



Australian Government  
Department of Agriculture,  
Fisheries and Forestry



# Independent report into NSW Rice Vesting Arrangements

Report to NSW Government

Research by the Australian Bureau of Agricultural and Resource Economics and Sciences

16 May 2023



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### Acknowledgement of Country

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.

# Contents

|   |           |
|---|-----------|
| <b>Contents</b> .....   | <b>3</b>  |
| <b>Summary</b> .....  | <b>4</b>  |
| <b>1 Introduction and review context</b> .....  | <b>1</b>  |
| <b>2 New South Wales rice production and marketing</b> .....                          | <b>4</b>  |
| 2.1 New South Wales rice marketing .....  | 8         |
| <b>3 Assessment of the 2021 NSW DPI review</b> .....                                  | <b>11</b> |
| 3.1 Stakeholder views .....   | 12        |
| 3.2 Reviewing the analysis in the 2021 NSW DPI Review .....                           | 14        |
| <b>4 Appropriate response to the 2021 Review</b> .....                                | <b>21</b> |
| 4.1 Challenges facing southern NSW rice production.....                               | 21        |
| 4.2 What if vesting were to continue? .....   | 24        |
| 4.3 What if vesting were removed? .....   | 26        |
| 4.4 What’s the appropriate response?.....   | 27        |
| 4.5 A transitional role for the Rice Marketing Board .....                            | 28        |
| 4.6 The northern New South Wales industry .....                                       | 29        |
| 4.7 Other issues.....   | 31        |
| <b>5 Governance and transparency</b> .....  | <b>32</b> |
| 5.1 Governance of the RMB .....   | 32        |
| 5.2 Transparency .....  | 34        |
| <b>6 Research, development and extension; and access to seeds and varieties</b> ..... | <b>38</b> |
| 6.1 Research, development and extension .....   | 38        |
| 6.2 Rice breeding.....  | 40        |
| 6.3 Access to seed .....  | 43        |
| <b>7 Other issues</b> .....   | <b>45</b> |
| 7.1 Buyer of last resort .....  | 45        |
| 7.2 Competition issues .....  | 47        |
| 7.3 Ensuring the quality of rice exports .....  | 49        |
| 7.4 International marketing of NSW rice .....   | 51        |
| <b>Appendix A: Terms of reference</b> .....   | <b>54</b> |
| <b>Appendix B: Stakeholder consultation summary</b> .....                             | <b>55</b> |
| <b>Appendix C: Implementation Plan</b> .....  | <b>57</b> |
| <b>References</b> .....   | <b>59</b> |

# Summary

Rice in New South Wales is vested in a statutory marketing board and rice exports are marketed by a sole and exclusive export licence (SEEL) holder, SunRice. This arrangement is regularly reviewed, most recently by the NSW Department of Primary Industries (DPI) in 2021, to ensure that the benefits outweigh the costs.

ABARES has been commissioned by the NSW DPI to deliver an independent report on the NSW rice vesting arrangements to the NSW Minister for Agriculture. In developing this report, ABARES assessed the findings and other information identified in the 2021 Review and asked stakeholders and other experts for feedback on a range of matters following NSW rice industry, including the findings of the 2021 Review; governance arrangements and transparency of information related to rice vesting; and the ability of industry participants to access commercial seed varieties and research, development and extension activities.

ABARES has also been asked to make recommendations to Government on the most appropriate response to the review and deliver an implementation plan for any changes required to the existing regulatory structure and governance arrangements.

## **Views on the 2021 NSW DPI report**

In general, ABARES' observations around the support for vesting among stakeholders are consistent with the findings of the 2021 Review – that is, a strong majority of southern NSW growers support vesting, and northern NSW growers do not.

Reasons given for supporting vesting include the strong integration of research and development, extension, grower services and marketing activities; the peace of mind generated by the buyer of last resort provision, and the ease associated with marketing rice compared with other crops. The reasons given by those opposing vesting centre around their strong view that the single desk export arrangements hinder the development of alternative supply chains in both northern and southern New South Wales, and the resulting lack of marketing options provided to growers.

ABARES also asked stakeholders for feedback on 2021 Review. The findings of the review – that there is no conclusive evidence of net benefits to growers or the community from the current vesting arrangements – were criticised by many stakeholders, as were the estimates of the potential growth of alternative supply chains to SunRice in the absence of vesting. In ABARES' view, the 2021 Review is the most comprehensive review of the rice vesting arrangements to date. In particular, and unlike in most of the previous reviews into the vesting arrangements, the review correctly identified that the restriction of alternative supply chains represents an opportunity cost imposed by the vesting arrangements.

## **Vesting hinders efficient industry adjustment to low water availability and should be removed**

Rice production in southern New South Wales is highly correlated with water availability. A combination of lower water supply (due to drier conditions and environmental water recovery policies in the Murray-Darling Basin (MDB)) and greater demand (primarily due to increased irrigation of increased horticulture and cotton production in the southern MDB) has reduced the volume of water available for rice production.

As a result, there has been a significant decline in rice production over the past 20 years. Total NSW rice production has averaged less than half the levels of the 1990s and has been characterised by more variable production levels. ABARES modelling of the MDB Water Markets indicates that water availability – and rice production – is likely to decrease further in coming years.

Rice vesting restricts the NSW rice industry's ability to respond efficiently to these pressures. In particular:

- the buyer of last resort provision restricts SunRice's ability to rationalise its processing capacity to better match current and likely future rice production levels in southern NSW
- the uniform pricing requirement restricts SunRice's ability to offer to better terms to more efficient growers with more reliable access to water allocations to encourage them to continue to produce rice.

The net result of this arrangement is that returns to rice growers are reduced: the costs of SunRice's handling, storage and processing capacity are higher than what would be efficient, reducing returns to all growers; and SunRice is unable to offer higher returns to preferred suppliers. As a result, vesting restricts the rice industry's ability to flexibly respond to the challenge of lower water availability in the most efficient way.

In addition, by allowing only SunRice to export NSW rice the vesting arrangements inhibit the development of alternative supply chains, both in southern and northern New South Wales. In the south this has the effect of limiting the options for growers to market their crops, and in the north the potential growth of rice production is hindered.

The rice vesting arrangements were established in response to grower preferences around the marketing of their rice in the 1920s, and have contributed to the development of a vertically-integrated industry with significant grower influence. However, there is no longer a clear consensus regarding marketing arrangements among growers, there is no strong evidence that vesting is required for the premium prices achieved for Australian rice, and there is the possibility that vesting is holding back the industry from achieving higher grower returns. As such, there is no longer a compelling case for the continuation of vesting.

In ABARES view, the vesting arrangements should be removed.

- For the southern NSW rice industry this represents a significant change in the marketing of rice. To allow time for an appropriate transition rice vesting should not be renewed beyond 30 June 2027, but this decision should be communicated to the industry as soon as possible.
- The almost complete separation of the northern NSW industry from the southern supply chain means that there is no reason why the prohibition on the export of northern-NSW grown rice should not be removed as soon as practicable.

### **Managing an orderly transition to a post-vesting rice industry**

The removal of vesting – in particular the likely termination of the buyer of last provisions – would be a significant change for southern NSW rice growers and regional communities. There is a role for the Rice Marketing Board (RMB) to act as a conduit between the industry and government in identifying and managing transitional issues as they arise. In order for the RMB to effectively carry out this role, improvements should be made to its governance – in particular, its cross-directorship arrangements with the SunRice board should be removed.

While the RMB currently publishes estimates of the export price premiums and freight discounts achieved by SunRice in marketing NSW rice, this does not tell the full story of the impact of vesting on grower returns and does not allow rice growers to fully appreciate the value of their crops. Transparency and price discovery would be enhanced if the more detailed information on the range of factors contributing to returns was made available to growers.

Industry-funded research, development and extension activities are a key part of the rice industry's response to lower water availability. The current governance structures of rice industry RD&E – in particular rice breeding – feature prominent roles for SunRice. It will be important to ensure that future industry-funded RD&E arrangements allow input from a range of stakeholders and support competition in a post-vesting rice industry.

## Recommendations

### **Recommendation 1**

The NSW Government should not extend vesting beyond 30 June 2027.

- From 30 June 2027 the *Rice Marketing Act 1983* should be repealed, and the Rice Marketing Board and all licencing requirements abolished.
- This decision should be communicated to the sector as soon as practicable.

### **Recommendation 2**

The objectives of the RMB should be amended to reflect a new role of working with affected rice industry stakeholders to advise the NSW Government on transitional issues relating to the removal of vesting.

### **Recommendation 3**

Northern NSW-grown rice should be exempt from the general prohibition on the export of rice grown in New South Wales as soon as practicable before 30 June 2027.

### **Recommendation 4**

NSW Government and the RMB should ensure that the cross-directorship requirement in the SEEL agreement is removed as soon as practicable.

### **Recommendation 5**

Prior to the cessation of vesting, the NSW Government and RMB should work with SunRice to improve reporting to growers. Such reporting should better reflect the returns to growers under vesting, including more transparency of the costs charged to growers by SunRice through the rice pool.

### **Recommendation 6**

The Rice Marketing Board should publish the content of the SEEL agreement on its website.

### **Recommendation 7**

The NSW Government should work with the Australian Government to ensure that future industry- and publicly-funded RD&E arrangements – including breeding – allow input from a range of stakeholders and support competition in a post-vesting rice industry.

### **Recommendation 8**

NSW DPI should work with co-owners to clarify access to germplasm by industry.

# 1 Introduction and review context

Rice in New South Wales is marketed via a statutory marketing board – the last of approximately 60 marketing boards that existed across a wide range of agricultural commodities in Australia from the 1920s – and rice exports are marketed by a sole and exclusive export licence holder. Consistent with the Intergovernmental Agreement on Competition and Productivity Enhancing Reforms (COAG 2016), the arrangement is regularly reviewed to ensure that the benefits of the arrangements outweigh the costs.

The latest such review was undertaken by the NSW Department of Primary Industries (DPI) in 2021. In response to the review the NSW Government announced that in order to provide certainty to the rice industry the vesting arrangements would be extended to 30 June 2027, and that it would commission an independent report to address a broad range of issues identified by the 2021 Review. The NSW Government has commissioned ABARES to deliver the report (Appendix A).

## 1.1.1 What we are being asked to do

In developing this report, ABARES assessed the findings and other information identified in the 2021 Review and asked stakeholders and other experts for feedback on the following matters related to the NSW rice industry:

- the findings of the NSW 2021 Rice Vesting Review
- governance arrangements and transparency of information related to rice vesting
- ability of industry participants to access commercial seed varieties and research, development and extension activities
- operation and tangible benefits of the ‘buyer of last resort’ provision
- consideration of relevant Australian competition law
- any other issues considered necessary.

The report has been structured around the terms of reference; this chapter provides background context on competition reviews; chapter 2 the production and marketing of rice in New South Wales; chapter 3 provides an assessment of the 2021 Review; and chapter 4 recommends the appropriate response to the 2021 Review. The remainder of the report considers issues identified in the terms of reference: chapter 5 governance and transparency; chapter 6 research development and extension; and chapter 7 other issues.

## 1.1.2 Reviews of New South Wales rice marketing regulation

Since the 1980s a large number of agricultural markets in Australia have been deregulated. At the start of the 1980s there were approximately 60 statutory marketing boards for agricultural commodities in Australia. Competition-based reforms starting in the mid-1980s have resulted in the deregulation of almost all of these markets. The statutory market arrangement for the NSW rice market is the last such arrangement in Australia.

One of the key drivers has been the 1995 Competition Principles Agreement between the Commonwealth and state and territory governments. This agreement prioritised reform to remove unnecessary regulatory barriers to competition, and was reaffirmed when the parties agreed to the Intergovernmental Agreement on Competition and Productivity Enhancing Reforms (IGA) in 2016.

The IGA include a guiding principle that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs
- the objectives of the legislation can only be achieved by restricting competition.

This ‘competition test’ is a key component of why rice vesting is heavily scrutinised. It is well documented that a number of significant benefits arise from increased competition, including efficiency gains, innovation and choice (see, for example, PC 2005, Gray et al 2014). Therefore the onus is on the proponent of a regulatory intervention to both demonstrate that the benefits of intervention outweigh the costs of restricting competition, and that there are no better means of achieving the objective (NSW Government 2017).

As a result of the NSW Government’s commitment to competition and productivity enhancing reforms – as well as its standard practice of reviewing legislation on a periodic basis to ensure the policy objectives of the legislation continue to be in the best interests of the State of New South Wales – there have been multiple reviews by different organisations into the rice vesting arrangements. The findings of these are summarised below.

- The 1995 NSW Government Review Group found that the vesting arrangements generated price premiums and a net public benefit. However, it suggested that the arrangement should continue under Commonwealth legislation rather than NSW legislation and the domestic market should be deregulated.
- The 2005 Review prepared for NSW Department of Primary Industries found that the vesting arrangements continued to deliver net benefits to the industry and broader community. It raised concerns about the transparency of the pool price and governance of the RMB.
- The 2010 Review prepared for NSW Minister for Primary Industries considered a range of issues and ways to improve performance metrics. Specifically, it noted the rice industry was likely to face increasingly challenging operating environment in relation to water availability and this warranted a higher level of monitoring, in addition to the periodic reviews, to demonstrate export returns were being delivered to growers.
- The NSW Government 2012 Review found evidence that the single desk, enabled by vesting, deliver price premiums in export markets relative to SunRice competitors selling into those markets.
- The NSW DPI 2016 Review found evidence of price premiums but noted that the vesting arrangements were discouraging the growth of the rice industry in northern New South Wales.
- The 2016 Commonwealth Productivity Commission (PC 2016) analysis found little to no evidence of a sustained and positive price premium, and that any premiums are offset by lower returns in other markets. It recommended vesting be abolished.
- The NSW Productivity Commission Green and White Papers (NSW PC 2020 and NSW PC 2021) recommended that the vesting arrangements should be allowed to expire unless it could be determined that they provide a net public benefit to the community.
- The NSW DPI 2021 Review found no conclusive evidence that vesting, through the restriction of export competition, is delivering higher prices for NSW rice exports – rather, higher prices are most likely attributable to a range of factors (such as a quality product, year-round supply, and commercial expertise) that do not depend on a single export desk. It noted that there is no evidence that competition to SunRice will put New South Wales’ rice export



markets at risk and stated that greater competition and choice would enhance the long-term viability of the NSW rice industry. It concluded that there is no conclusive evidence of net benefits to rice growers or the community from the current vesting arrangements.

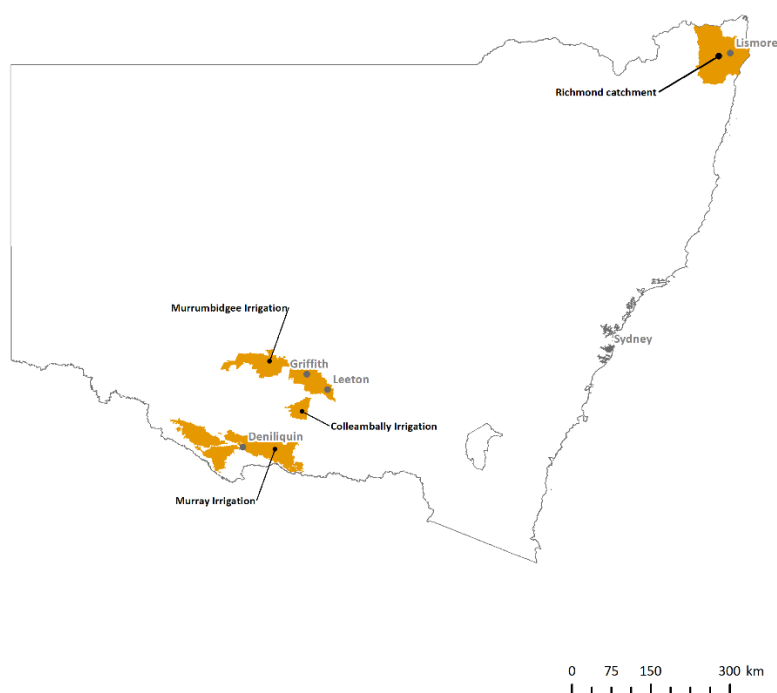
The reviews differ on many of their findings due to the methodologies employed and data availability. The focus of the reviews shifted over time as industry pressures evolved. In recent years there has been increasing scrutiny about whether any price premiums are attributable to vesting, although earlier analyses also raised this question (see, for example, Griffith and Mullen 2001). There has also been a varied focus over time on the returns to growers through the transparency of the pool and cost pooling arrangements. The 2021 Review considered the wider costs and benefits of vesting beyond the calculation of price premiums and freight scale advantage, which makes it more in line with the competition principles and the most comprehensive report to date.

This report outlines the most appropriate response to the 2021 Review and explores specific aspects of the 2021 Review that required further attention. To inform our understanding of the issues, ABARES held meetings across the Riverina, northern New South Wales and Canberra with industry stakeholders and growers, and received submissions from businesses, organisations and individuals (Appendix B). ABARES greatly appreciates the time provided by these stakeholders to inform our understanding of the issues covered in the terms of reference.

## 2 New South Wales rice production and marketing

Rice production in Australia is concentrated in the Riverina and Murray regions of southern New South Wales, with a small amount of production in the Northern Rivers region of northern New South Wales (Map 1). Rice production in the south is driven largely by irrigation water availability and in the north by adequate, timely rainfall.

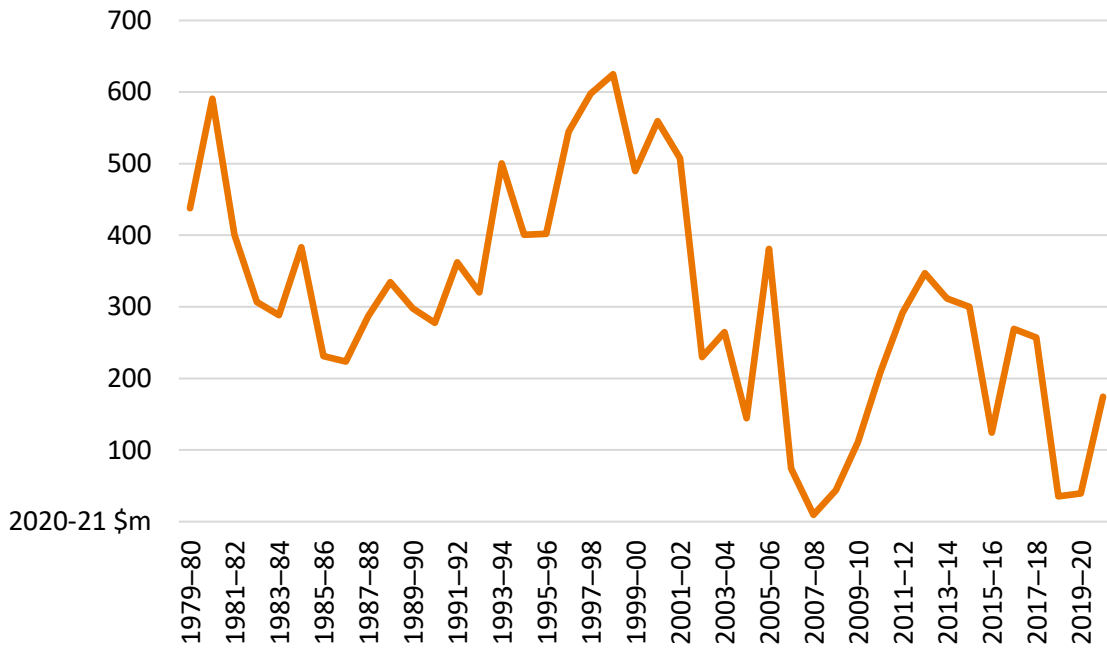
**Map 1 Rice production regions in New South Wales**



Sources: Adapted from Coleambally Irrigation Ltd, Murrumbidgee Irrigation Ltd and Murray Irrigation Ltd; Catchment: GA 1997; State boundary: ABS 2021.

Over the past 20 years the gross value of production of Australian rice has averaged around \$215m in real terms (Figure 1), but has been volatile – the value of production has been as high as \$381m in 2005–06 and as low as \$10m in 2007–08 and \$35m in 2018–19.

**Figure 1 Gross value of rice production**

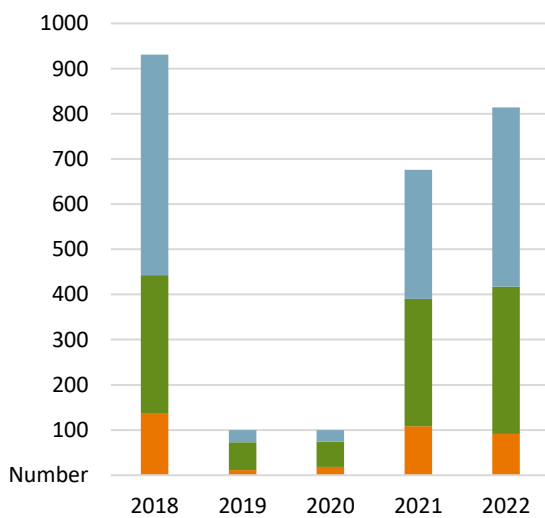


Source: ABARES 2022

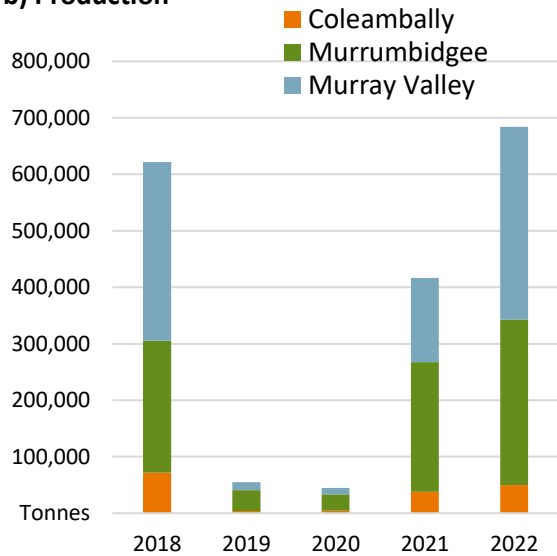
In southern New South Wales, rice is grown in the Murrumbidgee Irrigation Area, the Coleambally Irrigation Area and the Murray Valley Irrigation District. The number of farms and volume of production in these regions varies depending on the availability of water. In 2018, a year with relatively high water allocations, 931 farms harvested rice in southern New South Wales, but during drier years such as 2019 and 2020, the number can fall to as low as 100 (figure 2a).

**Figure 2 New South Wales rice summary statistics**

**a) Number of farms producing rice**



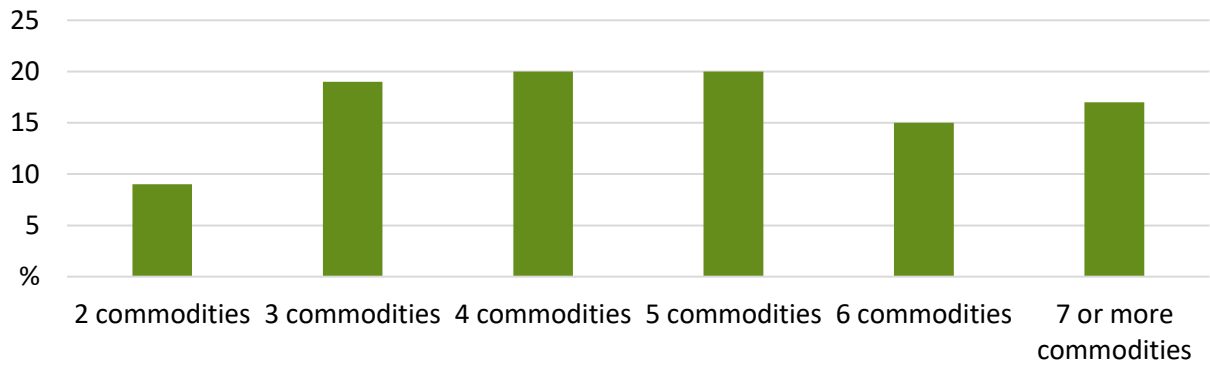
**b) Production**



Source: RMB 2023a

Rice production in southern New South Wales forms part of a mixed irrigation agricultural system. ABARES farm survey data shows that farms that grow rice as a summer crop also generally produce several other agricultural commodities across the year, including pasture, cotton, and livestock (Figure 3). As such, rice producers in southern New South Wales can be best be considered ‘irrigators’ rather than rice growers, and they consider a wide range of factors when making decisions about planting rice.

**Figure 3 Commodities produced by farms in rice growing areas**

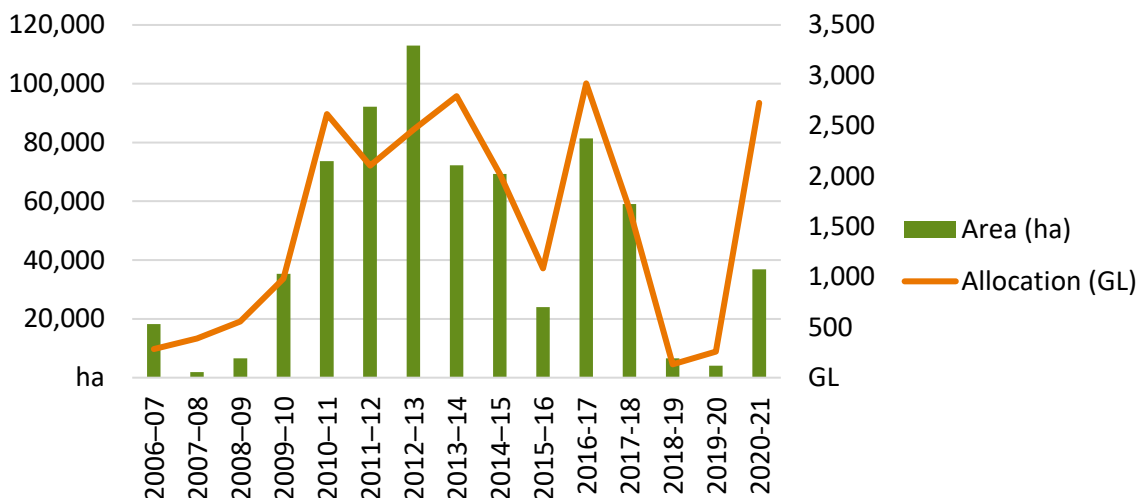


Note: The average annual number of commodities grown on individual farms in the southern NSW irrigation areas in the five years to 2020-21.

Source: ABARES 2023b

Farms that can irrigate have a choice on how to best to allocate their water allocations, whether on-farm among a variety of uses or to trade the allocation off-farm. In years when water is readily available (and water prices low), rice is a high-returning crop and production is relatively high. In years of low water availability (when water prices are high), the water-intensive nature of rice production makes it a less attractive option than alternatives and production is low. As such, area planted to rice is highly correlated with water availability (Figure 4).

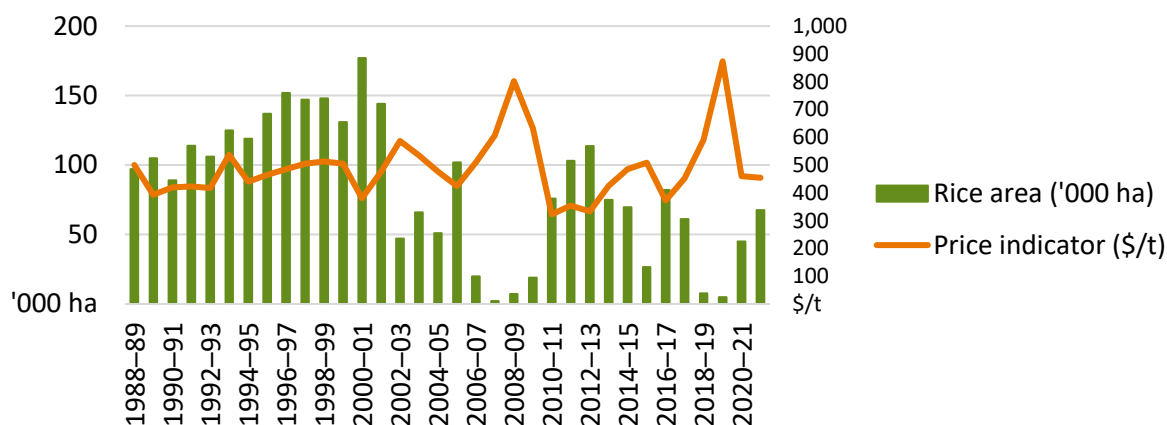
**Figure 4 Total rice area irrigated and general security water allocations in Murrumbidgee and NSW Murray**



Source: RMB 2023a, NSW DPE 2023.

Price is also a key component in the decision to grow rice. Most years SunRice offers a rice pool price which includes varietal premiums and discounts but is only determined definitively after the crop is marketed and sold, as well as a limited volume of fixed price contracts. In years of low water availability higher fixed price contracts have been offered to provide an incentive to growers to plant rice to meet premium contracts or maintain seed stocks for subsequent years (Figure 5).

**Figure 5 Rice area and price received**



Source: ABARES 2022

In northern New South Wales, rice is grown by a small number of growers on the coastal river floodplain in the Richmond Valley, near Lismore and Casino (Aither 2018). The climate in northern New South Wales is characterised by higher overnight temperatures during summer compared with southern New South Wales and this significantly reduces the need for flood irrigation which is used in the southern region to insulate the rice from lower temperatures. Rice grown in the Northern Rivers region also depends on in-season summer rainfall, rather than stored water. Rice production in Northern Rivers profitably utilises land prone to waterlogging that is not well-suited to other enterprises. The reliance on rainfall and climate introduces production risks and also requires use of deeper rooted, more drought tolerant rice varieties.

Rice production in northern New South Wales represents roughly 1-3% of New South Wales rice production. For the 2022-23 season, approximately 1200 ha of rice has been planted with an expected production of around 5000 tonnes. Stakeholder feedback indicates that rice production in northern New South Wales is currently limited by processing capacity.

**Table 1 Northern New South Wales rice production**

| Year | Paddy production | Proportion of NSW production |
|------|------------------|------------------------------|
|      | t                | %                            |
| 2018 | 3,857            | 0.6                          |
| 2019 | 540              | 1.0                          |
| 2020 | 1,362            | 2.9                          |
| 2021 | 2,611            | 0.6                          |
| 2022 | 1,772            | 0.3                          |

Source: RMB 2023a

## 2.1 New South Wales rice marketing

Marketing of NSW rice is regulated by the *Rice Marketing Act 1983* (the Rice Marketing Act; the Act) which establishes the Rice Marketing Board for the State of New South Wales (RMB). The objectives of the RMB, proclaimed in 2009, are:

- a) to encourage the development of a competitive domestic market for rice
- b) to ensure the best possible returns from rice sold outside Australia based on the quality differentials or attributes of Australian grown rice
- c) to liaise with and represent the interests of all NSW rice growers in relation to the Board's functions and objects.

The rice vesting arrangements mean that all rice produced in New South Wales is divested from producers at harvest and vests with the RMB. Since 2006 the RMB has been able to appoint authorised buyers under licence to purchase NSW-grown rice for marketing within Australia. However, only one licence is issued for the export of NSW-grown rice; this is known as the sole and exclusive export licence (SEEL). The current holder of the licence is Ricegrowers Limited, trading as SunRice.

As a result of these arrangements and licensing system for purchase of rice, the export of rice grown in New South Wales is prohibited except with the written approval of the RMB. This arrangement effectively establishes the single desk export system for NSW rice and thereby rice grown in New South Wales can only be exported by SunRice, with the other authorised buyers limited to the domestic market.

The agreement between the RMB and SunRice also stipulates other requirements as the holder of the SEEL. Among them is the obligation for SunRice to be the buyer of last resort for NSW rice and also to operate a crop marketing and payment system as required by s64 of the Rice Marketing Act (including acquiring rice of the same grade as near as possible at a uniform rate).

### 2.1.1 Processing and marketing supply chains

Processing and marketing of NSW rice is essentially split into two supply chains: the dominant SunRice supply chain, and a much smaller, separate northern NSW supply chain. There is a small number of other authorised buyers who grow and process small quantities of rice but have not emerged as significant competition to SunRice in the domestic market.

SunRice is a large company with a number of leading rice brands globally. It has an international presence in Australia, the United States, Singapore, United Arab Emirates, New Zealand, Solomon Islands, Japan, Jordan, Vietnam and Papua New Guinea. SunRice is a publicly listed company, with a dual class shareholding structure that gives rice growers a measure of control over the company (Box 1).

Rice is harvested at a significantly higher moisture content than many other crops which means it requires relatively specialised drying and storage facilities. As a result, rice growers need to plan for how they will deliver rice prior to harvest and understand what marketing options are available to them. A long history of investment by the NSW rice industry has created network of receival, storage and handling facilities widely dispersed through the Murray and Riverina regions, and three processing mills of a globally-efficient size based in the towns of Leeton and Deniliquin. These assets

are now owned by the SunRice group and represent a gross storage capacity of 1 million tonnes (DPI 2021) and a processing capacity of 800,000 tonnes (CIE 2021).

The northern NSW supply chain is separate from that in southern New South Wales and is effectively restricted by regulation to marketing on the domestic market. The Natural Rice Co Pty Ltd is the main rice marketer in the region and can currently handle and store around 6,000 tonnes. Processing is currently undertaken by a third party under contract. During consultations the Natural Rice Co noted that it has plans for expansion under the current regulatory arrangements, but further expansion beyond that point was hampered by the inability to diversify their marketing risk away from the domestic market.

### **Box 1 SunRice shareholding structure**

SunRice is an Australian Stock Exchange (ASX)-listed consumer-focused global food group comprising multiple businesses. The current structure of the company is built around a dual class shareholding.

- A-Class shareholders have control over director elections and constitutional changes, and ownership is restricted to active rice growers. A-class shares are not quoted on the ASX.
- B-Class shareholders have economic rights to receive dividends from SunRice which are derived from the profit businesses. These shares are quoted on the ASX.

SunRice notes that this share structure and the limited voting rights attached to B-Class shares distinguishes the company from other typical ASX-listed entities, which generally have a single share class with one vote per share.

The objective of SunRice is to optimise returns for both classes of shareholders. As rice growers, A-class shareholders receive payments for their rice via the rice pool business which deals with the receipt, milling, marketing and selling of southern NSW rice. Growers receive the balance of revenue (net of expenses) of the rice pool business in the form of paddy prices, and as such in most years this results in a nil net profit before tax for the rice pool business. Returns to B-Class shareholders are aligned with SunRice's profit businesses; the after-tax profits of these businesses (less retained earnings) are generally available for distribution to B-Class shareholders in the form of dividends that may be declared by the Board.

Despite the rice pool and profit businesses being separate, there are links between them. The profit businesses charge the rice pool for items such as asset financing and use of brands and assets, and the rice pool receives payment for rice products used as inputs to the profit businesses. In years of low rice production, the profit business has subsidised the rice pool business in the form of a paddy price supplement, reducing the returns available to B-Class shareholders.

There is a considerable overlap between A-Class and B-Class shareholdings. In 2019, when SunRice released their Information Memorandum in order to list on the ASX, SunRice noted that around 45% of the B-Class shares on issue were held by A-Class Shareholders.

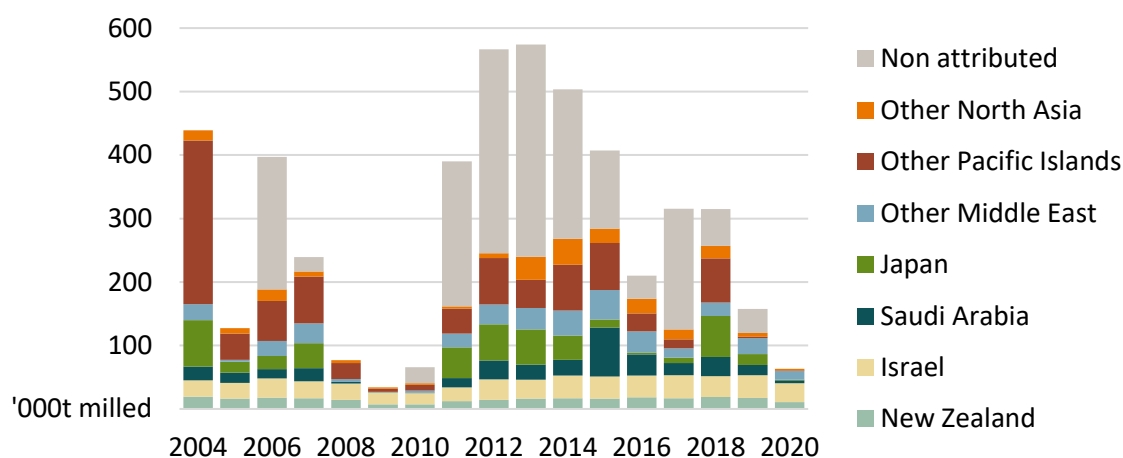
Source: SunRice 2019

### **2.1.2 Markets for New South Wales rice**

The Australian consumption of rice was around 350,000 tonnes in 2021-22 (ABRES 2022). The domestic market is supplied through domestic production and imports. There are no marketing restrictions on rice imports, and they make up roughly 60 per cent of Australian rice consumption. However, there are product differences, with Australia importing mostly long-grain varieties such as basmati and jasmine rice, and medium grain consumption being largely met by domestic production.

Between 2011–12 and 2021–22 Australia exported an average of 325,000 tonnes of rice per year, with significant year-to-year variability. Around half of Australian rice production is exported, but the volume of exports varies with production levels. In years of low domestic production rice grown in Australia is mostly marketed on the domestic market and New Zealand. In years of high domestic rice production, rice is marketed globally, with priority given to high value markets, such as the Middle East, then moving towards lower value tender markets depending on the volume received. In medium grain rice markets this volume makes Australia a small exporter, representing around 7% of global medium and short grain rice exports and 0.8% of total rice exports between 2011–12 and 2021–22 (ABARES 2022). The main competitors in medium grain rice markets are the United States – particularly California – and China.

**Figure 6 Volume of Australia’s rice exports by destination, 2007 to 2020**



Note: An exporter can apply to the ABS for export data to be made confidential when ‘disclosure would be likely to enable the identification of that business’ (ABS 2018). Confidentiality restrictions are applied to rice export data. ABARES obtains estimates by using other countries’ import data and creating a non-attributed element based on the actual ABS export data. This is the balance between the reported import data and the actual export data that cannot be reconciled. This element is classified as ‘Non attributed’. Therefore, export data presented here should be considered estimates.

Source: ABARES 2022; UN Statistics Division 2023

Rice is the leading staple food in much of the world, and its vital role makes its availability and price politically sensitive for governments in several regions (USITC 2015). Many major rice-consuming countries aim to promote self-sufficiency in rice production and use trade barriers, most commonly tariffs and quotas, to shield their producers from the international market (Greenville 2020). Significant amounts of rice can also be traded through government-to-government contracts. This makes rice a relatively thinly traded product – in 2021-22 global rice exports were 9.7% of global consumption, compared with wheat where exports made up 25.5% of global production (ABARES 2022). The global rice market is therefore volatile and subject to significant interference from protectionist governments.



## 3 Assessment of the 2021 NSW DPI review

### Key points

- There is broad support among growers for the current vesting arrangements, although a minority of growers in the Riverina and growers in northern New South Wales would prefer to see them removed.
- Many stakeholders were critical of the findings of the 2021 Review, particularly its projections for the growth of alternative supply chains in the absence of vesting.
- In ABARES' view, the 2021 Review is the most comprehensive review of the rice vesting arrangements to date. In particular, the review correctly identified that the restriction of alternative supply chains represents a potentially significant opportunity cost imposed by the vesting arrangements.
- Based on the 2021 Review, a strong case can be made that the NSW rice vesting arrangements do not meet the competition test.

The broad findings of the 2021 NSW DPI rice vesting review were that:

- there is no conclusive evidence of net benefits to growers or the community from the current vesting arrangements
- current arrangements restrict the growth of alternative supply chains and innovation in farm businesses
- removing vesting would have a relatively small impact on most growers and on SunRice (at least initially) but would most likely increase the value of the NSW rice industry.

ABARES has been asked to assess stakeholder views on the findings of the 2021 Review. Over the course of the report, ABARES met with:

- more than 50 rice growers over 8 face-to-face meetings across southern and northern NSW rice growing districts
- rice marketing businesses, including SunRice and the Natural Rice Co
- grower representative bodies, including the Ricegrowers Association of Australia (RGA) and the Northern Rivers Rice Growers Association
- statutory bodies including the RMB for New South Wales, AgriFutures, and officials from the NSW Department of Primary industries, the Australian Competition and Consumer Commission, The Department of Foreign Affairs and Trade, and the (Commonwealth) Department of Agriculture, Fisheries and Forestry.

In addition, ABARES received 26 written submissions (see Appendix B for more information).

ABARES acknowledges that care should be taken in drawing broader inferences from the sample of people who participated in the consultation process. The report team faced some challenges in its stakeholder engagement which may have reduced participation in the report.

- Significant flooding in the southern New South Wales in October-December 2022 resulted in delayed winter crop harvests, and delayed rice planting. Stakeholder meetings were postponed to February 2023 as a result.
- Many participants reported 'consultation fatigue' with this report following the 2021 Review rice vesting review as closely as it did.

This chapter reports back on the feedback from stakeholders on the findings of the 2021 Review. Stakeholder feedback relating to specific issues is also reported in other chapters of the report. This chapter also summarises ABARES assessment of the analysis undertaken and conclusions reached in the 2021 Review.

## 3.1 Stakeholder views

The views from growers set out below reflect the combined feedback received through stakeholder meetings, submissions and correspondence. ABARES has attempted to accurately capture the broad feedback of those stakeholders who contributed to this report. Where possible institutional stakeholders have been identified.

### 3.1.1 Broad impressions

In general, ABARES' observations around the support for vesting among stakeholders are consistent with the findings of the 2021 Review – that is, a strong majority of southern NSW growers support vesting, and northern NSW growers do not. Due to the low number of written submissions received for this report it is not possible to replicate the quantitative analysis of stakeholder support that was included with the 2021 Review.

The majority of southern growers supported the 'ecosystem' of marketing arrangements in the rice industry, particularly when compared with their experience in marketing other crops. This notion reflects the value they place on the integration of R&D, extension, grower services and marketing.

Growers also commonly noted the 'community' nature of the rice industry, and that distribution of pooled profits means that big and small producers are treated equally. As one grower submitted 'we aren't working against our neighbours to achieve the best outcomes'.

The peace of mind generated by the buyer of last resort provision was commonly noted, and the fact that SunRice was a trusted buyer, particularly when compared with the marketing risk present when growers market other commodities. The RGA submitted that:

The RGA members regularly comment on their frustration in securing an appropriate price for the other commodities they produce, along with trust in the buyer to pay in full and on time. The frustration and stress this causes often leads to mental health issues farming family members experience. (RGA submission to ABARES report)

Related to this, a common sentiment expressed by growers was the ease associated with marketing their rice crops. Growers noted that with their other crops they are 'on the phone all day checking out the marketing apps' – but with rice the marketing role is outsourced to SunRice and growers can concentrate on growing their crop.

Growers expressed views about the risks involved in removing vesting. These included an increase risk of foreign ownership of SunRice if the industry became more fragmented; the risk of lower prices

if competing supply chains were allowed to sell into SunRice's premium markets; and the risks to growers if SunRice were in effect to become an unregulated monopsony (that is, the sole buyer in the market).

Not all southern growers shared these views. The so-called 'breakaway' growers, as well as some other growers in the southern meetings, were concerned about the cross subsidy inherent in the pooling arrangement – they perceived that they were not able to realise the full value of their crop and were being denied alternative premium marketing opportunities. The cost of having to pay for SunRice's perceived storage, processing and handling overcapacity through their pool returns was also noted. The general view at these meetings was 'it's my crop, I should be able to sell it the way I want to'.

In ABARES' discussions with northern rice growers the overwhelming feedback was frustration that despite the 2021 Review finding that vesting was no longer required to support the industry, the NSW Government decided to continue the vesting arrangements until 2027. It was noted at the northern growers' meeting that the NSW Government was 'treating their citizens unfairly', and that they are treated differently to SunRice and their suppliers. It was also noted that vesting offered no benefit to northern growers as prohibitive distances locked them out of the rice pool, and the Rice Marketing Act locked them out of export markets. They also noted the lack of research, development and Extension (RD&E) support provided to them by the wider industry.

Northern growers noted that rice production gives them diversification options and allows them to generate returns from low lying land that is prone to waterlogging. The Natural Rice Co stated that the inability to export placed a limit on the size of the northern industry, and that the potential for growth in the industry was demonstrated by the fact that growers took up all available supply contracts within days of their release.

### **3.1.2 Restriction of alternative supply chains**

Growers supporting vesting, as well as SunRice and the RGA, were very critical of the assumptions in the 2021 report around the growth of alternative supply chains in the absence of vesting. A common theme was that they did not believe that such growth was likely, and a number of times stakeholders asked what sort of analysis was undertaken to verify the claims on growth by the northern growers and the southern breakaway group. In general, those stakeholders were critical that the major findings of the 2021 report rested on evidence that they considered unreliable and were upset that there was not a greater onus of proof on the proponents of change.

It should be noted that stakeholders supporting vesting often held conflicting views on alternative supply chains. Stakeholders would frequently state that alternative supply chains would fail to develop because they could not achieve the economies of scale or technical expertise required to compete with SunRice. But the same stakeholders would often then express concerns that alternative exporters would target high-value export markets and successfully compete away price premiums.

In discussions with northern and southern breakaway growers, the growth scenarios presented in the 2021 Review were generally supported. Growers at the meeting with southern breakaway growers stated that the future of the NSW rice industry is not about volume, it is about quality,

premium markets and ensuring high margins, and that the vesting arrangements prevented them from earning higher margins for their rice.

### **3.1.3 Impact of alternative supply chains on export markets**

SunRice, RGA and many southern growers mentioned their concerns on the impact of alternative marketers on premium export markets. Three broad concerns about the risks posed by competing exports of Australian Rice were noted:

- they would only target SunRice's premium markets, and thereby reduce the returns to all other growers
- they would precipitate a 'race to the bottom' in prices and reduce returns for everyone else because the only way for them to take market share away from SunRice was to offer a lower price to customers
- they would supply poor quality rice to these markets and put at risk the 'brand Australia' premium earned by NSW rice.

Both the southern and northern growers who supported the removal of vesting stated that there were varieties of rice that SunRice did not source domestically – including arborio, jasmine and coloured rice varieties – and there was the potential to target alternative marketing opportunities to those that SunRice has invested in. The northern growers also noted that the 'aerobic' rice production method commonly used in northern New South Wales gave them the opportunity to differentiate their rice from SunRice products on environmental grounds.

### **3.1.4 Consultation fatigue**

The one issue that united the views of all growers – whether in the southern or in northern New South Wales – was consultation fatigue. Variations of 'why are we doing this again?' were asked at each grower meeting, and in general there was confusion of the point of this report and why it was being conducted so close to the NSW Government's announcement that the vesting arrangements would continue to 2027. While grower meetings stimulated valuable discussions, a number had small attendances. The RGA noted consultation fatigue had an impact on their ability to generate enthusiasm among growers to engage with ABARES on this report – this was reflected in lower submission numbers and a reluctance of submitters to the 2021 Review to make new formal submissions to this review.

## **3.2 Reviewing the analysis in the 2021 NSW DPI Review**

Some of the key stakeholders in the current report – in particular SunRice, the RMB and the RGA – criticised aspects of the quantitative analysis undertaken for the 2021 Review. These criticisms and ABARES' observations on these matters are presented below.

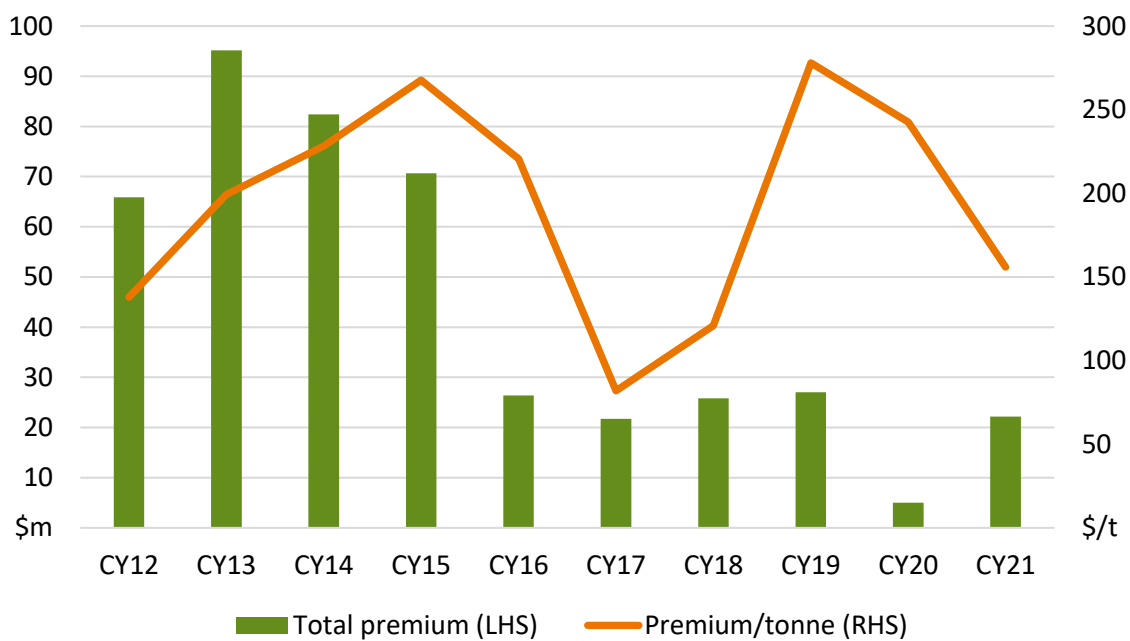
### **3.2.1 Export price premiums**

One of the key arguments in favour of rice vesting – and the single-desk exporting arrangement it underpins – is that it allows Australian rice to be sold at a premium in export markets and that vesting prevents this export price premium (EPP) being competed away by other Australian suppliers to the detriment of growers.

Under the SEEL agreement, SunRice is required to report its export price premiums to the RMB annually; the RMB verifies and reports these estimates publicly. The premiums are calculated as the

extent to which the prices SunRice receives in various export markets differ from those of relevant benchmark competitor prices. The verified export price premium – aggregated across all relevant markets – are reported in Figure 7 below. The calculated premium varies between around \$80 and \$270 per tonne (milled) in any given year and is estimated to be worth between \$5m and \$95m to the rice pool.

**Figure 7 Estimated export price premium, milled basis**



Note: CY denotes ‘crop year’ – the calendar year in which a rice crop is planted. The crop is largely marketed through the following calendar year.

Source: RMB 2023c and various years

The 2021 NSW DPI Review examined these estimates, and the arguments that the reported premiums are a benefit of vesting. Two separate analyses were undertaken for the 2021 Review.

- DPI compared prices for Australian rice in a number of markets with those of its closest international substitute (Californian medium grain rice). It found that premiums for Australian rice likely exist in a number of markets, in particular the middle east and NZ markets. The DPI found that the magnitude of these premiums was smaller than that reported by the RMB, and that any premium was likely the result of a number of factors, not just vesting.
- The CIE analysis underpinning the NSW Productivity Commission’s submission to the review looked at whether there was any evidence that SunRice has market power in its export markets. The presence of market power is important as in theory the only way vesting can contribute to price premiums is by allowing the single exporter to exploit market power. Data limitations restricted the analysis to the Saudi Arabian and NZ markets. CIE found that market power likely exists in the NZ market (to which SunRice is the largest supplier), but that Australia has no market power in the Saudi market.

The 2021 Review concluded that:

- premiums likely exist for Australian rice in its export markets, but that these premiums cannot be attributed solely to vesting – rather they are likely the result of a number of factors such as branding, quality and product positioning
- the EPP calculations reported by the RMB have flaws, especially in the selection of a comparative benchmark price, and may overestimate the extent of the premiums.

In its submission to ABARES, SunRice states that the analysis in the 2021 vesting review is flawed and draws inappropriate conclusions based on the available data, and that therefore the DPI and CIE analysis does not provide an adequate basis on which to implement a major reset of regulatory arrangements.

ABARES notes that there is a paucity of publicly available information on the prices and volumes of rice sold into export markets – both by SunRice and other countries' exporters – and that the selection and analysis of 'benchmark' competitors' prices with which to compare the prices SunRice receives will have limitations.

On the balance of available evidence, it would seem that SunRice does achieve high prices for the Australian rice it markets internationally but given these data problems the exact extent of such premiums, or how best they should be estimated, is not clear.

However, the key policy question for this report is not the extent of any price premium, but whether vesting (and the SEEL) allows SunRice to earn higher prices for Australian rice than would be possible in the absence of vesting. In submission to this report SunRice asserts that it earns premiums in export markets that are derived from vesting, but does not provide any evidence supporting this position. Likewise, the RMB noted that an independent assessment undertaken by its consultants 'concluded that SunRice's market power was directly attributed to the operation of rice vesting' (RMB submission p.6), but provided no evidence to support this assertion.

The lack of publicly available information on export quantities and prices in various markets, together with the uncertain strategies that may be employed by rival exporters and SunRice in the absence of the SEEL, make it difficult to answer this question quantitatively. However, in ABARES' view it is likely that any premiums earned by SunRice do not rely heavily on vesting for the following reasons:

- Australia makes up a relatively small share of international trade in medium grain rice, and faces competition in key markets, particularly from the much larger Californian industry. As such, and with the possible exception of the New Zealand market (2021 report, p. 70), it is unlikely that Australian rice enjoys significant market power in overseas markets and that any price premiums are more likely to be 'earned' by attributes such as quality, positioning and branding (see Box 2).
- SunRice already faces competition in its key overseas markets from (in particular) US exporters and appears to earn high prices regardless. This suggests that SunRice is able to position Australian rice separately to rice marketed by its international competitors. The assertion from SunRice and others that competitors will be able to free-ride on the 'brand Australia' premium earned by SunRice – and lower the prices for Australian rice accordingly – downplays the ability of SunRice to differentiate its product from possible Australian competitors and continue to earn high prices in the absence of vesting.

## Box 2 Can single desk export arrangements deliver price premiums?

In theory, the purported benefits of a single desk exporting arrangement such as the SEEL in relation to price premiums come from (PC 2000):

- the ability to capture rents from exploiting market power
- ‘earned’ premiums associated with specialised marketing expertise.

*Market power* in this context is the ability to exploit barriers to international arbitrage. But a single desk exporter can only exploit such opportunities where those opportunities exist. This is because such exporters can control the volume and characteristics of Australian exports, but it cannot control foreign supplies of similar or substitute products. In the case of rice, Australia is a small exporter of mostly medium grain rice, representing around 0.8% of total global rice exports and 7% of global medium and short grain rice exports in between 2011-12 and 2021-22 (ABARES 2022) – in most markets Australia is a price taker and has little or no market power to exploit.

*Earned premiums* include specialised marketing services – such as strong branding, reliability and quality – offered to buyers. While NSW rice exports are a small player on the global market, they are a significant part of the branded and consumer-ready medium grain segment (CIE 2021). Though buyers might be willing to pay for such services provided by a single desk exporter, this does not imply that monopoly selling is required to obtain such premiums or that it is the most efficient means of doing so. If it is the case that the marketing arrangements embedded in the single desk model are the most efficient, then legislative protection is not required to ensure their continuation – it will perform better than the alternatives in a competitive environment.

Source: PC 2000

### 3.2.2 Freight scale advantage

The ability to generate a freight-scale advantage (FSA) is another key argument in favour of the rice vesting arrangements and the SEEL. Because vesting requires SunRice to handle all Australian rice exports, it is argued that SunRice is able to negotiate lower export freight rates that are passed on to growers in the form of higher pool returns.

As with the EPP, SunRice is required to estimate the FSA annually, and it is verified and reported publicly by the RMB. The FSA is calculated as the discount applied to negotiated freight rates compared with spot freight rates. The discount is communicated to SunRice by individual shipping companies by letters which, along with the calculation of the FSA, are verified by the RMB.

The 2021 DPI review accepted that there would be discounts available for a larger freight task, but that these are dependent on scale, not vesting per se. The report also noted that:

- the negotiated freight rates are calculated on the entire SunRice freight task, not on just rates for the Australian-grown freight task, and are therefore not entirely attributable to vesting
- the comparison benchmark rates are spot rates on specific routes provided by specific lines and may not be indicative of rates that might be available to a smaller exporter.

The NSW DPI concludes that FSA estimates are at best approximations and that FSA is not dependent on vesting.

In its submission to ABARES, SunRice notes that the relationship between export volume and freight costs is clearly shown in the data provided to the RMB by SunRice, and that in low volume years the FSA per tonne is lower. SunRice continues that the 2021 Review underestimates the likely reduction in export volumes due to competing export supply chains in the absence of vesting, and as such the reduction in returns to growers in the absence of vesting is underestimated.

As with the calculation of SunRice’s EPP, the ability to independently examine the FSA claimed by SunRice is limited by the availability of data. It is also questionable whether spot freight rates represent the best benchmark to compare the rates that would be available in the absence of vesting.

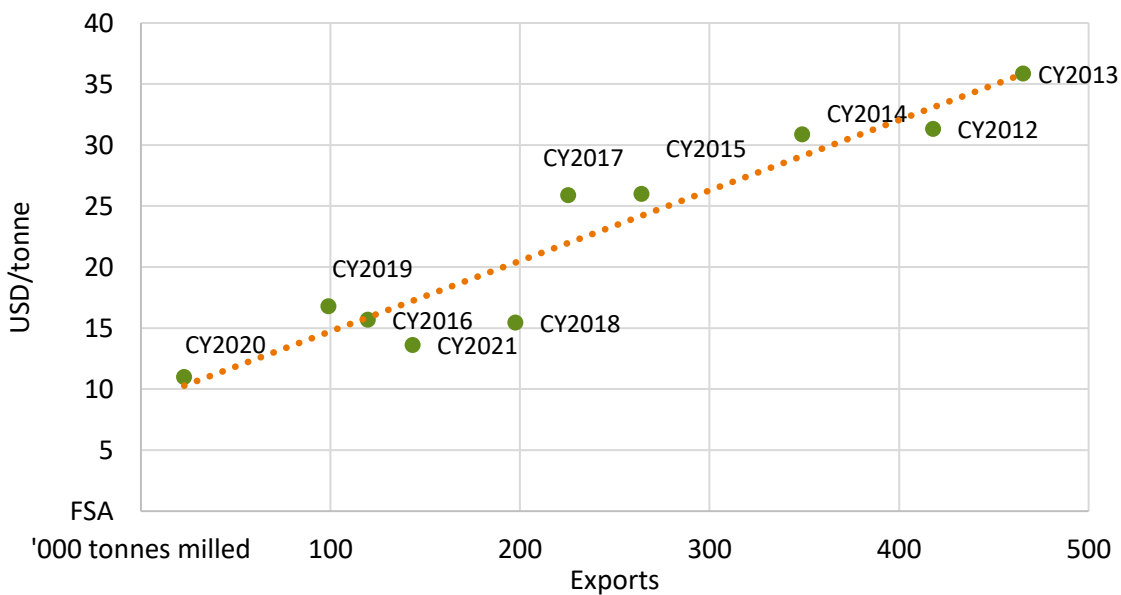
ABARES agrees it is likely that due to the size of SunRice’s freight task (including for rice sourced internationally) it can negotiate rates that would be unavailable to smaller exporters and, to the extent that the size of SunRice’s task is dependent on vesting, then it is arguable that the freight rates are a benefit of vesting. This is borne out by the positive relationship between the estimated FSA per tonne and the volume of exports (Figure 8).

However, as noted in the 2021 NSW DPI report:

- The size of SunRice’s non-Australian freight task is significant (approximately 70% of its total freight task, according to the 2021 Review) and not dependent on vesting.
- Under the most likely future scenarios (both with and without vesting) it is likely that SunRice will continue to handle a significant proportion of the Australian rice crop, and as such will continue to be able to negotiate favourable freight rates.

As such, in ABARES’ view the 2021 Review finding that freight scale advantage likely exists, but is not entirely dependent on vesting, is reasonable.

**Figure 8 The relationship between freight scale advantage and export volumes**



Note: 'CY denotes crop year.

Source: RMB 2023c



### 3.2.3 Impact on market growth without vesting

In work supporting the NSW Productivity Commission submission to the 2021 Review, CIE (2021) undertook consultation with stakeholders and developed a set of forecasts of the growth in alternative supply chains if vesting was removed.

The key assumptions underpinning this analysis are:

- alternate supply chains would be able to deliver higher returns to growers than SunRice supply chain
- growers would only leave SunRice supply chain if they received higher returns, and as such any growth in these supply chains is a net positive for the rice sector
- alternative supply chains would not be able to directly compete with SunRice on price, so would target niche markets with differentiated varieties or on other characteristics. This also means that significant proportion of new supply chain grown is additional to, not a substitute for, SunRice supply
- SunRice would still be the dominant supply chain: deregulation would result in the volume of NSW rice that SunRice handles falling only marginally, and SunRice would still process around 90% of the Australian rice crop.

Based on the above assumptions, the analysis found that:

- the removal of vesting will have little impact for most growers, and that SunRice will continue to be the dominant supply chain in the absence of vesting
- as growers will only leave SunRice if they can get higher returns, any reduction in the returns to growers from rice marketed through SunRice would be more than offset by increases from the growth of alternative supply chains resulting in a net growth in total returns to growers.

As discussed earlier in this chapter, these assumptions and findings were heavily criticised by many stakeholders.

- The RGA submitted that it 'strongly insist that stories and propositions for Northern Rivers future production relied upon by CIE in their Report are unrealistic and CIE's use of that information is overly optimistic giving inaccurate weighting to it.'
- The RMB noted that 'unsubstantiated predictions of increased production in the Northern Rivers region were based on grower consultation outcomes and a reliance on stakeholder intentions as a baseline outcome in the absence of vesting rather than a consideration of any constraints to this outcome'.
- SunRice submitted that the net benefit conclusion reached in the CIE report relied on an assumption that the claimed benefits for a small number of growers in the Northern Rivers region and a breakaway group in the Murray/Riverina region would come with minimal costs to the existing supply chain. They went on to suggest that the net benefit presented in the CIE report relies on reforming a system with significant industry support to achieve speculative benefits for a small group.
- A common feeling in ABARES' meetings with rice growers was that the northern New South Wales and southern breakaway growers' forecasts of growth in the absence of vesting were merely assertions and were not backed up by evidence.

As noted earlier, however, many stakeholders supporting vesting made conflicting statements on the potential growth of alternative supplied chains. In some circumstances, they cast doubt on the growth potential, but at other times they raised concerns that the development of alternative supply chains would compete away export premiums.

ABARES notes the criticisms of the modelling undertaken for the 2021 Review, in particular the fact that several stakeholders questioned the validity of the assumed growth scenarios for the alternative supply chains. And, as is discussed in chapter 4, the 2021 Review does not consider the potential for SunRice to change the business model for its Australian rice milling and marketing rice operations. In ABARES' view, however, this does not undermine the key finding of the analysis: that a clear cost of the current vesting arrangements is the restrictions they impose on the development of alternative rice export supply chains and alternative marketing options for growers. In contrast to many of the previous reviews of the rice vesting arrangements, this cost is identified and quantified in the 2021 Review, and in this respect it presents a more realistic analysis of the costs and benefits of vesting than has previously been presented.

### **3.2.4 Overall assessment of 2021 NSW DPI review**

Notwithstanding some of the difficulties in conducting quantitative analysis on the costs and benefits of vesting, ABARES broadly agrees with the findings of the 2021 NSW DPI review. That is:

- there is no conclusive evidence that the purported benefits of rice vesting – including export price premiums and freight scale advantage – would not be achieved in the absence of vesting
- vesting is restricting the growth and development of new and existing supply chains
- in the absence of vesting, greater competition and innovation would enhance the long-term viability of the rice industry.

On the evidence presented in the 2021 NSW DPI review the rice vesting arrangements do not pass the competition test, and on that basis alone a strong argument could be made to end the vesting arrangements. However, in ABARES' view the analysis underpinning the findings of the 2021 Review underplays the impact of the broader challenges – in particular reduced water availability – faced by the sector and does not consider the restrictions that vesting places on the industry's ability to efficiently respond to these challenges. These restrictions add to the costs of vesting and further strengthen the argument for its removal; these issues are considered further in the next chapter.

## 4 Appropriate response to the 2021 Review

### Key points

- Rice production in southern New South Wales will face challenges from lower water availability and competition from alternative crops in coming years. ABARES modelling suggests that rice production is likely to fall.
- Rice vesting – in particular the uniform pricing and buyer of last resort requirements – restricts the industry’s ability to respond efficiently to these challenges.
- Removing vesting would allow the rice industry the flexibility to rationalise its storage and processing capacity and to better focus on higher returning markets.
- Removing vesting may also allow the development of alternative supply chains to SunRice, giving growers marketing options.
- The removal of vesting would be likely to cause uncertainty for many growers and for regional communities. There is a role for the Rice Marketing Board to work with the industry to advise the NSW Government on transitional issues.

As discussed in the previous chapter, the single-desk export arrangement enabled by rice vesting is restricting the development of alternative supply chains. However, other aspects of the vesting arrangements – in particular the buyer or last resort and uniform price provisions – are imposing costs on the SunRice supply chain and restricting its ability to respond efficiently to the challenges faced by the southern rice industry. These issues are considered below.

### 4.1 Challenges facing southern NSW rice production

Rice production in southern New South Wales is highly correlated with water availability (Figure 4). In years of high water availability (and low water prices) rice is an attractive cropping option for irrigators and the area planted to rice is high. In years of low water allocations and high water prices, the returns to rice production are less competitive than alternative uses for the water and the area planted to rice falls significantly.

The water available for rice production has declined over the past 20 years for a number of supply- and demand-related reasons. On the supply side:

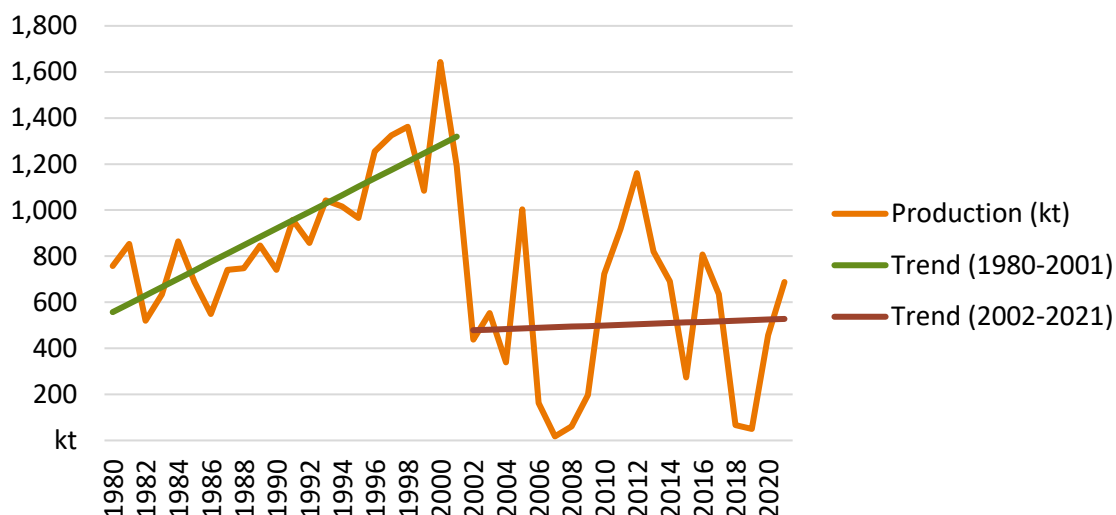
- rainfall has been much lower over the past 20 years than in previous decades. There has been a shift towards drier conditions across the south-east of Australia, with more frequent years of below-average rainfall, especially for the cool season months of April to October: average April to October rainfall for the period 2000–21 was around 10 per cent lower than the 1900–99 period (BOM CSIRO 2022). Lower rainfall depletes irrigation water storage volumes, and in regulated irrigation systems water allocation is primarily a function of water held in storage (Goesch, Legg and Donoghoe 2020)
- environmental water recovery under the Murray-Darling Basin Plan (the Basin Plan) since 2012 has further reduced the volume of water allocated to irrigation. Around 2,100 GL of water has been recovered for the environment, including about 300GL in the northern MDB,

and 1,800 GL in the southern MDB. Combined this represents around 20 per cent of total surface water entitlement rights. (Whittle et al. 2020).

The demand for irrigation water in the southern Murray-Darling Basin has also changed significantly over the past 20 years. These changes are reflected in water prices, and in movements of water between farms, industries, and regions (Goesch, Legg and Donoghoe 2020). While measuring long-term changes in irrigation water demand is difficult given fluctuations in seasonal conditions and water prices, ABARES modelling shows a significant increase in the demand for water for cotton and almonds in the southern MDB, and a reduction in the demand for water for rice and irrigated pasture (Goesch, Legg and Donoghoe 2020). The interaction between rice and cotton production is particularly important as cotton competes with rice not only for water resources but also – due to improvements in cotton cold-tolerance – increasingly for land resources.

This combination of supply and demand factors has seen a significant decline in rice production over the past 20 years (Figure 9). Between 1980 and 2001 rice production rose relatively steadily, with high production levels even in the poor rainfall years in the mid-1990s. Since the early 2000s and the advent of the MBD Plan, however, total NSW rice production has averaged less than half the levels of the 1990s and has been characterised by more variable production levels.

**Figure 9 Volume of Australian rice production, 1980-2022**



Source: ABARES 2022, SunRice 2022b

These pressures on NSW rice production are likely to increase:

- In coming decades, many regions of south and eastern Australia are likely to experience further decreases in cool season rainfall, and longer periods of drought on average (BOM CSIRO 2022).
- Water recovery under the Basin Plan may increase. The Commonwealth Government has recently announced that it is committed to fully implementing the Basin Plan.

Predicting future outcomes in the southern MDB with certainty is impossible. A range of factors – climate, commodity prices, water and industry policy, and innovation and efficiency improvements in farm production – will impact the medium term future of rice production in the southern New South Wales. However, under a set of plausible assumptions about the above factors and taking into

account recent and expected trends for water supply and demand, the recent trends in rice production in southern New South Wales appear likely to continue. ABARES modelled a set of future scenarios for the southern MDB in support of the Independent Assessment of Social and Economic Conditions in the Basin (Gupta et al, 2020. See Box 3). This work indicates that if future rainfall were to decline by 3% and allocation volumes by 11%:

- water prices in the southern MDB are estimated to be significantly higher compared to the present
- water used for rice irrigation in an ‘average’ rainfall year (ie. in the middle 6 deciles of rainfall) is modelled to decrease by 29 per cent compared to the present
- the production of rice is estimated to be 30 per cent lower compared the present.

### Box 3 Future scenarios for rice in the southern MDB

ABARES has developed a model of water trade and irrigation activity in the southern Murray-Darling Basin (Gupta et al 2018). The ABARES Water Trade Model is based on current farms using current capital and technology and does not allow for long-term adaptation or structural adjustment. Nonetheless the results provide an indication of potential future trends in the southern MDB water markets. The model was used to estimate water allocation prices, water trade and irrigation activity under three different scenarios:

- *Current market* – Based on current rainfall and allocation volumes, the current level of water recovery and current water demand. ‘Current rainfall and allocation’ were based on the period 2006-2019, which was particularly dry in the context of the historical record and may differ from average future climate conditions.
- *Future market* – current rainfall and allocation volumes, but an additional 450 GL of water recovery through on-farm efficiency programs, and a net increase in demand due to the maturity of current almond plantings and participation in on-farm water recovery programs.
- *Future market (dry)* – as for the Future market, but an assumed 3 per cent reduction in rainfall and 11 per cent decrease in allocation volumes.

The relevant results for the rice sector are presented in Table 2.

**Table 2 Modelled future scenarios <sup>a</sup> – rice**

|  |  | Current market | Future market | Future market (dry) |       |
|--|--|----------------|---------------|---------------------|-------|
| <b>Average water allocation price in an ‘average’ rainfall year</b>                          |  |                |               |                     |       |
| -  | <b>Murrumbidgee</b>                      | <b>\$/ML</b>   | 306           | 372                 | 434   |
| -  | <b>Murray (above choke) <sup>b</sup></b> | <b>\$/ML</b>   | 212           | 241                 | 274   |
| <b>Rice water use <sup>c</sup></b>   |  |                |               |                     |       |
| -  | <b>dry year</b>                          | <b>GL</b>      | 101           | 81                  | 59    |
| -  | <b>average year</b>                      | <b>GL</b>      | 461           | 401                 | 329   |
| -  | <b>wet year</b>                          | <b>GL</b>      | 808           | 664                 | 543   |
| <b>Value of rice production (difference from current scenario, assuming constant prices)</b> |  | <b>%</b>       |               | -13.5               | -30.3 |

a. Modelled under the assumption that water recovery is achieved via on-farm efficiency programs. To the extent that voluntary purchases are used instead, water prices are likely to be lower. b. Includes NSW Murray Above and Vic Murray Above. c. ‘Dry’ years are the 2 in 10 years with the lowest rainfall, ‘average’ years are the middle 6 in 10 rainfall years, and ‘wet’ years are the 2 in 10 years with the highest rainfall.

Source: Gupta et al 2020.

#### **4.1.1 Storage and processing overcapacity**

Partly as a result of the reduction in paddy production in the past 20 years, the NSW rice industry is characterised by significant storage and processing over capacity. SunRice's operations are structured around processing capacity (across three mills in Deniliquin and Leeton) of around 800 kt (paddy equivalent) per annum (CIE 2021), and total storage of 1 Mt, including a network of 17 receival points (CIE 2021).

The 2021 Review noted that a NSW rice crop of approximately 760,000 paddy tonnes is sufficient to support SunRice's mills at efficient utilisation rates (DPI 2021). Australia's rice harvest has reached that level only 5 times in the past 20 seasons; and given the likelihood of low water reliability and competition from other crops in coming years it is not likely that this level of utilisation will be commonly reached in the future. SunRice's Deniliquin facilities were reduced to 'care and maintenance' in 2007-2010 in response to low paddy production, and one of the mills in Deniliquin was closed again in 2019 for the same reason. Judging from stakeholder meetings, it is accepted within the industry that it is rare that SunRice's current capacity will be fully utilised in the future.

The capital, maintenance and efficiency costs of carrying this excess infrastructure is borne by the industry – specifically, by growers through the rice pool – and reduces returns to growers compared with a situation where processing capacity was more in line with likely production. Added to this are the costs of maintaining and retraining skilled staff as production levels fluctuate.

## **4.2 What if vesting were to continue?**

In order to respond to these pressures and keep rice a viable cropping option in southern New South Wales, the industry is investing in R&D to increase yields and improve water use efficiency. It will also be important to keep returns to growers high. However, rice vesting – which includes the buyer of last resort and uniform price provisions – restricts the NSW rice industry's ability to respond efficiently to these pressures.

### **4.2.1 Buyer of last resort**

The first way that vesting restricts the ability of the industry (including growers and SunRice) to respond to the industry's challenges is through the buyer of last resort provision. Under the SEEL agreement, SunRice must act as a buyer of last resort for NSW-produced rice – subject to the rice being 'merchantable' – to meet the statutory obligations of the RMB (NSW DPI 2021).

Many growers value the insurance that the buyer of last resort provides (see chapter 7.1). The provision is also claimed to keep the utilisation rates of SunRice's current storage and processing infrastructure as high as possible, and thus improve returns to growers (SunRice submission, p11).

However, the buyer of last resort provision also operates to put an obligation on SunRice to handle the entire crop at a scale determined by growers – effectively, growers determine how much paddy they want to produce and SunRice is obliged to handle it. As discussed earlier, paddy production is highly correlated with irrigation water availability, and the volume of paddy that SunRice is required to handle varies widely – in the last 10 years it has been as low as 45 kt and as high as 1,161 kt (ABARES 2022). The requirement for SunRice to have sufficient capacity to handle and process the large harvests in years of high water availability limits its ability to rationalise its handling/processing infrastructure to a more efficient level, with increased costs being passed on to growers in the form

of lower pool returns. Under SunRice's Paddy Pricing Policy (SunRice 2021) an Asset Finance Charge is deducted from the rice pool for access to milling, packing, storage and warehousing assets owned by SunRice. Irrespective of actual crop size this network of assets must be maintained to service both high and low production years to enable SunRice to fulfill its obligations as the buyer of last resort.

In addition, the buyer of last resort provision means that in bumper years SunRice is forced to market Australian rice into progressively lower-priced export markets. This reduces the average price for the pool as a whole and again serves to lower unit returns to growers.

#### **4.2.2 Uniform price requirement**

The SEEL agreement also requires SunRice to operate an equitable crop marketing and payment system (the rice pool) to meet the obligations of the RMB under the s64 of the Rice Marketing Act. The standard pool paddy price is determined by the revenue that SunRice earns from selling rice, minus SunRice's costs for receival, storage, processing, marketing, selling and overheads, and then calculating the average net return per tonne. The standard pool price is subject to premiums and discounts according to the variety and quality of the rice.

Some growers have expressed to ABARES, and to previous reviews of the rice vesting arrangements, that this equality among growers regardless of size is a key advantage of the current arrangements. However, the pool also likely sets up a cross-subsidy. While growers are paid variety and quality premiums for their paddy, and returns are discounted for poorer quality, the arrangement does not emulate a dynamic market outcome (PC 2000). In essence, the role of the pool is to promote equality in returns across growers as much as possible, with the result that the return received by an individual grower does not directly reflect the price paid by buyers for their finished product. The effect of any cross subsidy is that more efficient producers producing better quality grain more reliably effectively subsidise the returns to other growers – the best grain goes to the best markets, but growers receive broadly similar returns. This effect is compounded by the buyer of last resort – SunRice is obliged to market all merchantable grain regardless of quality. The requirement to market through a pooled arrangement limits SunRice's ability to offer to better terms to more efficient growers to encourage them to continue to produce rice.

#### **4.2.3 Net result**

In effect, vesting means that the costs of handling, storage and processing capacity borne by the pool are higher than what would otherwise be required, reducing returns to all growers. Compounding this effect is the fact that the most efficient growers – those cross subsidising other growers within the industry – are likely to be the ones with the greatest incentive to cease growing rice and switch to other crops and/or trade their water allocation.

As noted in the 2021 Review and by contributors to the ABARES report, vesting also inhibits the establishment of alternative supply chains to SunRice. While licensed buyers are free to market their rice within Australia, consistent industry feedback indicates that without an export market to help grow scale and reduce risk it is difficult to justify the investment in storage, handling and processing capacity required to grow to the scale needed to compete effectively. As such, growers that may otherwise would seek to increase returns outside the SunRice rice pool are unable to do so.

### 4.3 What if vesting were removed?

The 2021 Review establishes a counterfactual where the removal of vesting encourages the establishment of two relatively small alternative supply chains (one based in northern New South Wales, the other in southern New South Wales), and the continuation of the current SunRice supply chain largely as is – that is, purchasing the bulk of rice offered to it and handling most of the NSW rice harvest with an infrastructure footprint similar to the present. While this is certainly one possible outcome – particularly in the short term – in ABARES' view this analysis downplays the external challenges facing the industry and does not consider the ability for SunRice to respond to them.

In the absence of vesting the incentives for SunRice to move away from the current model will grow. Low and variable water availability and competition from alternative summer cropping options will continue to place pressure on the rice pool model – the rice pool has already needed to be subsidised by the profit-earning segments of the SunRice group in 2020 and 2021. In its submission the RGA noted that in the absence of vesting acting as a buyer of last resort and maintaining access to remote receival sites would no longer be in the best interests of SunRice and its shareholders.

What SunRice's response to the removal of vesting would look like – and when/if it might eventuate – is highly uncertain, and depends on SunRice's business strategy, the emergence of competitor supply chains, and external pressures such as drought conditions. However, it is possible that SunRice's response could involve a combination of:

- reducing its infrastructure footprint – for example, it could close its Deniliquin processing facilities, and rationalise its storage and handling assets to support its Leeton plant
- suring up a smaller, but more reliable, supply of paddy by abandoning the rice pool model and contracting directly with bigger, more efficient growers with more reliable access to water allocations
- focusing its marketing efforts for Australian rice on achieving the highest prices for a smaller, better-quality crop in its most premium markets.

Under this scenario, streamlined processing facilities and higher average prices would support higher returns to (a smaller number of) growers. This would allow SunRice to better respond to challenges, both the external challenges already noted and those from the establishment of competitor supply chains.

It should be noted that SunRice's dual shareholding structure adds a further uncertainty to the scenario depicted above. It is possible that the A-class shareholders who would be adversely affected in the above scenario – and whose absolute numbers could constitute a majority – may be able to delay or prevent SunRice from taking such decisions.

The alternative supply chains that may arise in the absence of vesting could give growers new options to market their output. These supply chains may target niche markets or compete with SunRice directly in premium markets, both domestically and overseas. Whether these alternative supply chains emerge – and to what scale – will depend significantly on the response of SunRice of the removal of vesting.



## 4.4 What's the appropriate response?

In comparing these alternative scenarios and determining the best policy response, it is important to note the uncertainties. The 'with vesting' scenario described above depends on climate conditions, the policy environment (particularly around access to water), and whether any breakthroughs in rice breeding or agronomic practices substantially change the pressures on the rice industry. And the counterfactual 'without vesting' scenario is also uncertain – in addition to the above factors, what would happen in the absence of vesting depends on unknowns such as SunRice's assessment of its optimal business strategy, the dynamics of its dual-shareholder structure, and the emergence of competing supply chains.

However, ABARES' view is that rice production is unlikely to return to the levels of the late 1990s, and is more likely to decline further over the medium term. Given this, the choice open to the NSW Government appears to be either to:

- keep the vesting arrangements – including the uniform pricing and buyer of last resort provisions. This will limit the ability of the NSW rice industry to respond to the pressures facing the sector in an efficient manner. In this scenario the most efficient producers will have the most incentive to cease producing rice, and the pool costs will be borne by a smaller number of growers, reducing profitability further
- remove the vesting arrangements and allow the industry the flexibility to respond to challenges in the most efficient manner. The NSW rice industry may still reduce in size, but it is more likely to have an efficient processing footprint, supplied by more efficient growers receiving higher margins.

The discussion above assumes the continuation of low and variable water availability. However, as discussed earlier in this chapter, it is likely that water availability will reduce further in coming years, and water prices will be higher. Under both scenarios described above, lower water availability is likely to reduce the production of rice in southern New South Wales and further increase the pressures on the rice pool model. In ABARES' view this only strengthens the argument that the removal of vesting will allow the best chance of a higher value industry to continue into the future.

### 4.4.1 Transitional issues

It is important to note that given the outlook for water prices and availability it is quite likely that the rice industry will reduce in size regardless of whether vesting is removed – vesting does not address the pressures facing the industry. However, the removal of vesting may see rice removed as a cropping option for many growers sooner than if vesting were maintained. To the extent that SunRice responds to the removal of vesting by dealing with a smaller number of growers, it is likely that some types of growers – those generally growing smaller rice crops, with lower yields and with less secure access to water – will be more affected, as might growers located further from processing facilities. While such growers will need to adjust their operations, it is important to keep the adjustment required in perspective – rice is but one cropping option open to most growers, and many will have the ability to move into other summer crops (e.g. cotton or maize).

A smaller rice crop is also likely to result in lower employment in the sector. In an average crop year SunRice employs 400-500 full-time equivalent employees in the region (CIE 2021), mostly in Deniliquin and Leeton. A reduction in the size of the rice industry may create transitional issues for these communities. Again, it is important to note that in ABARES' view reduced employment in the

sector over the medium term is a strong possibility, whether or not vesting is removed, and may be mitigated to a certain extent by

- growers switching to other crops
- the emergence of alternative supply chains.

Which communities will be affected, and by how much, is highly uncertain and detailed assessment beyond the scope of this report.

While the immediate removal of the vesting arrangements would allow the southern NSW rice industry to begin any adjustment sooner, it would represent a significant change for all stakeholders. On balance, ABARES considers that rice vesting should be discontinued for the southern NSW rice industry after 30 June 2027, and the NSW Government should aim to give stakeholders as much notice as possible of any decision to remove vesting.

#### **Recommendation 1**

The NSW Government should not extend vesting beyond 30 June 2027.

- From 30 June 2027 the *Rice Marketing Act 1983* should be repealed, and the Rice Marketing Board and all licencing requirements abolished.
- This decision should be communicated to the sector as soon as practicable.

## **4.5 A transitional role for the Rice Marketing Board**

As noted, the NSW rice industry is facing a number of challenges and if vesting is removed a transition to a fully deregulated industry with competing supply chains beyond SunRice could occur. The transition to a post-vesting rice market will create uncertainty for many in the industry – not just growers and processors but also the many businesses in southern New South Wales supplying them, and the broader regional community. In ABARES' view, there is a need for the NSW Government to engage with the industry during the transition to consider what advice and support growers and the community will need to manage the transition, and there is a role to be filled to act as a conduit between the industry and government in identifying and managing these issues.

The industry has an active and well-appreciated grower representative body in the RGA, whose role is likely to become increasingly important in a transition to a deregulated market. However, ABARES notes that the RGA does not currently represent all NSW growers – its branches are located across Northern Victoria and the Murray and Murrumbidgee Valleys of New South Wales (RGA Submission p. 2) and there is no representation for northern NSW growers. In addition, the RGA has a long and close association with SunRice, and will continue to deliver a number of industry initiatives with SunRice. And the RGA is a grower representative body – it does not represent the interests of other industry stakeholders that may be affected by the removal of vesting.

In ABARES' view the RMB, with a few changes, is well placed to advise the NSW Government on transitional issues. Its membership includes grower-elected representatives, and if considered appropriate, there is scope to appoint members with expertise in the sort of economic and social issues that may arise during the transition.

Such a role would need to be reflected in the RMB's objectives. The current objectives, proclaimed in 2009, are:

- a) to encourage the development of a competitive domestic market for rice
- b) to ensure the best possible returns from rice sold outside Australia based on the quality differentials or attributes of Australian grown rice
- c) to liaise with and represent the interests of all NSW rice growers in relation to the Board's functions and objects.

In ABARES' view, the RMB objectives should be amended:

- to include a new primary objective giving the Board the role of advising the NSW Government on transitional issues relating to the removal of vesting
- to reflect its role to liaise and represent the interests of *all* affected parties in the transition, not just growers
- to remove the objective to report on SunRice's export returns and to promote transparency of grower returns, as discussed in chapter 5.2.

### **Recommendation 2**

The objectives of the RMB should be amended to reflect a new role of working with affected rice industry stakeholders to advise the NSW Government on transitional issues relating to the removal of vesting.

The NSW Government may consider that there is a continuing need for an industry advisory body after vesting is removed as growers and the broader industry adjust to the new market arrangements. If this were the case, ABARES is of the view that there would be advantages to establishing a time-limited body such as a ministerial advisory body rather than extending the role of the RMB post-vesting. Such an approach would be important as it would still allow for the repeal of the Rice Marketing Act, which would:

- be a more straightforward arrangement that will allow the NSW Government the flexibility to establish a body reflecting the needs of a post-vesting sector
- avoid having a marketing board – established under a commodity marketing act – existing alongside an otherwise fully deregulated rice industry.

## **4.6 The northern New South Wales industry**

ABARES' analysis of the appropriate response to the 2021 rice vesting review has thus far omitted discussion of the northern NSW rice industry. Northern growers face a very different situation to those in southern NSW:

- The northern NSW industry does not face the same challenges as the southern industry – while climate change will affect all Australian farmers, the northern industry's far lower reliance on irrigation, as well as the fact that rice gives growers the opportunity to use land that is currently underutilised, means that the external pressures on the sector are fewer.
- The northern NSW rice industry is a separate supply chain to the southern supply chain dominated by SunRice – prohibitive costs of transporting rice from northern New South Wales to SunRice receival facilities in southern New South Wales mean that the buyer of last resort provision has no impact on the northern growers and they are effectively unable to participate in the rice pool.

- In ABARES' view it is most likely that in the absence of vesting the northern NSW supply chain would target different markets to SunRice and not significantly affect the rice pool. The northern NSW supply chain is likely to focus on relatively niche rice varieties that focus on differentiated attributes, such as the environmental benefits of the industry's 'dryland' production system (that is, lower water use and reduced methane emissions compared with the paddy production system in the south).

In ABARES' discussion with northern rice growers and with the Natural Rice Co, it was highlighted that being prevented from accessing export markets confines the northern industry to compete in a domestic market characterised by a concentrated retail sector, and competition from the SEEL holder and rice imports. In the view of the Natural Rice Co, this limits the northern industry's ability to diversify its markets and reduce business risk, which it sees as a requirement to justify further investment. This in turn denies the industry the economies of scale required to compete effectively in the domestic market. To the extent that this is the case, farmers in northern New South Wales miss out on the potential for higher farm incomes, the region misses out on a chance for a larger value-adding industry, and consumers miss out on the opportunity to purchase different types of Australian rice.

In discussions with southern stakeholders, and with SunRice and the RGA, doubts were raised on the growth potential of the northern NSW rice industry. For example:

- The RGA notes that 'stories and propositions relied upon [in the 2021 Review] are unrealistic and the use of that information is overly optimistic' (RGA submission).
- The Rice Marketing Board notes that 'unsubstantiated' growth projections for the Northern Rivers region in the 2021 Review were based on 'grower consultation outcomes and a reliance on stakeholder intentions as a baseline outcome in the absence of vesting rather than a consideration of any constraints to this outcome'.

The potential for growth of the northern New South Wales industry is uncertain. While proponents of its expansion are optimistic of its potential for growth, ABARES has not reviewed detailed business cases for the expansion of the sector; ultimately this will be decided by the ability of proponents to finance expansion and by rice growers and consumers. However, given the almost complete separation of the northern supply chain from that in southern New South Wales, in ABARES' view removing the effective prohibition on the export of northern NSW-grown rice from poses little risk to the southern supply chain. Rice growers in northern New South Wales should be allowed access to export markets, and the northern NSW industry should be allowed to succeed (or not) on its own terms. ABARES also notes removing export restrictions would not pose the same transitional issues in northern New South Wales as it would in the south, and as such the restrictions should be removed for these growers as soon as possible and in advance of the cessation of rice vesting in 2027.

ABARES notes that exempting northern NSW grown rice from the general export prohibition contained in s51B of the Rice Marketing Act may not be straightforward, and may not necessarily involve removing the industry entirely from the vesting arrangements. There are a number of ways in which the exemption may be implemented; determining the best approach will involve appropriate legal advice and is beyond the scope of this report. However, ABARES would note that:

- the desired outcome is the early exemption of northern-NSW grown rice from the general export prohibition, not necessarily the early removal from the vesting requirements. Indeed,

under the current legislative framework it may be necessary to retain vesting for the northern rice industry to facilitate its exemption from the export prohibition

- care should be taken to ensure that exempting northern buyers from the export prohibition does not undermine the transition of the southern NSW rice industry by allowing the early 'back door' export of rice grown in southern New South Wales.

### **Recommendation 3**

Northern NSW grown rice should be exempt from the general prohibition on the export of rice grown in New South Wales as soon as practicable before 30 June 2027.

## **4.7 Other issues**

In moving to a post vesting industry, a number of issues need to be considered and addressed by the NSW Government. Some of these have already been identified in the terms of reference for this report.

The remainder of this report addresses these issues.

## 5 Governance and transparency

### Key points

- The cross directorships of the RMB and SunRice continue to create a perceived conflict of interest, which undermines confidence in the RMB. Confidence in the RMB will be important if it is to support the industry to transition to a post-vesting future. The cross-directorship arrangements should be abolished.
- The NSW Government should promote more transparency on the range of contributing factors to grower returns, not just export prices and freight rates. This would allow growers to better understand the value of their crops.
- The SEEL agreement is an important part of the governance arrangements, and it should be made public.

ABARES has been asked to consider governance arrangements and the transparency of information relating to rice vesting, particularly in relation to the RMB. Governance and transparency are considered in turn below.

### 5.1 Governance of the RMB

The 2021 Review found that the close relationship of the RMB and SunRice – in particular the requirement in the SEEL that SunRice reserve two of the grower Director member positions on the SunRice board for elected Grower-members of the RMB – creates a perception of a conflict of interest.

The intended objective of the cross directorship arrangement is to provide RMB with ongoing knowledge of the operations at SunRice at a relatively low cost. However, this can create a perception that a conflict of interest exists. This issue was raised as far back as the 1995 Review and was again the subject of scrutiny after the 2016 Rice Vesting Review, which triggered a separate review into the governance of the RMB in 2017. Despite the 2017 review and the subsequent response and communication strategy from the RMB, there continues to be an ongoing perceived conflict of interest.

While this issue was not a major concern discussed during consultations, stakeholders opposed to vesting did note that the arrangement did not instil confidence in the RMB. Some stakeholders noted that it doesn't appear to be 'truly independent.' They also suggested there was confusion around the objectives of the RMB, particularly how it could represent the interests of 'all growers' and develop a competitive domestic rice market with SunRice directors on the board. Other stakeholders noted that the issue had been prosecuted before and no evidence of wrongdoing was found, and that a number of recommendations from the 2017 governance review had been implemented.

The relationship between directors and companies are fiduciary in nature (AICD 2021). This means that directors undertake to act in the interest of the company, not in their own self-interest, and should not allow conflicting interest to override the company's interest. In addition, directors must not improperly use their position or information they obtain to advantage themselves or cause

detriment to the company. In general, a conflict exists if external interests influence or are perceived to influence one's decisions as a director. This means that a conflict can be real, perceived, or potential (AICD 2017). Conflicts of interest are a common occurrence, especially in large corporate entities (AICD 2022).

The conflicts of interest identified during the review process from stakeholders and the previous review into governance arrangements included:

- as grower members of the RMB are also directors of SunRice it can be argued that they have a conflict of interest when assessing the performance of SunRice as the SEEL holder
- RMB directors maintain shareholdings in SunRice
- the possibility of SunRice, through the cross directors, accessing information about competitor intentions submitted to the RMB (ABARES notes that the Authorised Buyer Licensing Committee of the RMB does not include grower-elected members)
- the possibility of growers' commercial relationship with SunRice being jeopardised by applying for a domestic licence.

Conflicts of interest are not necessarily a problem in themselves. It is how they are managed and disclosed that is the issue (AICD 2017). The RMB and SunRice publish policies and charters which outline how conflicts of interest must be dealt with. This includes removing relevant directors from discussing issues where they maintain a conflict. The issue with this approach is the possibility for it to create a conflict between a person's duty as a director of both entities.

If a director is constantly required to remove themselves from relevant discussions because of their conflicting duty, they are effectively reducing their ability to bring their skills and capacities to service the company. While this is a peripheral issue, it has been raised in various governance best practice discussions – 'at some point, you have to recognise you can't just keep a seat warm while the business of the board goes on without you' (AICD 2017).

While there is no suggestion of any wrongdoing – and ABARES notes that the 2017 review of governance arrangements concluded that conflicts were appropriately managed – stakeholder responses make clear the perception of a conflict of interest remains. In ABARES' view the benefits of the arrangement are few, and some of the reported benefits (such as the low-cost ability to collect data) would be further reduced if transparency was improved (see 5.2 below), or can be delivered by other means. The arrangements also restrict the ability of the relevant directors to contribute fully to the role with both the SunRice and RMB Boards.

The current cross-directorship arrangements and the perceptions of conflict of interest they create will become more of a problem as the industry heads toward a post-vesting future, particularly given the role that the RMB can play in helping the industry transition to this future (see chapter 4.5). In ABARES' view the cross directorship arrangements should be removed.

#### **Recommendation 4**

NSW Government and the RMB should ensure that the cross-directorship requirement in the SEEL agreement is removed as soon as practicable.

## 5.2 Transparency

The primary role of the reporting activities undertaken by the RMB is to ensure that the proclaimed objectives of the Board are being achieved. One of those objectives – ensuring ‘the best possible returns from rice sold outside Australia based on the quality differentials of attributes of Australian grown rice’ – is at the heart of the RMB’s publication and verification of estimates of the export price premium and freight scale advantage achieved by SunRice.

Outside the narrow aim of reporting against the RMB’s proclaimed objectives, the reporting also serves a broader role. The granting of the SEEL to SunRice effectively sets up a monopsony in the NSW market for paddy rice – the majority of growers have very little choice but to sell their rice to SunRice. Ideally, reporting by the RMB should allow government and industry to ensure that this market power is not being used to the detriment of Australian growers and the broader community.

### 5.2.1 What is reported

While the Rice Marketing Act states that the Board may publish reports, information and advice concerning the production, marketing or use of rice, there is no legislated requirement for SunRice to report prices or financial details to the RMB, or for the RMB to publish reports on the operation of the market.

However, in response to a 2012 review recommendation that performance monitoring and reporting by the Board to growers and the NSW Government should be improved, the RMB prepares an annual report to NSW rice growers covering the Board’s performance against its stated objectives, and the performance of SunRice as the SEEL holder. Included in the reports is an assessment of the export price premium and the freight scale advantage that SunRice achieved in the preceding crop marketing year; these estimates are subject to verification by external consultants. The RMB’s annual report to NSW rice growers also contains a summary of SunRice’s financial performance (which is also available from SunRice’s own annual reporting), and an assessment of whether it considers the Board’s objectives have been met for the year.

### 5.2.2 Can reporting be improved?

As noted in previous chapters, the 2021 Review noted some weaknesses with the estimates of FSA and EPP, and concluded that while it is likely that SunRice is able to achieve export price premiums and reductions in freight rates the estimates should be regarded as approximation, and it is not clear that they are the result of vesting per se.

Beyond these observations of whether the estimates prepared by SunRice reflect the ‘true’ premiums and discounts achieved however, the FSA and EPP only tell part of the story about whether vesting and the SEEL provide value to NSW rice growers. Returns to growers are also affected by factors other than just the purported price premiums and freight scale advantages. SunRice’s Paddy Pricing Policy (SunRice 2021) notes that in addition to freight costs, costs to the pool include:

- handling/storage of harvested paddy
- direct processing costs
- grower services (including the RGA and RD&E)
- distribution of product
- sales and marketing costs



- fees paid to SunRice for the use of corporate assets (such as plant and machinery, as well as SunRice brands).

A lot of attention is given to the export monopoly created by the vesting arrangement (that is, the creation of a single seller of Australian Rice internationally), but relatively little attention is given to the fact that vesting creates an effective monopsony in the market for Australian paddy (that is, the creation of a buyer with significant market power). In theory, in the absence of effective competition the monopsonist can lower prices for its inputs (in this case, paddy returns) to below than what would be the case in an efficient market in order to maximise its profit.

While SunRice's Rice Pool segment nominally is not a profit centre for the SunRice group, the prices charged to the pool (including for access to assets used by the rice pool, and for paddy handling expenses) do contribute to group profit, and some of the output from the rice pool business are used as inputs to profit generating segments of the SunRice group. In the 2021-22 marketing year (SunRice 2022a):

- \$40.6 million (14%) of rice pool revenue was from internal businesses (including rice food and CopRice) and dependent on internal pricing policies
- \$12.6 million (21%) of net SunRice Group profit was from the Corporate segment, which largely represents internal charges to the rice pool and other segments for using SunRice assets (including brands and access to milling, storage and warehousing assets).

The extent to which SunRice is able to exercise monopsony power is unclear – the need to provide growers a return high enough for them to plant rice in the face of competition for land and water resources by other crops serves to limit SunRice's ability to lower pool returns to increase profits.

However, where government regulation creates market power – as vesting does in the market for Australian rice paddy – it is important that market outcomes are monitored to ensure that the market power is not being used to the detriment of other market participants. While the RMB reports on prices and freight rates, as noted above even taken at face value these are only part of the story. There are other costs and revenues attributed by SunRice to growers through the pool, and there is very little transparency over these costs and revenues. Information is not publicly available and is not reported by RMB. In the absence of competition, and without explicit accounting of profits flowing from value-added activities, it is difficult to assess whether the services provided by SunRice to the rice pool are cost effective – a high selling price might be associated with a lower overall return for growers due to high operating costs (PC 2000).

And if vesting is removed and growers have more options to market their rice, information on the full range of contributions to the rice pool will aid in the process of price discovery, allowing growers a better understanding of the true value of their product in the transition to a deregulated export market.

A clearer breakdown on costs and returns to the pool would give NSW rice growers more information about the value of their crops and, in the event vesting is removed, better equip them to assess the relative benefits of marketing their crop with alternative supply chains. The NSW Government and the RMB should work with SunRice to improve reporting to growers, which may include the total revenue of the pool (including revenue from SunRice businesses); total returns to growers; and the proportional contribution to costs of factors such as storage and handling; processing; freight and distribution; and payments to other SunRice businesses.

ABARES notes the commercial sensitivity of this information to SunRice. This will need to be taken into account when determining whether this information is best provided to growers by the RMB or by SunRice directly.

#### **Recommendation 5**

Prior to the cessation of vesting, the NSW Government and RMB should work with SunRice to improve reporting to growers. Such reporting should better reflect the returns to growers under vesting, including more transparency of the costs charged to growers by SunRice through the rice pool.

### **5.2.3 Publication of the SEEL agreement**

Under the Rice Marketing Act, all rice produced in New South Wales is vested in the RMB – that is, the RMB is its legal owner. As discussed earlier, only authorised buyers may deal in rice produced in New South Wales and the Act authorises the Board to impose conditions on where they market rice. The RMB appoints authorised buyers separately for trading rice on the domestic and export markets – currently there are 14 buyers authorised to trade rice domestically, and one of those buyers, SunRice, has the sole licence to export rice.

The Act also sets out obligations on the RMB regarding the manner in which it must market NSW rice. Chief among these is the requirement to accept all rice of merchantable quality offered to it by growers (s61(1)); and to operate an equitable crop marketing and payment system, including acquiring rice of the same quality or grade as near as possible at a uniform rate (s64(2)). Section 50 of the Act allows the Board to appoint an authorised agent to carry out its functions, and SunRice is the Board's sole authorised agent (NSW Government 2012).

The SEEL agreement acts as both the licence for SunRice to export NSW rice, and the written order appointing SunRice as the Board's authorised agent under s50 of the Act. The SEEL agreement details the obligations on SunRice as the Board's authorised agent, including to act as the buyer of last resort and to maintain the 'equitable crop marketing and payment system'. As such it can be argued that, to the extent that the SEEL agreement stipulates the way in which SunRice is to carry out the Board's functions, the SEEL agreement is part of the regulatory framework governing rice marketing in New South Wales.

Achieving good regulatory outcomes is a cooperative effort by the government, and amongst regulators, the regulated, and the broader community (OECD 2014). Good governance arrangements for regulators promote the efficient achievement of policy objectives and public confidence in the operations of regulatory agencies. The OECD notes that accountability and transparency of regulators is an important part of maintaining public confidence in regulation, and to that end operational documents and other material should be publicly available. (OECD 2014, p. 83).

ABARES understands that the SEEL agreement is currently being reviewed by the RMB and SunRice. Given the importance of the SEEL agreement in the regulatory framework governing the marketing of NSW rice, ABARES considers it would be consistent with best regulatory practice for the SEEL agreement to be made publicly available.

**Recommendation 6**

The Rice Marketing Board should publish the content of the SEEL agreement on its website.

## 6 Research, development and extension; and access to seeds and varieties

### Key points

- Rice RD&E is predominantly funded by industry levies and matched Australian Government contributions, and reflecting the current industry structure is heavily focused on improving the SunRice supply chain.
- Given its focus on maximising return on its RD&E investments, AgriFutures will have a strong incentive to continue to invest in SunRice's supply chain even in the absence of vesting, and SunRice is likely to have strong incentives to remain engaged in this program.
- The governance structure of Rice Breeding Australia and the lack of alternative seed supply options to SunRice runs the risk of hindering competition in the absence of vesting.
- There is uncertainty around industry access to germplasm held by parties to the historic rice breeding programs. Clarifying these arrangements would assist the industry – particularly any new supply chains – to commercialise new and niche varieties.

ABARES has been asked to consider the ability of industry participants to access commercial seed varieties and research, development and extension (RD&E) activities. In order to inform this analysis ABARES completed additional consultation with industry, along with stakeholders and suppliers in the RD&E system.

### 6.1 Research, development and extension

The vesting legislation does not directly establish a role for the SEEL holder in industry research, development and extension. Rather, the existence of the legislation has focused industry RD&E around SunRice as the dominant supply chain; this may continue to benefit SunRice if vesting is removed. This risk is mitigated by the role of AgriFutures and their ability to co-ordinate and allocate research funding.

Rice RD&E is primarily managed by Rural Industries Research and Development Corporation (trading as AgriFutures). RD&E activities are funded by a levy on paddy sales matched by capped Australian Government funding. In 2018 rice growers voted to increase the industry levy from \$3 per tonne to \$6 per tonne, of which \$5.94 is directed to RD&E managed by AgriFutures (the remaining \$0.06 helps fund rice biosecurity planning and implementation activities coordinated by Plant Health Australia).

The priorities and objectives for AgriFutures' Rice Program are outlined in its Rice Program Strategic Research, Development and Extension plan 2021–2026 (AgriFutures 2021). The plan identifies four broad priorities and indicative funding: optimised genetic improvement (with a budget representing 50% of total funding); agronomy and farming systems (25%); coordinated industry extension (20%); and strengthened industry capability (5%). Between 2016-17 and 2020-21 AgriFutures invested around \$16.9m into rice RD&E (Agrifutures Submission p. 2).

In order to deliver the RD&E program AgriFutures partners with research providers and others including with the private sector to access intellectual property, skills, know-how, and other resources (AgriFutures submission). In general terms, the partnerships are contracted by AgriFutures on a fee-for-service basis. The genetic improvement component of the RD&E extension plan is delivered through Rice Breeding Australia, a partnership with SunRice and the RGA (see section 6.2, below); the agronomy and farming systems component with a variety of researchers including universities and the NSW Government; the industry extension component is delivered through the Rice Extension project with SunRice and the RGA; and the industry capability component with a variety of providers.

A smaller R&D program is managed privately in northern New South Wales. This program is in partnership with Southern Cross University and is targeted at developing varieties more suited to the climatic conditions in that region and more specialised coloured rice varieties. It does not currently receive direct funding from the industry RD&E program managed by AgriFutures but has received funding from the Australian Research Council and via other government initiatives.

During consultations it was clear that growers had concerns that in the absence of vesting SunRice would take a more commercially focused approach to the detriment of broader industry-good research. Feedback indicated that there is significant support for industry RD&E – it is a valued part of the ‘ecosystem’ – and genuine concern that industry RD&E would cease or become fragmented if vesting was removed and alternative supply chains develop.

While the involvement of SunRice in RD&E is not a requirement of vesting, SunRice submitted that:

SunRice’s current high level of investment is justified by vesting, knowing it can capture the benefits of the increased and higher quality production in export markets. SunRice would have reduced incentives to invest, or be more selective in the growers and areas it targets for investment, if it could not capture the benefits or if other exporters were able to free-ride on this investment. The 2021 Review seems to assume that SunRice would maintain current levels of R&D activities in Australia and not respond to a changed environment if vesting were removed. This view is not consistent with commercial reality. (SunRice submission p.8)

ABARES would note that RD&E in the rice industry is already very heavily focussed on the commercial interests of SunRice and, via rice pool returns, NSW rice growers. The research program is highly integrated: rice varieties are developed targeting particular consumer preferences in premium SunRice markets, and the agronomy programs designed to most efficiently deliver these rice varieties given the production systems in southern New South Wales. Stakeholders noted in the 2021 Review that the coordinated approach to grower extension leads to an improvement in market returns via rapid grower uptake of research finding and new technology. Given the program is largely funded via industry levies and public funding, it would be in SunRice’s interest to remain heavily involved in rice industry RD&E in the absence of vesting to ensure that industry and public funds continue to be invested for its benefit – and the benefit of its supplying growers – rather than in research that may benefit competing supply chains.

It is also the case that it is in AgriFutures’ interest to remain closely associated with SunRice. RD&E programs are subject to a number of monitoring, evaluation and reporting frameworks, and are generally assessed on their ability to deliver a return on investment. During stakeholder

consultations, AgriFutures noted that its rice research programs – particularly breeding programs – have high fixed costs and that the best returns on investment can therefore be achieved by focusing research efforts on varieties that are likely to be able to be sold in high volumes. In all realistic scenarios in the absence of vesting, SunRice will remain the largest supply chain for Australian rice.

That is not to say that rice RD&E will continue unchanged. As discussed earlier in the report it is quite likely that rice industry output will be lower in coming years due to lower water availability – this will translate to smaller levy and public funding and potentially smaller RD&E programs. And, as it points out in its submission, freed from its buyer of last resort obligation SunRice may be more selective in the areas and growers on which it focuses RD&E efforts. However, ABARES' view is that it is in both SunRice's and AgriFutures interests for SunRice to remain heavily involved in industry funded RD&E in the absence of vesting.

If, in the absence of vesting, new supply chains develop it will be important that they are able to access and influence publicly- and industry funded RD&E programs. The governance arrangements for AgriFutures' rice RD&E program have recently changed, with a new Rice Program Management Committee established to advise on RD&E opportunities and issues of relevance to the Australian rice industry (AgriFutures Submission, p.4). Reflecting the current shape of the rice industry, the Committee comprises a minimum of six members sourced from the RGA, SunRice, Rice Research Australia Pty Ltd (A subsidiary of SunRice), Rice Breeding Australia, and AgriFutures. AgriFutures notes that 'the Committee will be reviewed annually to ensure relevance and efficacy'. It will be important that the governance of public RD&E in the rice industry evolve with the rice industry if vesting is removed and ABARES understands the terms of reference for the committee can accommodate such a change.

## 6.2 Rice breeding

Continued pressure from climate and competition from other resources means it is particularly important for the NSW rice industry to develop high yielding, water efficient varieties that underpin the efficiency of sector (AgriFutures 2021).

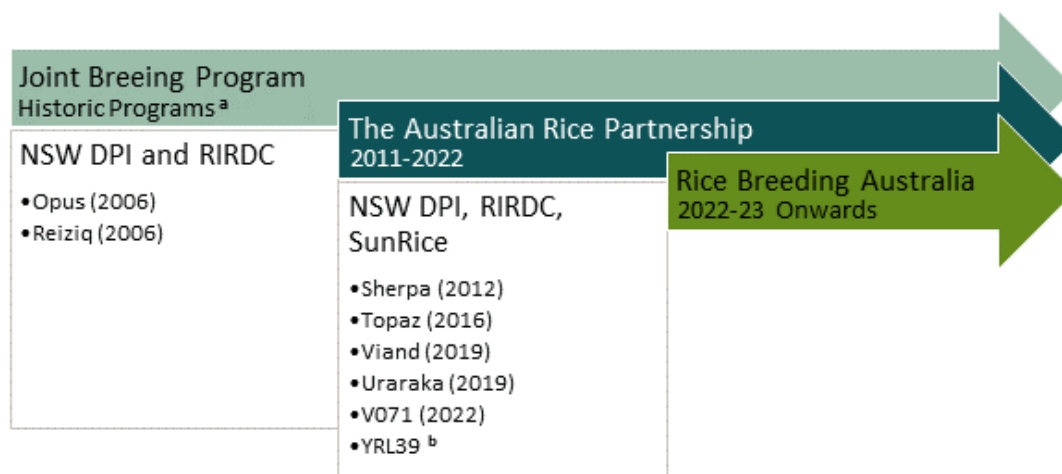
Historically, AgriFutures Australia and NSW Department of Primary Industries (DPI) jointly invested in rice breeding (Figure 10). The varieties released from this program were Opus and Reiziq, which are jointly owned by NSW DPI and AgriFutures. Likewise, the plant breeder's rights (PBR) – a form of intellectual property rights similar to patents – to the varieties are held by the NSW DPI and AgriFutures.

In 2010-11, the breeding program was expanded to include SunRice and it became known as the Australian Rice Partnership under which five rice varieties were developed, Sherpa, Topaz, Uraraka, YRM70 'Viand' and V071. YRL39 was developed under the Northern Australia Rice Project. These varieties are protected by PBR and are owned by the partners in common.

Under the Australian Rice Partnership, AgriFutures Australia and NSW DPI granted SunRice a world-wide exclusive license to commercialise a number of varieties. SunRice was offered the licences on right of first refusal basis, and the licenses are valid until the expiry of the PBR. As a result, growers must access seeds of PBR-protected varieties through SunRice, with the licenses stipulating equal access to seed for all industry participants. The existing commercial arrangements are legally binding

and therefore many varieties will be subject to these arrangements until their PBR terms expire and they enter the public domain (unless the parties agree to change them).

**Figure 10 History of PBR registrations from rice breeding programs**



<sup>a</sup> Date is date PBR granted according to PBR Database; NSW DPI is NSW Department of Primary Industries for and on behalf of the State of New South Wales, RIRDC is Rural Industries Research and Development Corporation (also trading as AgriFutures), SunRice is registered as Ricegrowers Limited. <sup>b</sup> YRL39 was developed by the same partners under the Northern Australia Rice Project.

Source: PBR Database 2023

Unlike in other agricultural industries – and reflecting the current structure of the Australian rice industry – the royalty arrangements for the varieties are on a ‘cost’ basis, with all of the benefits of the varieties being returned to growers through the rice pool; non-supplying growers are charged a margin for seed. In other industries it is more common for those entities commercialising PBR-protected varieties to charge an end point royalty for the use of the variety, with a charge collected at the point of sale of the harvest.

AgriFutures identified in the Rice Program Strategic RD&E plan (2021–2026) that the highest return on investment in rice breeding will come from ensuring rice is a profitable and competitive option for the limited water resources within the irrigated cropping systems of Australia’s temperate rice-growing regions. Their plan acknowledges that while the benefits of program investment will extend to the whole of the Australian rice industry, the overarching program goal of achieving 1.5 t/ML by 2026 is the focus (AgriFutures 2021), rather than investing in multiple smaller varieties/systems targeting niche markets.

To achieve this goal rice breeding has recently transitioned to Rice Breeding Australia, a not-for-profit company with membership from AgriFutures, SunRice and the Rice Growers Association (Box 4).

#### Box 4 Rice Breeding Australia

On 1 July 2022, Rice Breeding Australia was established to *‘provide new energy and a commercial focus to rice breeding so that it can be a key part in achieving the major transformation in water productivity and ultimately be an important contributor to the long-term viability of the Australian rice industry’* (AgriFutures 2022).

Rice Breeding Australia is a not-for-profit company, with membership from AgriFutures Australia, the SunRice Group and the RGA. The company’s purpose is to ‘develop and deliver new and improved rice varieties that will enhance the profitability and sustainability of Australian rice growers’. The company must have at least three Directors including an Independent Chair. For the inaugural Board, the foundation members have appointed a skill-based board of four Directors (AgriFutures Submission p.4) – in addition to the independent Chair, the board is comprised of directors from SunRice, the RGA and Agrifutures.

Rice Breeding Australia will be responsible for implementing the entirety of AgriFutures’ ‘Optimised Genetic Improvement’ priority, representing around 50% of the budget of AgriFutures’ rice RD&E program. ABARES understands that there will be no direct funding from the other members of Rice Breeding Australia, although negotiations with SunRice are ongoing. The research undertaken by Rice Breeding Australia will be carried out by staff employed by the company, rather than being contracted to other research bodies.

During consultations, the focus of the new breeding program was widely regarded as being a good direction for the majority of the southern NSW industry. However, this view was not universally shared and there were opposing views about how RD&E should be directed. The major concern raised during consultations was about the structure of Rice Breeding Australia – in particular SunRice’s position on the Rice Breeding Australia Board – and what it would mean for competing supply chains if vesting was removed.

During discussions with AgriFutures and Rice Breeding Australia, a not-for-profit company was justified as the best approach to direct research priorities. It was argued that because SunRice has the best understanding of the consumer and processing characteristics required of new varieties, and RGA has a very close relationships to a large majority of growers, the structure was best able to ensure the program remains commercially focused.

Other stakeholders noted that this arrangement is unusual across industry funded RD&E programs and creates a range of governance issues. For example, stakeholders wanted to know if other groups would be able to join Rice Breeding Australia in the future. Such arrangements are set out in the company’s constitution, which allows for new members and directors subject to approval from the initial members.

There is also uncertainty about how varieties would be commercialised under the new arrangement. At the time of writing these issues are still being finalised, but ABARES understands that any plant breeder’s rights developed by Rice Breeding Australia are to be vested with AgriFutures. If, as is currently the case, SunRice is offered the first right of refusal to an exclusive licence to commercialise the new varieties, SunRice will have a significant competitive advantage against any competing supply chains.

Seed pricing arrangements will also be important. Under the current arrangements, seed is made available at cost to those supplying paddy to the rice pool, with a margin charged on seed supplied to those outside the pool. ABARES understands that similar arrangements are likely to be set up for



varieties developed by Rice Breeding Australia, and that an end point royalty scheme is not being considered.

As noted, new commercialisation arrangements have not been finalised. However, it should be noted that stakeholders are conscious of giving rise to a situation whereby new supply chains, seeking to access varieties developed under the industry-funded scheme, would effectively have to do so under conditions imposed by SunRice.

Given the challenges faced by the Australian rice industry, continued genetic improvement of rice varieties is an important part of maintaining the industry's future viability. ABARES notes that even if an end point royalty scheme is considered unsuitable for the rice industry, there are alternatives to AgriFutures offering SunRice the first right of refusal to an exclusive licence to commercialise new varieties. Whether the exclusive rights are allocated in a more competitive fashion, or whether non-exclusive commercialisation rights can be granted, it is important that access to such important technologies is provided in a way that supports competition in the absence of vesting.

#### **Recommendation 7**

The NSW Government should work with the Australian Government to ensure that future industry- and publicly-funded RD&E arrangements – including breeding – allow input from a range of stakeholders and supports competition in a post-vesting rice industry.

### **6.3 Access to seed**

SunRice is the main supplier of seed in the NSW rice seed market. For the commercially-important PBR-protected varieties, SunRice has the sole right to supply seed. And for varieties that are not protected by Plant Breeder's Rights, the fact that SunRice handles the majority of the rice harvest, combined with its pure seed arrangements that require suppliers to buy seed from SunRice, has prevented the establishment of a viable alternative market for rice seed.

Some stakeholders highlighted this as a benefit, noting SunRice knows the best way to market product and therefore the best varieties for them to grow. The RGA submission noted that the vesting arrangements gives the industry confidence to invest in arrangements such as SunRice's Pure Seed scheme, 'which underpins the quality and purity of rice seed provided to all growers' (RGA submission p. 6).

Other stakeholders suggested that the current arrangements restrict their ability to market niche products – an example given was that there is a niche for Australian-grown arborio rice which is currently unfilled because SunRice has not recently offered to supply arborio seed. In addition, non-SunRice supplying growers had previously noted difficulty accessing seed from SunRice, even if it was theoretically being made available for purchase. This situation appears to have recently improved – the RMB notes in its submission that:

Since publication of the 2021 Rice Vesting Review, the RMB acknowledges SunRice has developed a new online ordering system for non-supplying Authorised Buyers. This enables Authorised Buyers to order rice seed up to two years in advance, giving SunRice the production window in which to grow the seed for supply. So far, industry reaction to this new

process has been mostly positive as it provides certainty around access to commercial supply of seed. (RMB submission p.8)

During consultations for this ABARES report, a wide range of stakeholders acknowledged the recent improvements in accessing seed, but noted that the arrangement still required them to signal their business intentions to SunRice, and that the terms of the agreement required a deposit being paid many months in advance of delivery.

Access to seed will be an important issue if competing supply chains are to develop in the absence of vesting. The Australian Competition and Consumer Commission (ACCC) notes that restricting competitors' access to an essential input is one of the types of conduct that may represent a misuse of market power (ACCC 2018). And the RMB notes that access to seed is a concern and that it is working to include provisions in the new SEEL agreement to ensure fair and equitable access to seed for all rice growers (RMB submission, p. 8).

While compliance with competition laws is the responsibility of individual businesses (as noted in chapter 7.2), in ABARES' view it will be important for the RMB to continue to monitor access to seed to ensure access for all market participants.

A related issue raised during consultations for this report relates to access to existing, non PBR-protected germplasm. These are varieties that have been developed under the historic rice industry breeding programs but either were not commercialised (for a variety of reasons) or are no longer planted commercially; or that are other varieties in the public domain. There is uncertainty among the previous partners to these breeding programs – NSW DPI, SunRice and AgriFutures – as to the ownership or rights associated with the germplasm, or even whether the germplasm still exists or where it is located. This situation also appears to be complicated by the creation of Rice Breeding Australia and the uncertainty as to the transfer of germplasm owned by the previous partners.

Stakeholders expressed frustration to ABARES in obtaining access to this germplasm in order to conduct further trials or to bulk up the seed to enable domestic production. Some stakeholders note that they have had to seek such germplasm from overseas, which creates costs and delays in meeting strict biosecurity requirements. In ABARES' view it would be useful for the parties involved in historic rice breeding programs to clarify issues around the holdings of non PBR-protected germplasm to facilitate better industry access to this potentially valuable resource.

#### **Recommendation 8**

NSW DPI should work with co-owners to clarify access to germplasm by industry.

## 7 Other issues

### Key points

- The buyer of last resort provision is valued by many growers for the ease and security it brings to the marketing of their crops. However, it is likely restricting the ability of the rice industry to respond efficiently to its external challenges.
- The abolition of the Rice Marketing Act would remove certain exemptions for rice industry participants from the restrictive trade practices provisions of the Commonwealth *Competition and Consumer Act 2010*. It will be the responsibility of all participants to ensure compliance with competition law.
- Australian rice supply chains are integrated, and it is likely that in the absence of vesting Australian rice exports will continue to be dominated by branded, consumer-ready products. These factors reduce the need for the development of new quality assurance institutions in the absence of the single desk export marketing of Australian rice.

In addition to the issues considered in earlier chapters, the terms of reference for this report asked ABARES to assess the operation and tangible benefits of the ‘buyer of last resort’ provision, and to consider any relevant Australian competition law issues. In addition, ABARES has also considered stakeholder views around rice export quality issues. These issues are considered below.

### 7.1 Buyer of last resort

ABARES has been asked to assess the operation and tangible benefits of the ‘buyer of last resort’ provision. The ‘buyer of last resort’ is an obligation on SunRice to purchase all paddy of merchantable quality that is offered to it by NSW rice growers. As noted in chapter 5 the obligation stems from section 61(2) of the Rice Marketing Act which states that under the rice vesting arrangements the RMB ‘shall not refuse to accept from any producer any of the commodity which is vested in it... and which conforms to the applicable standards of quality or grade and which is delivered to it in accordance with this Act.’ As the sole authorised agent of the RMB, this obligation falls on SunRice and is detailed in the SEEL agreement.

The obligation is not ‘triggered’ as such – it is not possible to identify the proportion of NSW rice that was purchased solely because of the buyer of last resort provision. In practice SunRice accepts all merchantable rice offered to it without explicitly assessing whether it would have been purchased in the absence of the obligation. The purchase of paddy under the buyer of last resort provision is subject to quality grading, and theoretically there is a ‘merchantable’ threshold below which paddy would not be purchased. This threshold is not clearly defined, and in consultations with stakeholders it was unclear whether ‘unmerchantable’ paddy is ever refused – the RMB’s submission to ABARES notes that ‘the RMB has received no reports from rice growers, accusing SunRice of not purchasing their rice under the Buyer of Last Resort provision, including no cases brought to the RMB complaining that the price offered was unreasonable under the operation of ‘merchantable quality’’. The RMB and SunRice are working to clarify this ‘merchantable’ threshold and introduce reporting arrangements in the next version of the SEEL agreement.

### **7.1.1 Stakeholder feedback**

For southern growers, the BOLR obligation is insurance against the risk that a NSW rice grower will not be able to sell 'merchantable' quality rice after harvest – it virtually eliminates counterparty risk for growers. This obligation on SunRice is clearly valued by the majority of stakeholders. During ABARES' meetings with southern growers, a common view was that the buyer of last resort provision made the marketing of rice easy, particularly compared with other grains, and offered peace of mind that their crop would find a market regardless of the vagaries of the growing season.

Grower submissions to ABARES frequently touched on the 'vital' value of the buyer of last resort provision. Submissions noted that the provision increases growers' confidence to plant rice and compared the arrangements favourably with those for other grains: 'as many cereal growers have found this season due to the wet harvest securing a market for weather effected grain has been very problematic'.

In its submission to ABARES, Murray Irrigation noted that 'The ability of SunRice to process, brand and market rice on behalf of growers leaves the growers free to what they do best, growing a staple food that can be sold around the world'. The Rice Growers Association submission stated that 'No other similar industry in Australia offers this kind of certainty to its growers. As our climate becomes more volatile, this is another type of 'premium' service that can be afforded to growers as a result of our vesting arrangements'.

In ABARES' view, even though it is difficult to point to its operation in practice, it is clear that the peace of mind offered by the buyer of last resort provision represents a highly valuable part of the vesting arrangements to the majority of southern growers.

It is important to note that the buyer of last resort provision offers no benefit to growers in northern New South Wales. Under the terms of the buyer of last resort provision, growers are responsible for delivering paddy to SunRice receiving facilities. Given the distance between the northern NSW growers and the nearest SunRice receival facilities in the Riverina, the need to dry paddy prior to transport and the costs associated with transporting paddy such distances make it uneconomic to deliver to SunRice to receive the pool return.

### **7.1.2 Effect of the buyer of last resort provision**

The buyer of last resort provision is in effect a form of mandatory insurance against the risk that harvested crops will find a market. The cost of this insurance is borne by all growers in the pool – to the extent that rice is accepted that otherwise would not have been the average price for rice sold by the pool and the average return to growers is reduced. In effect, the buyer of last resort provision amplifies the effect of any cross subsidy created by the pooled pricing arrangements.

As discussed in chapter 3, for SunRice the BOLR obligation creates a requirement to handle the entire NSW rice crop, at a size determined by growers. This has some significant implications:

- *Impact on infrastructure requirements* – many stakeholders (including SunRice) emphasised the importance of vesting and the buyer of last resort provision in ensuring that SunRice's handling and processing infrastructure is utilised to the fullest extent possible. But the requirement also limits the extent to which SunRice can rationalise its infrastructure – it is obliged to handle all rice produced by the industry, at a scale and geographic spread

determined by the industry. Depending on water availability, the NSW paddy harvest can vary from 50kt to 800kt.

- *Impact on marketing* – In a ‘bumper’ year, SunRice needs to market Australian rice to progressively less ‘premium’ markets. This reduces the pool price to all growers.

If vesting is removed, the SEEL agreement will be terminated and the formal obligation for SunRice to be the buyer of last resort will be removed. In ABARES’ view, one of the biggest changes for many growers in the absence of vesting – at least initially – will be coming to terms with what the absence of the buyer of last resort provision means for their business. Even if there is little practical change to the way growers market their rice in the absence of vesting, the perception of rice as a low-risk and straightforward crop to market is likely to change.

As discussed in chapter 3, what happens to how SunRice will deal with growers is uncertain. SunRice could continue to offer a similar service to the buyer of last resort for its contract growers – that is, any grower who wishes to grow rice could contract with SunRice on an area-based contract and SunRice would be contractually obliged to purchase the output. This is similar to how the northern NSW supply chain operates: growers are contracted on an area basis, and all rice (of a merchantable quality) is purchased by the Natural Rice Co. Alternatively, SunRice could move away from offering to purchase all rice offered to it and seek to contract with a smaller number of growers – a possibility discussed in chapter 3.

Either way, judging by the strong stakeholder feedback on the value of the buyer of last resort provision, its removal would result in uncertainty for a considerable number of growers. While most growers would be used to dealing with marketing risk associated with their other winter and summer cropping enterprises, rice marketing has some significant differences. In particular, in comparison with other grains rice needs to be dried soon after harvest to maintain grain quality, and requires significant investment in drying and storage infrastructure. As such, arguably more than in other grains industries, rice growers need marketing certainty prior to harvest. While on-farm storage for other grains has grown significantly since deregulation in those sectors – in 2021 an estimated 90 per cent of farms stored grain (GRDC 2022) – the reliance of southern NSW rice farms on the SunRice supply chain has largely removed the need for investment in on-farm rice drying and storage facilities, and has prevented the development of alternative off-farm storage options.

If vesting is removed, addressing growers’ uncertainty over the removal of the buyer of last resort provision and providing information on how to manage marketing risk in the evolving market will need to be a priority area for the NSW Government and the RMB, working closely with SunRice.

## **7.2 Competition issues**

ABARES has been asked to consider the application of relevant Australian Competition Law to the issue around vesting. In considering this issue, we have consulted with the ACCC, which provided broad advice on the application of the *Competition and Consumer Act 2010* (Cth; CCA), rather than advice relating specifically to the rice industry.

The application of consumer and competition law is not straightforward and depends on careful consideration of how the legislative and legal framework applies to specific situations. A full competition assessment is beyond the scope (and responsibility) of the current review, and consideration is limited to some high-level observations. In short, it is up to individual businesses in

the NSW rice industry to consider whether their business practices (with or without vesting) are consistent with competition law, and ABARES notes that an appropriate transition period before vesting is removed would allow business the time to undertake this assessment.

### **7.2.1 Current exemption from Part IV of the Competition and Consumer Act**

Part IV of the CCA includes prohibitions on restrictive trade practices, including cartel behaviour; imposing minimum resale prices; and behaviour that substantially lessens competition in a market such as:

- cooperation among businesses
- misuse of market power
- exclusive dealing.

Section 51 of the CCA exempts anything authorised by State legislation or regulations from being considered to have contravened Part IV of the CCA. For the purpose of this exemption, Section 164 of the Rice Marketing Act specifically authorises contracts, agreements and understandings made by the RMB in order to exercise its functions, and conduct by all parties to such arrangements, as being exempt for the purpose of section 51 of the CCA. In effect, this means that the licence conditions on ABL holders, as well as any conduct consistent with the SEEL agreement, are exempt from the restrictive trade practices provisions of the CCA.

In the absence of vesting – and presumably the repeal of the Rice Marketing Act– this exemption would no longer apply and all conduct by rice industry participants would be subject to the trade practices provisions of the CCA. Like all businesses, participants in a post-vesting NSW rice market will need to assess their business conduct against the provisions of the CCA to ensure compliance.

### **7.2.2 Market power**

One issue that a number of stakeholders have raised with the review is their belief that SunRice has significant market power and will seek to use that market power to limit competition. ABARES notes that market power is not a straightforward concept:

- market *share* is different to market *power* – just because SunRice might have significant market share in a market does not mean that it has market power – market power involves a lack of competitive constraint. For example, while SunRice may have a large market share of the domestic retail rice market, the countervailing power of supermarket retailers may limit its ability to leverage that market share into market power
- defining a market is not straightforward. In the NSW rice industry, there may be different markets for the supply of rice seed; the supply of paddy; the supply of processing services for rice; the supply of processed rice for export, or for the domestic market. The extent to which any one firm has market power in any of these markets might differ and would need to be separately assessed.

That said, ABARES notes that any new supply chains in the absence of vesting are likely to receive strong competition from SunRice. In ABARES' discussions with the ACCC, it was noted that the ACCC has not undertaken a competition assessment in the rice sector. If the Rice Marketing Act is repealed all firms in the NSW rice market will be subject to the CCA and will need to assess their practices accordingly.

### **7.2.3 Unfair contract terms**

Another area that may have particular relevance to the NSW rice industry is the Unfair Contract Terms provisions of the CCA. This framework protects consumer and small businesses against the inclusion of unfair terms in standard form contracts (also known as ‘take it or leave it’ contracts where there is limited/no room to negotiate terms). Recent amendments to the framework, which will commence in November 2023, introduce substantial penalties for the contravention of these laws.

The ACCC has previously raised concerns with terms in a number of contracts in other agriculture sectors, including the horticulture, dairy, and winegrape sectors. Of potential relevance to the rice sector, terms which give the contract offeror the power to make unilateral changes to contract terms (including price) were identified as potentially concerning by the ACCC, as were lengthy payment periods set out in contracts.

ABARES would note that all businesses offering contracts to consumers or small businesses (including growers) are subject to the CCA and would need to assess their standard form contracts against its provisions. Given the issues that have arisen with respect to contracts in other agricultural sectors the RMB and NSW Government should ensure that industry participants do not have significant competition concerns or face a lack of transparency with sales/marketing contracts in the transition to a deregulated rice industry.

## **7.3 Ensuring the quality of rice exports**

During consultations with growers and industry stakeholders, two related issues were raised regarding risks that the removal of vesting would pose to the quality of Australia rice exports, as perceived by consumers in export markets:

- The removal of the single desk export arrangements will require the development of ‘industry good’ functions related to defining and ensuring quality standards for rice, as was required after the deregulation of the wheat industry.
- Competing Australian exporters will be able to ‘free-ride’ on the investment SunRice has made positioning Australian rice as a quality product by selling lower-quality, cheaper rice, thereby reducing the price achievable by Australia rice in overseas markets.

These arguments are considered below.

### **7.3.1 The need for new institutional arrangements**

The need for new institutions to ensure the orderly marketing of Australian rice for exports was raised during stakeholder consultations. It was argued that standard setting and quality assurance functions currently undertaken by SunRice in its processing and export of Australian rice may need to be entrusted to external industry bodies in the absence of the single-desk exporting arrangements, and that the costs of establishing such bodies would need to be taken into account when assessing whether to remove vesting.

The experience of the wheat industry was raised as an example of what could happen if this issue is not considered carefully. In its submission the RGA stated that:

Clear lessons from the deregulation of Australian wheat and dairy demonstrate the need to appropriately fill the marketing gap ... Concerningly, deregulation of Australian wheat saw

numerous export markets lost, and the nation's reputation as a reliable exporter of quality produce seriously damaged. The recovery of markets and international trust has only occurred through the implementation of grain quality standards and receival testing that meets market requirements. (RGA submission, p.9)

It is instructive to consider the experience of the wheat industry's deregulation and its relevance to the marketing of NSW rice for export. Wheat is accumulated across Australia in many relatively small consignments at bulk storage and handling facilities. Agreed receival standards provide a basis upon which buyers can verify that the wheat they receive matches the description of the wheat they have purchased. Australian wheat is then exported as a bulk commodity and is used as an input to food products or animal feed. Australian wheat is marketed on the basis of standard classes and grades and in this way a reliable 'brand' of Australian wheat is established (PC 2010). As such, the abolition of the single-desk export arrangements for wheat in 2008 required the development of new institutions to take over the industry quality assurance and standard setting functions previously undertaken by the single-desk exporter (Box 5).

### **Box 5 Quality assurance and standard setting in the Australian wheat industry**

Prior to deregulation, the single-desk wheat exporter AWB (International) Limited undertook wheat classification and established all wheat classes/grades. Following deregulation, the Grains Research and Development Corporation (GRDC) assumed responsibility for the management and operation of wheat classification.

The GRDC implemented a two-tiered model to provide the functions required for wheat varietal classification. This involved the determination of wheat classes/grades based on market requirements and the assessment and classification of new wheat varieties into the established grades. These functions are now undertaken by Grains Australia Ltd, a company funded by the GRDC through grower levies and public funds to provide various 'industry good' functions.

In addition, Grain Trade Australia was formed in 1991 to standardise grain receival standards, trade rules and grain contracts across the Australian grain industry – functions initially undertaken by AWB (International) Ltd.

Source: PC 2010

NSW rice is marketed very differently to wheat.

- NSW rice is not marketed as a bulk commodity – in 2017 SunRice noted that over 95% of all of its exports were branded, consumer-ready products rather than bulk products (SunRice 2017).
- The NSW rice supply chains are more vertically integrated than other grain industries. SunRice, the Natural Rice Co and presumably other rice exporters that may be established in the future are responsible for sourcing paddy, processing and packing the rice, and marketing it in its final form to wholesalers/retailers.

In this environment, firms marketing NSW rice overseas will have more control over grain quality 'paddock to plate' compared with other grains, and the emphasis on branded marketing means that it will be in each firm's financial interest to ensure the quality of their product meets importers' requirements. In this way, the marketing of NSW rice marketing is more similar to the export marketing of Australian horticulture products – which do not have centralised standard-setting



institutions – than to the marketing of other grains. In ABARES' view there will not be the same need to establish centralised marketing institutions as there was for the bulk export of other grains.

### **7.3.2 Protecting 'brand Australia'**

A common concern raised during ABARES' stakeholder engagement was that competing exporters would be able to 'free-ride' on the investment made by SunRice over many years to establish Australian rice as a quality product, and to reduce the premiums that are currently being earned by this product positioning.

The RGA's submission stated that

[SunRice's investments have]... allowed SunRice to establish the Australian product as one of extremely high quality and very good value. SunRice works hard to ensure its brands are responsive to changing consumer demand. A new entrant to the export market couldn't deliver the level of commercial innovation that SunRice is delivering. It's also highly unfair that any new entrant could essentially – without any effort on their own part – be able to ride on the coattails of SunRice's longstanding efforts. (RGA Submission p. 7)

The concern was also repeatedly raised during ABARES' public consultations with rice growers.

ABARES' notes that it is difficult to judge the extent to which a 'brand Australia' premium exists for SunRice products in overseas markets, or what even an 'Australian' brand means in different markets. No evidence has been presented to ABARES during its stakeholder consultations as to the size or nature of such a premium. However:

- To the extent that 'brand Australia' is based on production systems and inputs, regulatory oversight and export quality standards, any exporters emerging in the absence of vesting will need to will need to abide by the same requirements as SunRice.
- To the extent that SunRice has characterised other product and service attributes – grain quality, reliability of service, continuity of supply, etc – as a function of their product being 'Australian' rice, as export competition emerges it may need to adjust its branding strategy to clearly differentiate its products from those of competing exporters.

ABARES also notes that the exports of other Australian agricultural products – such as horticultural exports – maintain a strong Australian branding despite being comprised of multiple competitive exporters, demonstrating that vesting and a single desk exporter is not necessary for any premiums that may be earned in this way.

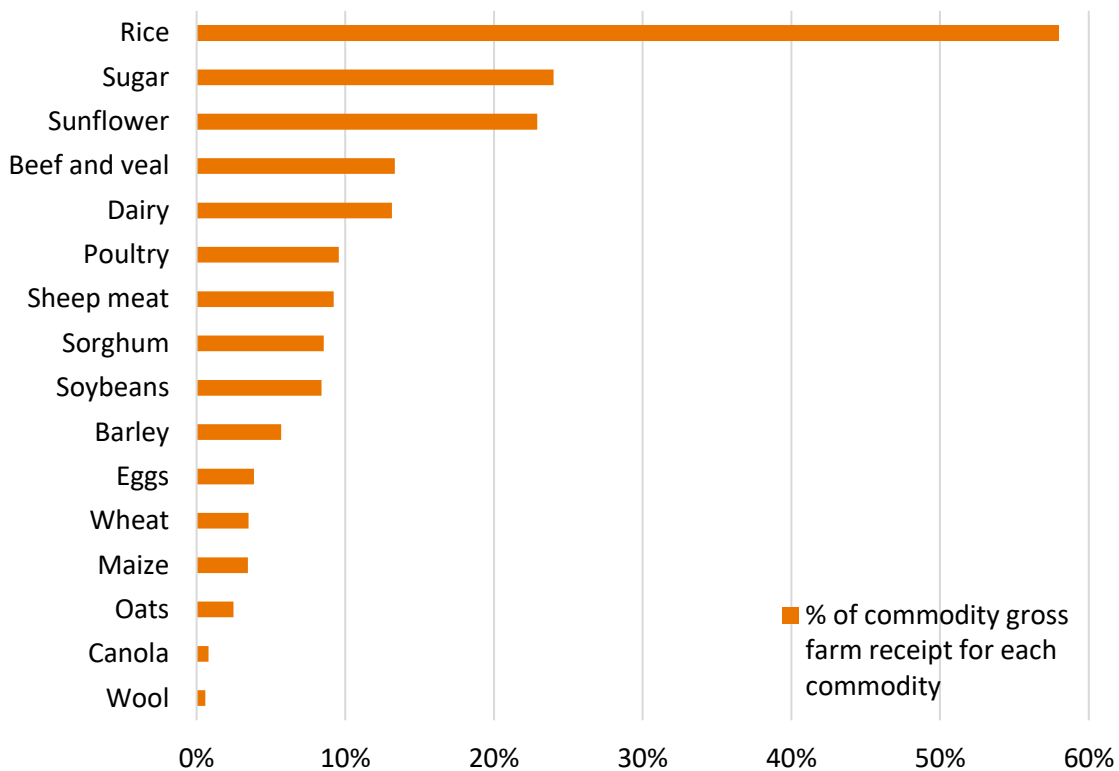
And as a final note at least one competing supplier, the Natural Rice Co, already sells to major Australian supermarkets and meets their quality standards. It is quite possible that industry fears about the likelihood of low quality produce risking lucrative markets may not be realised.

## **7.4 International marketing of NSW rice**

Australia has a long history of deregulating the agriculture sector and removing distorting forms of support. As a result, Australian farmers are some of the least subsidised in the world. Government support in Australia today is largely focused on building sector capacity, such as through R&D. Policies providing direct farm support are generally concentrated on risk management tools, such as Farm Management Deposits, to help manage Australia's uniquely variable climate (Greenville 2020).

Rice markets globally, however, are heavily distorted. Rice is often considered a sensitive domestic industry and governments try to protect their domestic industry by imposing heavy trade restrictions on more efficient producers. Among OECD members, support to rice farmers was close to 60% of farm incomes (Figure 11). This is well above other commodities and is due to heavy government intervention in this sector, primarily through market price support, such as tariffs and quotas (Grenville 2020).

**Figure 11 Transfer to specific commodities, OECD members, 2016-2018**



Source: OECD 2019

During consultations stakeholders raised concerns about the distorted operation of international rice markets and Australia’s ability to compete in global rice markets without the single desk arrangements. The argument presented during consultations was that if a competing Australian exporter was to emerge, importers could play the multiple Australian exporters off against each other and force lower prices on NSW rice growers.

‘SunRice competes with suppliers from many other markets, but not with those suppliers accessing rice grown in NSW. If the Sole and Exclusive Export Licence (SEEL) didn’t exist, and other exporters entered the market, the risk is that substitutability within the submarket for NSW grown rice would lead to new entrants (assuming there are no other barriers to establishing themselves in the market) undercutting the SunRice price, creating a lower priced market equilibrium and ultimately lower returns for growers’ (RMB Submission p.7).

In ABARES view Australia already faces competition in global markets from other exporters, such as California. While the SEEL holder can control Australian exports, they cannot control the production of other countries. As such, and as discussed in chapter 3, it is likely that in many of its high-value

markets SunRice's observed price premiums rely on 'earned' factors such as product quality and reliability of supply. This limits the extent to which such premiums can be competed away by alternative Australian suppliers.

In addition, the argument that new exporters would compete away the premiums that go to NSW growers ignores the fact that for growers, export prices are not the same as returns. Even if competing exporters were to offer lower prices to importers to increase market share at the expense of SunRice, they will still need to secure a reliable supply of paddy to fulfil these contracts, and they'll need to offer better terms than SunRice to growers to do so. To do this sustainably new exporters will need to process and market NSW rice to these markets more efficiently than the incumbent – in this way, while price may be reduced, returns to growers may increase. This situation is comparable to the dairy industry today, whereby excess processing capacity has seen processors offer high farmgate prices to maintain throughput of processing facilities, which is in turn driving rationalisation in the processing sector as companies restructure their manufacturing footprint around a smaller dairy sector (ABARES 2023a).

#### **7.4.1 Market access concerns**

The 2021 Review noted that the continued existence of the RMB potentially impacts the ability of Australia to negotiate improved access for rice in its trade agreements, but that the extent to which this occurs in practice was impossible to determine.

ABARES would agree that it is impossible to know the counterfactual argument and whether Australia would get better market access without vesting. During consultation with the Department of Foreign Affairs and Trade for this report it was noted that trading partners have raised concerns with the presence of the RMB during trade negotiations. However as previously noted rice is a sensitive commodity in many countries, and it is likely that rice would be excluded from many trade agreements regardless of the presence of the RMB.

Nonetheless it should be noted that the RMB is, *prima facie*, a trade distortion, and it sits uncomfortably against Australia's position as an advocate of agricultural trade reform.

# Appendix A: Terms of reference

## **Purpose:**

The Department of Primary Industries (DPI) has conducted a review of the rice vesting arrangements (the 2021 Review) established under the *Rice Marketing Act 1983*. The 2021 Review examined whether the benefits of vesting outweigh the costs to the whole community, and whether any benefits can only be achieved through restricting competition.

The 2021 Review found that there is no conclusive evidence of net benefits to growers or the community from the current vesting arrangements, but that there continues to be strong support for vesting arrangements from some industry stakeholders.

In coming to these findings, the Review considered in detail the benefits enjoyed by the rice industry that are regularly cited as being related to vesting, primarily export price premiums and freight scale advantage. While it is acknowledged that there are a range of views on the underlying cause of these cited benefits, the Review found no conclusive evidence that the benefits can be directly attributed to vesting and found higher net benefits could be achieved in alternative policy arrangements.

The 2021 Review identified a range of issues that warrant further investigation, including further stakeholder consultation. An Independent Reviewer will be appointed to make recommendations to Government about future regulatory and governance arrangements for the industry.

## **Terms of Reference:**

The Reviewer is to develop a report in accordance with the following terms of reference:

1. Consider the findings and other information identified in the 2021 Review and undertake further consultation with industry stakeholders and other relevant experts, as necessary.
2. Assess the following matters relating to the NSW rice industry:
  - a. Stakeholder views about the findings of the 2021 Review
  - b. Governance arrangements and transparency of information related to rice vesting
  - c. Ability of industry participants to access commercial seed varieties and Research, Development and Extension activities
  - d. Operation and tangible benefits of the 'buyer of last resort' provision
  - e. Consideration of relevant Australian competition law
  - f. Any other issues considered necessary.
3. Make recommendations to Government on the most appropriate response to the Review and deliver an implementation plan for any changes required to the existing regulatory structure and governance arrangements.

## **Delivery:**

Report development is to be led by the Independent Reviewer, independently of Government.

The Reviewer is to deliver a report to the Minister for Agriculture by 30 May 2023.

# Appendix B: Stakeholder consultation summary

## Consultations summary

| <b>Date</b> | <b>Stakeholders</b>   | <b>Location</b> |
|-------------|---|-----------------|
| 25/10/2022  | Consultation meeting with RGA productivity and industry affairs committee | Virtual         |
| 31/10/2022  | Consultation meeting with Honestly Riverina Ltd                           | Virtual         |
| 1/11/2022   | Consultation meeting with Natural Rice Co Ltd                             | Virtual         |
| 8/11/2022   | Consultation meeting with Rice Marketing Board                            | Canberra        |
| 24/11/2022  | Consultation meeting with ACCC  | Virtual         |
| 30/11/2022  | Consultation meeting with Rice Breeding Australia                         | Virtual         |
| 6/12/2022   | Consultation meeting with RGA Executive                                   | Deniliquin      |
| 15/12/2022  | Consultation meeting with NSW DPI   | Virtual         |
| 16/12/2022  | Consultation meeting with Rice Marketing Board                            | Canberra        |
| 16/12/2022  | Consultation meeting with DFAT  | Canberra        |
| 17/01/2023  | Stakeholder workshop  | Finley          |
| 20/01/2023  | Consultation meeting with AgriFutures Australia                           | Canberra        |
| 1/02/2023   | Northern NSW stakeholder workshop   | Lismore         |
| 1/02/2023   | Tour of Natural Rice Co facilities  | Lismore         |
| 2/02/2023   | Tour of rice breeding facilities, Southern Cross University               | Lismore         |
| 15/02/2023  | Stakeholder workshop  | Leeton          |
| 15/02/2023  | Stakeholder workshop  | Griffith        |
| 15/02/2023  | Tour of Leeton Mill, SunRice  | Leeton          |
| 16/02/2023  | Stakeholder workshop  | Coleambally     |
| 16/02/2023  | Stakeholder workshop  | Finley          |
| 16/02/2023  | Stakeholder workshop  | Deniliquin      |
| 16/02/2023  | Stakeholder workshop  | Wakool          |
| 17/02/2023  | Tour of Deniliquin Mill, SunRice  | Deniliquin      |
| 17/02/2023  | Tour of Old Coree rice breeding facility                                  | Jerilderie      |

### **Submissions received**

- 14 from individuals (11 via the have your say survey, 3 via uploaded/emailed letters)
- 12 from businesses/organisations, including:
  - SunRice
  - Natural Rice Co
  - Ricegrowers Association
  - AgriFutures
  - Rice Marketing Board
  - Charles Sturt University
  - Murray Irrigation
  - Port of Melbourne
  - Rural Development Australia – Riverina
  - Senator Perrin Davey
  - National Farmers Federation
  - NSW Farmers Association

# Appendix C: Implementation Plan

| Action  | Rec | Indicative timing | Considerations  |
|---|-----|-------------------|---|
| <b>Announce and establish transition</b>                        |     |                   |   |
| Announce that rice vesting will not continue after 30 June 2027 | 1   | Within 12 months  | NSW Government to announce that vesting will not be renewed after 2027 for southern growers, and to outline the transition to a post-vesting industry. This should be announced as early as practicable to allow the industry sufficient notice of the end of vesting.  |
| Proclaim new objectives of RMB                                  | 2   |                   | Primary objective of the RMB to reflect a new role of working with rice industry stakeholders to advise the NSW Government on transitional issues relating to the removal of vesting.<br><br>Objectives to reflect requirement to consult with and represent the interests of all NSW rice industry stakeholders, not just growers.<br><br>Amend objectives to reflect the shift in reporting emphasis away from achieving returns in export markets towards enhancing transparency of grower returns from the rice pool. |
| Abolish cross-directorship requirements                         | 4   |                   | RMB to remove from the SEEL the requirement for RMB elected members to be represented on the SunRice board.   |
| End export prohibition/vesting for northern NSW growers         | 3   |                   | Export prohibition for northern NSW rice industry to be removed, ideally ahead of sowing for the 2024-25 season.<br><br>The intention is to allow rice grown in northern NSW to be exported, not for northern-NSW based processors to export rice grown in southern NSW.<br><br>Allowing the northern NSW industry to export may also require ending vesting for northern NSW growers, depending on how the change is implemented.  |
| Publish the SEEL  | 6   |                   | SEEL agreement between RMB and SunRice, reflecting where appropriate the changes to reporting requirements and export prohibition undertakings, to be published on the RMB website.   |
| <b>During transition</b>  |     |                   |   |
| Improve rice pool reporting to growers                          | 5   | By mid-2024       | NSW Government and RMB to work with SunRice to develop reporting indicators to enhance transparency over operation of rice pool.<br><br>Parties will need to strike a balance between transparency and legitimate confidentiality concerns. This may have a bearing on whether the information is reported to growers directly by SunRice or by the RMB.<br><br>Indicators may include the total revenue of the pool (including revenue from SunRice businesses); total   |

Independent report into NSW rice vesting arrangements

|   |     |                              |   |
|---|-----|------------------------------|---|
|   |     |                              | <p>returns to growers; and the proportional contribution to costs of factors such as storage and handling; processing; freight and distribution; and payments to other SunRice businesses.</p> <p>The indicators should be developed for reporting in 2024</p>  |
| RMB industry liaison  | 2   | 30 June 2024 to 30 June 2027 | <p>To liaise with industry and affected regional communities to identify and advise NSW government on transitional issues as they arise. These issues are likely to include:</p> <ul style="list-style-type: none"> <li>• Buyer of last resort – work with industry and NSW Government to provide information and reduce uncertainty to growers in relation to rice marketing options ahead of the removal of the buyer of last resort obligation.</li> <li>• Access to seed – continue to ensure that SunRice is meeting its obligations to provide equitable access to seed for all growers.</li> </ul> |
| Promote RD&E arrangements that support post-vesting rice market | 7,8 | Ongoing to June 2027         | <p>To work with Australian Government and AgriFutures to ensure that industry- and publicly-funded RD&amp;E arrangements support the development of a competitive market for rice in the absence of vesting. Issues to address are likely to include:</p> <ul style="list-style-type: none"> <li>• commercialisation arrangements for new levy-funded rice varieties</li> <li>• ensuring governance arrangements for industry-funded RD&amp;E allow for input from all relevant parties in a post-vesting rice industry.</li> </ul>   |
| Consideration of need for ongoing advisory body post-vesting    | 2   | By 30 June 2027              | <p>NSW Government to consider the need to develop a time-limited body to continue the RMB’s liaison/advisory role after the removal of vesting. If required, such a body should not be established in legislation but instead could take the form of an advisory body appointed by the relevant minister.</p>   |
| <b>Removal of vesting</b>                                       |     |                              |   |
| Allow 2022 vesting proclamation to expire                       | 1   | From 30 June 2027            |   |
| Repeal <i>Rice Marketing Act 1983</i>                           | 1   |                              | Rice Marketing Act to be repealed and all licensing requirements abolished from 30 June 2027.   |



# References

- ABARES 2022, [Agricultural Commodity Statistics](#), Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra.
- 2023a, [Agricultural Commodities Report: March quarter 2023](#), ABARES, Canberra.
- 2023b, Farm Survey Data, Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra
- ABS 2018, International Merchandise Trade, Australia: Concepts, Sources and Methods, Australian Bureau of Statistics, Canberra.
- 2021, [Digital boundary files](#), Australian Bureau of Statistics, Canberra.
- ACCC 2018, [Guidelines on misuse of market power](#), Australian Competition and Consumer Commission, Canberra.
- AgriFutures 2021, [AgriFutures Rice Program Strategic RD&E Plan \(2021-2026\)](#), Rural Industries Research & Development Corporation, Wagga Wagga.
- 2022, [New Structure announced to accelerate rice breeding in Australia](#), Media release, Rural Industries Research and Development Corporation, Wagga Wagga, 11 August.
- AICD 2017, [Managing conflicts of interest](#), Australian Institute of Company Directors
- 2021, [Individual general duties of directors](#), Australian Institute of Company Directors
- 2022, [Conflicts of interest](#), Australian Institute of Company Directors
- AITHER 2018, [Expanding the New South Wales rice industry](#), AITHER Melbourne.
- BOM CSIRO 2022, [State of the Climate 2022](#), Commonwealth of Australia, Canberra.
- CIE 2021, [Rice Vesting economic evaluation](#), Report prepared for NSW Productivity Commission, The Centre for International Economics.
- COAG 2016. [Intergovernmental Agreement on Competition and Productivity-enhancing Reforms](#). Council of Australian Governments. December 2016.
- Goesch, T., Legg, P. & Donoghoe, M., 2020. [Murray-Darling Basin water markets: trends and drivers 2002-03 to 2018-19](#), Canberra: Australian Bureau of Agricultural and Resource Economics and Sciences.
- Gray, EM, Oss-Emer, M and Sheng, Y 2014, [Australian agricultural productivity growth: past reforms and future opportunities](#), ABARES research report 14.2, Canberra, February
- GRDC 2022, [Boosting the efficiency of on farm storage](#), Grains Research & Development Corporation, Canberra.

Griffith G, Mullen J 2001, [Pricing-to-market in NSW rice export markets](#), The Australian Journal of Agricultural and Resource Economics.

Greenville J 2020, [Analysis of government support for Australian agricultural producers](#), ABARES research report, Canberra.

GA 1997, [Australia's River Basins](#), Geosciences Australia, Canberra.

Gupta, M, Hughes, N & Wakerman Powell, K 2018, [A model for water trade and irrigation activity in the southern Murray-Darling Basin](#), ABARES conference paper, Canberra, January.

Gupta, M, Hughes, N, Whittle, L, & Westwood, T 2020, [Future scenarios for the southern Murray-Darling Basin](#), Report to the Independent Assessment of Social and Economic Conditions in the Basin, ABARES research report, Canberra, February, CC BY 4.0.

IMC 2010, Review of the NSW Rice Marketing Act 1983, Integrated Marketing Communications.

NSW DPE 2023, [NSW Regional Water Statement](#), NSW Government, Sydney.

NSW DPI 2005, Marketing of Primary Products Act 1893 NSW Rice Marketing Board Review Report, NSW Department of Primary Industries.

— 2016, [Review of Rice Vesting Proclamation](#), NSW Department of Primary Industries.

— 2021, [Rice Vesting Review 2021](#), NSW Government.

NSW Government 2017, [Assessment Against the Competition Test](#), New South Wales through Department of Finance, Services and Innovation.

— 2012, [Review of Rice Vesting by the Rice Marketing Board under the NSW Rice Marketing Act 1983](#), NSW Government Trade and Investment, Sydney.

NSW Government Review Group 1995, Review of the legislation establishing the NSW Rice Marketing Board, The Government of New South Wales.

NSW PC 2020, [Productivity Commission Green Paper](#), NSW Treasury, Sydney.

— 2021, [Productivity Commission White Paper](#), NSW Treasury, Sydney.

OECD 2014, [The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy](#), OECD Publishing, Paris

— 2019, [Agricultural Policy Monitoring and Evaluation 2019](#), Organisation for Economic Cooperation and Development, OECD Publishing, Paris.

PBR Database 2023, [Plant Breeders Rights](#), IP Australia, Canberra.

[Primary industries \(excise\) levies amendment \(rice\) regulations 2020](#)

PC 2000, [Single-desk Marketing: Assessing the Economic Arguments](#), Productivity Commission Staff Research Paper, AusInfo, Canberra.

- 2005, [Review of National Competition Policy Reforms](#), Productivity Commission Report no. 33, Canberra.
- 2010, [Wheat Export Marketing Arrangements](#), Productivity Commission Report no. 51, Canberra
- 2016, [Regulation of Australian Agriculture](#), Productivity Commission Report no. 79, Canberra.
- RMB 2023a, [NSW Rice Crop Statistics](#), The Rice Marketing Board for the State of New South Wales, Leeton.
- 2023b, RMB annual verification reports, The Rice Marketing Board for the State of New South Wales, Leeton.
- 2023c, [RMB annual reports](#), The Rice Marketing Board for the State of New South Wales, Leeton.
- SunRice 2017, [Proposed Australia-Indonesia Comprehensive Economic Partnership Agreement SunRice Public Submission](#), SunRice Group, Leeton.
- 2019, [SunRice Information Memorandum](#), SunRice Group, Leeton.
- 2021, [Paddy Pricing Policy](#), SunRice Group, Leeton.
- 2022a, [2022 Annual Report](#), SunRice Group, Leeton.
- 2022b, [2022 AGM - Chair & Group CEO addresses and presentations](#), SunRice Group, Leeton.
- 2022c, [Non-Supplying Grower Expression of Interest to Purchase Seed Form 2023–24](#), SunRice Group, Leeton.
- UN Statistics Division 2023, [UN Comtrade database](#), United Nations, New York
- USITC 2015, [Rice: Global Competitiveness of the U.S. Industry](#), United States International Trade Commission, Washington.
- Whittle, L, Galeano, D, Hughes, N, Gupta, M, Legg, P, Westwood, T, Jackson, T & Hatfield-Dodds, S 2020, [Analysis of Economic effects of water recovery in the Murray–Darling Basin](#), Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra