regulations in this way is that further staged repeal will be deferred until 2014.

2.4 Need for Government action

It is considered that the services provided by the agricultural committees would not be adequately provided under a voluntary scheme due to the presence of certain 'market failures'. (Market failure refers to a situation where "a market, left to itself, does not allocate resources efficiently".¹) Specifically, these are the 'industry good' characteristics of research and product promotion activities, 'spill-overs' associated with pest control activities, and the 'imperfect competition' and 'asymmetrical information' problems addressed by the development and promotion of draft contract provisions and the supply of actual market price information. Without Government action, the committees would not have the means to raise the levies that enable them to provide the services to address these market failures.

2.5 Objective of Government action

The objective of Government action is to ensure that committees for particular primary products have appropriate processes for elections and polls, and are able to charge levies that enable them to provide services that benefit their constituents. Voluntary levies have been shown not to be successful in raising the necessary finances for the services that growers expect. Providing a statutory basis for the levies ensures the outcomes sought by the constituents.

2.6 The four current Regulations

Foundation regulations

The *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation* and the *Agricultural Industry Services (Riverina Citrus) Regulation* are foundation regulations establishing the agricultural industry services committees known as the Wine Grapes Marketing Board and Riverina Citrus respectively. A foundation regulation establishing an agricultural services committee must comply with the procedural requirements in section 4 of the Act and must provide for the matters specified in section 6 of the Act. A foundation regulation can be remade under section 5 of the Act to continue an agricultural services committee on condition that the agricultural industry services, primary producers, primary products and the area of operations of the committee are the same as the existing committee. If an amendment to any of these matters in the foundation regulation is proposed, section 22 of the Act provides that the amendment must be supported by more than half of the votes cast in a poll in which more than half of the committee's constituents cast votes.

Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003

The Regulation constitutes the "Wine Grapes Marketing Board" as a services committee. It provides for a committee to support wine grapes and wine grape growers in the MIA, for those growers who harvest more than 20 tonnes of MIA wine grapes.

The 2003 Regulation assigned the Board responsibility for the industry service functions that were found to meet the public benefit test under National Competition

¹ Guide to Better Regulation, NSW Government 2008, p39

Policy principles. The Board funds the provision of these services (clause 7 of the 2003 Regulation) by levying a compulsory charge of \$3.90 per tonne of wine grapes delivered by growers to wineries. The levy, and a budget and operational plan, are agreed annually by growers at a general meeting, as required under section 23 of the Act. In recent years the Board has made a practice of returning \$1 of this levy to growers.

The Board is to provide the following services for its constituency:

- (a) The development of a code of conduct for contract negotiations between wine grape growers and wineries, and of draft contract provisions for the sale of MIA wine grapes to wineries, such as the prices to be paid by the wineries, and the terms and conditions of payment;
- (b) Promotion of private contracts for the sale of MIA wine grapes to wineries by wine grape growers,
- (c) Collection and dissemination of market and industry information, including the production and publication of indicator prices for MIA wine grapes grown in the MIA,
- (d) Research and development into wine grape health;
- (e) Education and training relating to wine grape production and marketing;
- (f) Promotion of wine made from MIA grapes, and regional wine-making.

Agricultural Industry Services (Riverina Citrus) Regulation 2007

The Regulation constitutes "Riverina Citrus" as a services committee. The Riverina Citrus committee applies to citrus fruit, and citrus growers in the MIA with citrus fruit orchards of two hectares or more.

The committee funds the provision of the services listed in clause 8 of the 2007 Regulation by levying a compulsory charge of \$4.50 per tonne of citrus fruit delivered by growers to packers or processors. That levy, and a budget and operational plan, are agreed annually by growers at a general meeting, as required under section 23 of the Act.

The Regulation therefore provides for the following services:

- (a) to contribute to the funding of fruit fly eradication programs,
- (b) facilitate the adoption of orchard management practices aimed at improving citrus fruit production,
- (c) obtain and disseminate information relevant to the citrus fruit industry, including the development of a forecasting service for production,
- (d) contribute to promotional activities to help increase the sale of citrus fruit,
- (e) facilitate the development of new and existing export markets for citrus fruit,
- (f) provide for communication between growers of citrus fruit in the MIA and government departments and agencies, public authorities and the general public.

Agricultural Industry Services (Polls and Elections) Regulation 2005

The Regulation prescribes the conduct of polls and elections of members of agricultural industry services committees. It also provides for the preparation and maintenance of registers of constituents.

Agricultural Industry Services (Interstate Arrangements) Regulation 2004

The Regulation provides for the following two orders made under the *Agricultural Industry Development Act 1990* of Victoria to have effect in New South Wales:

- *Murray Valley Citrus Industry Development Order 2008* (“Victorian Citrus Industry Order”); and
- *Murray Valley Wine Grape Industry Development (Extra-territorial) Order 2008* (“Victorian Wine Grape Industry Order”).

The Victorian Citrus Industry Order establishes the Murray Valley Citrus Board and sets out the Board’s functions and powers. The Regulation provides that the Order applies in the NSW local government areas of Balranald, Murray, Wakool and Wentworth in relation to producers of oranges, grapefruit and mandarins.

The Victorian Wine Grapes Industry Order establishes the Murray Valley Wine Grapes Industry Development Committee and sets out its functions and powers. The Regulation provides that the Order applies in the NSW local government areas of Balranald, Wakool and Wentworth in relation to producers of wine grapes.

2.7 The proposed Regulation

The proposed Regulation combines the four Regulations made under the Act and makes only very minor amendments of a machinery nature in doing so.

The substantive provisions of the Regulation remain unchanged for the Wine Grapes Marketing Board (Part 2) and Riverina Citrus (Part 3). In addition, the proposed Regulation continues machinery provisions for interstate arrangements for the formation of industry service committees where the areas served by those committees cross state borders (Part 4), and for procedures for polls and elections in relation to industry service committees (Part 5).

The proposed minor amendments of a machinery nature in the Regulation are:

- Removal of the definition of “former Board” from the definitions for Part 2 (clause 4);
- Inclusion of a reference to the relevant regulation making power in the Act for Part 2 (clause 5(1));
- Inclusion of a reference to the previous *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003* to ensure the continuation of the Wine Grapes Marketing Board (clause 5(2));
- Inclusion of a definition of “area of operations” and “MIA” in the definitions for Part 3 for the purposes of tidying up the clauses ie the meaning of “area of operations” and “MIA” is unchanged (clause 15);
- The returning officer is no longer able to correct the information in a candidate’s statutory declaration and must instead give the candidate notice if any information is rejected, and provide them with the opportunity to provide suitable information (clause 55(3));
- The repeal of the *Agricultural Industry Services (Riverina Citrus) Regulation 2007* and *Agricultural Industry Services (Polls and Elections) Regulation 2005*

which are not due to be automatically repealed on 1 September 2009 (clause 85);

- The inclusion of a savings provision (clause 86).

None of the proposed amendments change the agricultural industry services, primary producers, primary products or the area of operations for the Wine Grapes Marketing Board or Riverina Citrus and therefore:

- the proposed Regulation with the amendments can be made pursuant to section 5 of the Act; and
- section 22 of the Act does not apply, with the effect that a poll of constituents is not required to make the Regulation with the amendments.

The RIS sets out an analysis of the impact of the proposed Regulation, which is intended to replace the four separate Regulations. Overall, this analysis finds that the conclusions of previous competition policy reviews still hold and that maintenance of the existing arrangements through the proposed statutory rule will provide net benefits to the wine grape and citrus growing industries and to the community.

The proposed Regulation remains consistent with the objectives and regulation-making powers of the Act.

3.0 Options

Three options were initially considered as alternatives to achieving the objectives of the proposed Regulation. These are:

- Option 1: No regulation;
- Option 2: Remake the Regulation without substantial amendment; or
- Option 3: Remake the Regulation with amendment of substantive provisions.

However, section 22 of the Act precludes Option 3 in the case of the *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation* and the *Agricultural Industry Services (Riverina Citrus) Regulation*. This is because amendments are unable to be made to the substantive provisions of foundation Regulations without a poll of growers supporting them. As there has not been a poll of growers, Option 3 is not considered feasible. Therefore two options are considered for achieving the objectives of the Regulation. These are:

- Option 1: No regulation; or
- Option 2: Remake the proposed combined Regulation without substantial amendment.

3.1 Option 1: No Regulation

Not remaking the *Agricultural Industry Services (Wine Grapes Marketing Board) Regulation 2003* and the *Agricultural Industry Services (Riverina Citrus) Regulation 2007* would mean that Government would save the cost of making a regulation.

Both regulations have been subject to competition policy reviews. Not making the Regulation would mean ignoring the findings of these reviews.

For example, the 2002 competition policy review of Riverina Citrus found that, as a result of market failures arising from spillovers and free-rider problems, there are net benefits to the industry and the general community from the industry restrictions that led to the 2007 Regulation.

Further, not remaking the Regulation would be against the wishes of the constituency of wine grape and citrus fruit growers in the MIA, who continue to support the Wine Grapes Marketing Board and Riverina Citrus.

This would mean that, if industry in the MIA wished to continue to supply services to all growers, it would only be able to administer a voluntary levy, or subscription, on growers. Based on experience in other industries, without legislative support for a compulsory charge, substantially less than half of the grower constituency would contribute despite the activity being in the industry's collective interest.

It is considered that "free-rider problems" would then rapidly erode grower support and undermine the financial viability of the committees, eventually requiring them to be dissolved. This would not achieve the objectives of the Act, and the industry and community benefits of the existing arrangement would be lost.

Industry support for the Wine Grapes Marketing Board is evidenced by the annual ratification by growers of the compulsory charge. This could be seen as evidence that voluntary subscription would fail to deliver the desired services due to the "free rider" problem, whereby individuals have an incentive to avoid paying in the belief that others will do so.

While it might be argued that a certain level of promotion and market access activity would be organised on an individual business basis, there would be elements of market failure in specific areas. These include:

- control of certain pests and diseases which have the potential to spread to the whole production area if left to individuals' decisions whether to incur a cost of pest control;
- research and development into production and post-harvest techniques and generic and regional promotion are other areas where capturing the full benefits of obtaining information or of generic promotion may be difficult and, therefore, in the absence of industry-wide approaches to funding these activities, under-investment may occur; and
- with respect to the Wine Grapes Marketing Board, encouraging private contracts between growers and wineries to replace a culture that was reliant on the Board's previous marketing powers, is a key role of the Board. Developing a code of conduct and draft contract provisions to facilitate this requires a region-wide approach, and is beyond the ability and resources of individual growers.

In summary, not remaking the Regulation would limit the effective implementation of the Act, and contribute to preventing its objectives being fully achieved.

3.2 Option 2: Make the proposed combined Regulation

The proposed Regulation repeals four Agricultural Industry Services regulations and makes, with very minor amendments of a machinery nature, a new combined

regulation. The Regulation provides for the continuation of the provisions of the four current Regulations, which have been shown to meet the industry needs of the committees' constituents, and to meet with their approval. It also prescribes the processes for polls and elections, which provides certainty and transparency for constituents. The proposed Regulation further allows for a more efficient regulatory structure for the requirements that apply to all industry services committees.

Making the proposed Regulation and providing for compulsory industry levies enables the market failures (as set out under Option 1 and discussed in more detail in sections 4.6.1 – 4.6.4) that would exist otherwise to be addressed, to the benefit of the industry and the community.

Option 2 is considered to yield the greater net benefit and is therefore the preferred option.

4.0 Cost-benefit analysis

4.1 Methodology

The methodology adopted for analysing the options, and the impact of the proposed Regulation, is based on the procedure set out in Schedules 1 and 2 of the *Subordinate Legislation Act 1989*, as well as the following guidelines:

- New South Wales Treasury, *New South Wales Government Guidelines for Economic Appraisal* (July 2007)
- Better Regulation Office, *Guide to Better Regulation* (April 2008)
- Better Regulation Office, *Measuring the Costs of Regulation* (June 2008).

This RIS assesses the impacts of the proposed Regulation against the alternative option of no regulation. Such impacts may include direct and indirect costs and benefits. Where the impacts of an option cannot be assessed in monetary terms, qualitative judgements have been made.

4.2 Machinery clauses

The proposed Regulation will remake many provisions which are considered machinery in nature. The machinery provisions include:

- Part 1, clauses 1-3, sets out the name of the Regulation, its commencement and interpretation of certain terms used;
- Part 2, Division 1, provides definitions regarding the Wine Grapes Marketing Board, and Division 3, provides for aspects of the membership and some procedural requirements of the Wine Grapes Marketing Board;
- Part 3, Division 1, which provides definitions for Riverina Citrus, and Division 3 which provides for the membership of the committee and some procedural requirements.
- Part 4, interstate arrangements, provides for the cross-border committees administered by Victoria for wine grapes and citrus fruits. As a stand-alone regulation these provisions were considered machinery, and it is proposed to consider them in the same way in this RIS.

- Part 5 provides the procedural details for polls and elections under the Act. As a stand-alone regulation these provisions were considered machinery, and it is proposed to consider them in the same way in this RIS.

It is not considered necessary to discuss these provisions in detail, but comment on the above provisions may nevertheless be included in submissions and will be considered.

This RIS therefore discusses the proposed *Agricultural Industry Services Regulation 2009* as it relates to the parts that provide for the Wine Grapes Marketing Board and Riverina Citrus.

4.3 Competition policy

Under section 4(4)(b) of the Act, a foundation regulation to constitute a services committee cannot be made without reference to the competition policy principles set out in clauses 1 and 5 of the *Competition Principles Agreement*. This process ensures that the effect of a foundation regulation on the wider community has been judged to be positive or, at worst, neutral and that the functions of a committee have been assessed by government as services that address market failure. In summary, these principles provide that a regulatory intervention should not be imposed unless the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition. Furthermore, under a market failure framework, government intervention should be limited to addressing problems associated with clear and identifiable areas where freely operating markets fail to produce socially desirable outcomes.

Wine Grapes Marketing Board

Competition policy reviews were undertaken of the Wine Grapes Marketing Board in 1996 and 2001. The 1996 review found that the Board's information collection and dissemination, and research, development and extension industry service functions generated a public benefit by overcoming under-investment in these activities. The 2001 review accepted these conclusions and instead focused on the other functions and services for which the Board was seeking approval at that time. The 2001 review found that, on the basis of their being supported by both wine grape growers and winemakers, the industry services provided a net public benefit:

Riverina Citrus

The 1997 competition policy review of Riverina Citrus found that there would be net benefits to the citrus industry in the MIA, and to the general community, from the NSW Government continuing to authorise collective action by citrus growers to fund and provide specified industry services. The grower constituency benefits directly from the services, and community benefits flow indirectly through increased economic security, more secure supplies of quality food products and the earnings from export benefits.

4.4 Costs and benefits of Option 1

Costs for business

- Potential loss of markets, including export markets. (For example, some overseas markets would be lost if fruit fly was found in products).

- Potential loss of productivity from pest incursions.
- Potential loss from not having access to research information and therefore lack of improvement to products leading to potential for loss of markets.

Costs for government

- Increased requirement for social security benefits where unemployment increases as the industry declines (C'wth).

Costs for consumers

- Potential for increased product prices due to lower productivity or unsaleable product.
- Potential for reduced security of product supply due to increased pest incursions, and limited or no improvements to products and productivity.

Costs for the community

- Potential for loss of employment, leading to reduced regional prosperity and development opportunities.

Benefits for business

- No requirement to pay levies.

Benefits for government

- No requirement to maintain and review legislation.

Benefits for consumers

- Nil.

Benefits for the community

- Nil

4.5 Costs and benefits of Option 2

Costs for business

The main financial cost of the proposed Regulation is the financial cost of paying levies imposed by the industry services committees on wine grapes and citrus fruit, payable by constituent growers in the MIA for deliveries made to wineries, packers and processors.

The current rate for wine grapes is \$3.90 per tonne and the average tonnage of wine grapes delivered by each grower in 2008 was 610 tonnes (based on the estimated deliveries of 294,000 tonnes for 2008). This means wine grape growers will pay an average levy of \$2,380 per year.

The current rate for citrus is \$4.50 per tonne, and the average tonnage of citrus delivered by each grower is 350 tonnes (based on the estimated deliveries of 180,000 tonnes for 2007-08). This means citrus growers will pay an average levy of \$1,575 per year.

Costs for government

- Preparation of the proposed Regulation

Costs for consumers

- Nil.

Costs for the community

- Nil.

Benefits for business

- More effective, because industry-wide, marketing and promotion
- More effective, because industry-wide, biosecurity measures against pest incursions
- Research provided for better products and productivity
- Improved horticultural understanding and practices
- More effective industry-wide communications with, for eg, consumers, government and markets.

Benefits for government

- Co-regulation reduces the cost to government of administration and compliance measures.

Benefits for consumers

- Security of supply as the committees help support and develop industry
- Potential for improved quality of product and certainty of quality

Benefits for the community

- More stability in the industry: supply stability, and employment stability and its impact on social welfare.

4.6 Qualitative analysis

The minor benefits arising from allowing the Regulation to lapse are considered to be outweighed by the costs of doing so. The most significant benefit is that growers would not be subject to a compulsory levy. (How the committees currently allocate the funds raised by the levies is set out in their current budgets in Appendix 3.)

The most significant costs would be to the industry, consumers and the community. These costs are discussed under section 3.1, Option 1. They are associated with market failures which include productivity and market losses due to pests and diseases not being controlled on an industry-wide basis; loss of the research into improved product, techniques and information that the committees provide; and in the case of the Wine Grape Marketing Board, the assistance provided to help the industry become self reliant for negotiations and contracts.

As well, there would be a loss of significant export markets from any loss of fruit fly freedom, a criterion on which north Asian importers accept or reject fruit from specific areas of Australia. Fruit fly freedom can only be achieved by universal participation in control programs, therefore supported by universal contribution of a share of the cost of control.

These benefits are considered to far outweigh the costs of making of the Regulation, of industry paying levies, and potentially consumers paying slightly more to cover the cost of the levy.

The principal economic benefits of the proposed Regulation arise from the committees' authorised service functions. The functions benefit the wider community through the promotion of allocative efficiency, which is the market condition whereby resources are allocated in a way that maximises the net benefit attained through their use. In this case, it is achieved through rectifying market failure without imposing any additional costs on the community.

The market failure justification for the four main types of service functions are described below.

4.6.1 Developing and promoting draft contract provisions (Wine Grapes Marketing Board)

The Wine Grapes Marketing Board's function of acting as a marketing agent for growers and, more recently, setting terms and conditions of payment for 'spot market' sales of wine grapes, has meant that growers for many years had little exposure to private contracting arrangements. The competition policy review of 2001 and the 2007 review of the *Wine Grapes Marketing Board (Reconstitution) Act 2003* both highlighted the efficiency gains associated with an increased use of private contracting, and the role that the Board could play in facilitating and encouraging these more efficient marketing arrangements.

Without the prompting of a lead organisation in which growers have confidence, the associated benefits would be realised much more slowly. The Board is developing a code of conduct for contract negotiations as well as draft contract provisions, and encouraging their wider use. These activities address both the 'imperfect competition' and 'asymmetrical information' market failures. They will lead to increased efficiency and reduced costs in the long-term supply and marketing of wine grapes, thereby forming a strong case for continuation of the current arrangements.

4.6.2 Contribution to the Queensland Fruit Fly control program

The MIA is situated in a contiguous area of citrus production in Victoria, South Australia and NSW that has been designated as a "Fruit Fly Exclusion Zone". As long as the area is free from fruit fly, MIA product is acceptable to important export markets. However, maintaining fruit fly-free status is a continuous task, carried out largely by government agencies, and funded by government and industry.

Currently industry is responsible for funding the industry awareness component of the program, and the industry bodies in the zone - Citrus Growers of South Australia, Murray Valley Citrus Board and Riverina Citrus - all contribute to a program promoting community awareness that is coordinated by Murray Valley Citrus Board. In the year ended 30 April 2008 Riverina Citrus contributed \$88,000.

State Governments (NSW, Victoria and South Australia) fund the following components:

- the sterile fruit fly factory;
- monitoring and testing of traps and specimens; and
- response activities when there is an outbreak.

In the year ended 30 June 2008 the NSW Government disbursed \$1.99 million.

Collection of the industry contribution from all participants is not possible on a voluntary basis. The control of pests and diseases in an area presents classic 'industry good' and 'spill-over' market failure characteristics, requiring the participation of the whole industry for a control program to be successful. The industry contributions from Murray Valley and South Australian growers are also collected under legislative arrangements. Therefore, this is a strong argument for continuation of the current arrangement.

4.6.3 Research and technology transfer

The Wine Grapes Marketing Board and Riverina Citrus are both involved in a range of research and extension activities.

The Board assists growers in vineyard operations with research and extension projects; with workshops, seminars and field days promoting innovation, better pest and disease control and more efficient water use; weekly summaries of weather conditions and forecasts to assist with pest control and irrigation management. The Board also runs its own laboratory, undertakes HACCP auditing, data gathering, and identifying regional research priorities. (HACCP Australia runs food safety programs in food and food related industries.)

Riverina Citrus organises a program of grower meetings, field days and regular newsletters, all of which provide extension and technology transfer information in relation to citrus production. All production issues are addressed in this program, including: cultivation, husbandry, pruning, pest control, quality management and post-harvest techniques. As it is financed by part of the compulsory charge, participation in the program is open to all growers in the area.

The benefits to industry of these research programs centre around overcoming the 'industry good' market failure associated with research and development through collective action. The presence of local funding partners also leverages locally raised funds by encouraging research agencies to invest resources in research trials in the area on topics relating to the area's specific problems.

4.6.4 Product promotion and market research (market access)

The majority of growers would not voluntarily undertake promotional activity due to the fact that they would not receive all of the benefits associated with their investment. There is therefore a potential 'free rider' effect associated with the fact that promotion is essentially an 'industry good', which can be overcome by compulsory collective action and funding through the two industry service committees.

This is particularly the case with MIA wine grapes, where the continued support of growers and wineries for the regional promotion activities undertaken by the Board can be taken as prima facie evidence that regional industry promotion continues to yield net benefits to the region.

4.7 Preferred option

The proposed Regulation is expected to facilitate the operation of the Act by giving effect to its provisions to have statutory committees to provide services to a defined constituency of agricultural producers. The proposed Regulation is consistent with community expectations, the intention of Parliament and does not impose an unnecessary regulatory burden on the community.

By combining the four Regulations into one, there is a reduction in red tape and in future costs to government, as one regulation rather than four will be subject to review under the *Subordinate Legislation Act 1989*.

While the proposals represent continuation of existing functioning arrangements, they also seek to ensure that the statutory framework (for achieving the stated objective of the Regulation) is efficient and effective. It is considered that remaking the existing regulations addresses community expectations regarding the two service committees involved.

The costs and benefits of making the proposed Regulation are such that, when considered against the alternative option, it would be appropriate to make the proposed Regulation. The principal costs are borne by the wine grape and citrus industries in the MIA and their continued support for the proposed Regulation is strong evidence that they receive net benefits, that is, that the benefits exceed the costs.

Similarly, the performance of the service functions by the committees benefit the wider community through the promotion of allocative efficiency through the rectification of market failure without imposing any additional costs on the community.

The benefits to the community of the preferred option are supported by the outcome of a multi-criteria analysis (see Appendix 1). This analysis is a qualitative assessment of the contribution each function makes to the overall outcome for industry and the community. It is based on NSW DPI's 10 years of experience in working with these communities.

Overall, the proposed *Agricultural Industry Services Regulation 2009* is expected to maximise net benefits to the community. It is therefore recommended that the proposed Regulation be made.

5.0 Compliance and enforcement

The proposed Regulation does not include compliance enforcement provisions. Instead, it provides an effective form of co-regulation, with the NSW Government providing statutory backing for an industry administered arrangement. It provides for an industry funded and industry managed scheme of service provision. Responsibility for the collection of compulsory charges rests with the relevant committee or board. At the same time, the management of the committee's or board's funds is subject to public accountability requirements.

6.0 Consultation and review

Since the making of their foundation regulations, both the Wine Grapes Marketing Board and Riverina Citrus have consulted with their constituents on a regular annual basis, and their authority to collect rates and to undertake plans of activity has been agreed by a majority of constituents.

The public accountability requirements and the requirement for meetings of constituents to endorse the annual strategic plans and to endorse the rates proposed, provide an ongoing rigorous process of review.

The proposed Regulation and RIS have been provided directly to the wine grape and citrus growers in the Murrumbidgee Irrigation Area through Riverina Citrus and the Wine Grapes Marketing Board. The public consultation of the proposed Regulation has also been advertised in the *Sydney Morning Herald* newspaper, the Area News (Griffith and Leeton) and in the NSW Government Gazette.

Further, the proposed Regulation will be subject to staged repeal every five years, and is subject to the review provisions of the *Subordinate Legislation Act 1989*.

Appendix 1

Multi-Criteria Analysis

Objectives of the Regulation:

To provide services for the benefit of growers of specified horticultural products in the Murrumbidgee Irrigation Area of NSW.

Option 1: Allow the Regulation to lapse

Option 2: Remake the Regulation

Criteria	Weight (%)	Option 1		Option 2	
		Score	Weighted Score	Score	Weighted Score
Improved contract negotiation and provisions	10	-2	-0.2	2	0.2
Better products and productivity	20	-3	-0.6	3	0.6
Product promotion and market information	25	-3	-0.75	3	0.75
Market benefits from biosecurity	30	-2	-0.6	2	0.6
Improved communications ¹	15	-1	-0.15	1	0.15
TOTAL	100		-2.30		+2.3

Note: Scores are between -5 and +5. A score < 0 indicates that the option does not fulfil the criteria. A score of > 0 indicates that the option meets the criteria.

¹Improved communications between growers of citrus fruit in the MIA and government departments and agencies, public authorities and the general public.

Appendix 2

Parties potentially affected by the regulatory proposal

Affected Party	Nature of interest	Importance
Approx 480 wine grape growers in the Murrumbidgee Irrigation Area	Development of code of conduct for contract negotiations	High
	Development of draft contract provisions and promoting private contracts	High
	Collection and dissemination of market and industry information	High
	Research and development into plant health in relation to wine grapes	Medium
	Education and training in relation to wine grape production and marketing	Low/medium
	Generic promotion (in association with wineries) of MIA wine and the regional industry	High
Wineries in the MIA	Development of code of conduct for contract negotiations and draft contract provisions and promoting private contracts	High
	Generic promotion (in association with wineries) of MIA wine and the regional industry	High
Employees of the Wine Grapes Marketing Board	Provision of services.	
Approx. 510 citrus growers in the Murrumbidgee Irrigation Area	Effective control of Queensland fruit fly	High
	Generic promotion of Riverina citrus fruit	High
	Access to domestic and export market information	Medium
	Extension of research results.	Med/high
Packers and processors of citrus fruit in the MIA.	Generic promotion of Riverina citrus fruit	High
	Access to domestic and export market information	Medium
Employees of Riverina Citrus (4)	Provision of services	

Current budgets used in provision of committee services

1. Wine Grapes Marketing Board

The 2008 budget of the Wine Grapes Marketing Board projected revenue of about \$865,000, of which approximately:

- \$49,000 was allocated to the development of a code of conduct for contract negotiations and draft contract provisions;
- \$208,000 was allocated to information collection, dissemination and transfer;
- \$12,000 was allocated to publishing price information and communicating with wineries;
- \$210,000 was allocated to research, development and extension activities;
- \$31,000 was allocated to regional promotion;
- \$33,000 was allocated to regional representation of wine grape growers and industry;
- \$163,000 was allocated to the overhead and operational costs of service provision; and
- \$159,000 was identified as a potential surplus.

2. Riverina Citrus

The 2007-08 budget of Riverina Citrus was approximately \$725,100, of which approximately:

- \$203,949 was to be spent on research and technology transfer activities;
- \$86,600 was to be spent on industry information dissemination;
- \$88,000 was to be spent on the Fruit Fly Control Program;
- \$93,940 was to be spent on industry promotion;
- \$97,150 was to be spent on exploration of export markets; and
- \$155,500 was to be spent on the overhead costs of service provision.

The committees have permanent secretariats and full time staff to carry out their functions. The approximate annual cost of salaries and administrative overheads of service delivery for the Wine Grapes Marketing Board for 2008 was projected to be \$163,000. The figure for Riverina Citrus is \$155,500.