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To; Mr Paul Lindwall, Presiding Commissioner
Regulation of Australian Agriculture
Productivity Commission
Locked Bag 2, Collins Street East
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By Email: agriculture@pc.gov.au

Dear Mr Lindwall

Re: Inquiry into the Regulatory Burden Imposed on Australian Farm Businesses
Draft Report dated 21 July 2016

"More laws less justice" Cicero 106-43 BC

INTRODUCTION

Thank you for the opportunity to comment on the Environmental Section of the Draft Report and make a submission to the Productivity Commission's enquiry into State and Federal regulations. The above quote is over 2000 years old and it appears that political ideology still prevails over common sense.

Most regulations have a significant impact on the competitiveness of farm businesses. The end result is reduced productivity, competitiveness and income for Australian agriculture producers. Regulations that unnecessarily target economic activity significantly reduce innovation, investment initiatives and export income. The removal of "green" and "red" tape would deliver increased competitiveness, productivity, employment, farm profitability, the better allocation of resources and greater use of existing infrastructure. The net result would be an increase in living standards for all Australians.

Firstly we would like to commend the Commission for the following findings. We would however recommend from our personal experience (detailed in this submission) and that of our many contacts with farmers in Western Australia that the Commission should change the word "may" to "indisputably" in the first sentence below

"The Commission heard that native vegetation and biodiversity conservation regulations "may":

- impede productivity improvements, including by limiting farmers' capacity to respond to changing circumstances. For example, the Australian Farm Institute described New South Wales native vegetation laws as 'a cumbersome and tangled web of productivity sapping regulations'

- Place considerable costs on farm businesses, including the cost of conserving species and ecosystems that benefit the wider community

- involve complex and costly processes (including the need to obtain and pay for detailed specialist advice about the presence of threatened species on the property)

- be duplicated across different levels of government. A farmer wanting to clear trees may need approval from both the Australian Government under the EPBC Act and the relevant state government under its native vegetation and/or threatened species legislation

- be in some cases administered in a very bureaucratic and inflexible fashion. While states' native vegetation legislation typically seeks to promote social, economic and environmental interests, in some states these laws are administered by regulators who are unwilling to tolerate any environmental harm, even for potentially large social or economic benefits (and thus take a lexicographic approach to environmental protection)

- be rigid and contribute to landholders' distrust of government, and limit their voluntary participation in environmental programs and actions (box 3)."

While supporting and confirming the Commissions Draft Recommendations as detailed at 3.1, 3.2 and 3.3 our perception is that the recommendations are unlikely to be the catalyst to drive significant change to the current situation. This is said in the knowledge that most politicians and their constituents are city orientated and unaware of the impact being inflicted on rural individuals and communities. Rigorous independent calculations of the financial, economic and social impact being imposed on farmers by current Environmental Laws need to be produced in a transparent manner. This analysis may focus Federal and State policies on the costs being imposed on individuals by iniquitous environmental legislation for dubious benefit.

Governments agree that the increasing Debt and Deficits will erode the Standard of Living of all Australians, in the future. However, Governments are failing to retract inappropriate legislation that is dated and failing to achieve the original outcomes sought. State Legislation that is at least equivalent to the Commonwealth Constitution Section 51 (xxxi) is needed. (Commonwealth Constitution Section 51 (xxxi) requires any property takings by the Federal Government to be on just terms, when existing private property rights are breached for public benefit, and that the cost be met by the public rather than the individual.). When States need to budget and be accountable for costs, the focus will no doubt question whether the benefits of environmental legislation are of greater value than money that could be directed to more deserving areas like health and education.

RECOMMENDATION

The Productivity Commission is urged to recommend amendments to current Environmental Legislation to simplify the clearing of remnant vegetation procedures to generate more income and jobs for the Australian community.

We have enclosed as Attachment 2, "A Flow Chart to Simplify Schedule 5 of the EP Act. The flow chart details an application process for clearing of remnant vegetation that is not covered under FACT SHEET 9. Legislation as detailed in this flow chart would enable farmers to clearly understand the clearing application process. Approvals would invigorate the agriculture sector with respect to innovation, investment, income and employment. (Fact Sheet 9, attached for your information, details the circumstances when clearing activities do not require a permit. Misinformed individuals often state farmers may clear 5ha each year as they wish confusing the situation. This is not true the conditions for clearing without a permit are very restrictive. Attachment 2 however will clarify the process and be easier to understand.

It would be in the best interest for Australian Agriculture that the Federal and State Governments adopt a uniform policy position with respect to the clearing of remnant vegetation. Legislation similar to "Schedule 5" of the EP Act in WA is too restrictive and fails to recognise the cost impact on owners of private property who wish to conduct farming. We have enclosed as Attachment 3 "The Costs Faced by Farmers with Remnant Vegetation On their Property". These are costs that must be paid each and every year. Current Environmental Policy restricts income growth, productivity and employment opportunities in the agriculture sector leading to the economic and population contraction in rural communities and the loss of services that sustain community well-being.

EXECUTIVE SUMMARY

All rural and regional communities in Western Australia and no doubt in many parts of Australia are adversely affected by current Environmental Legislation, in particular legislation similar to Schedule 5. The key messages that needs to be reiterated are

- Private property designated and zoned for agriculture are farms not national parks. To expect remnant vegetation to be cared for by families endeavouring to make a living is unjust without appropriate financial incentives. Farms need to be productive and profitable to be sustainable.
- Farmers know that their land is the critical source of equity for their business and possibly their retirement superannuation. Consequently farmers will work to protect and maintained the land to produce the most profitable yields.
- If the Government considers a farmers land may contain rare or endangered flora or fauna then the Government is responsible for the expense of independent studies to ascertain the status of remnant vegetation.
- If the Government decides to restrict farmers the freedom of action to work their land in their families' best interests or rezone privately owned areas as an Environmentally Sensitive Areas (ESA) then the Government must be prepared to pay fair and just compensation.
- The continuous loss of lives and infrastructure through fire is preventable. Common sense and risk analysis is needed at farm level. Costs suffered by individuals and rural communities by bush fire are much more devastating than the financial cost often expressed. The reduction of fuel loads, removal of dead fall and the construction of adequate fire breaks are decisions for the owners of the land. Fire prevention legislation should detail minimum standards not maximum. For example the designated 20 metres of clear ground around farm infrastructure is totally inadequate in an ember attack from wooded areas with a heavy fuel load.
- Only rural areas that are collocated or close to major towns with growing populations that provide good health, education and public transport systems comparative to cities and have the potential to be developed for residential and life style subdivisions have increasing land values. Remnant vegetation has little value and is usually a cost to the farming business.
- Most agricultural farm values are directly reflective of the arable area available, yield per ha, costs of production per ha, cost of produce to the port and commodity prices. Unfortunately, commodity prices are currently stable or even falling. Consequently, productivity increases are essential for farm sustainability and survival. Productivity increases reflect the economies of scale and time taken to complete sowing, spraying, or harvesting operations in the most cost effective manner.

BACKGROUND

We have restricted our comments to the current Environmental Regulations in Western Australia. This is based on our experience after submitting a land clearing application to the Department of Environmental Regulation (DER) to clear 23 ha of remnant vegetation on our grain farming property. The proposal arose from our desire to create a financial legacy for our granddaughter who will have on going medical issues. We hoped that by planting a mixture of native sandal wood, wodgil and jam tree along over 20 km of contour banks that would also reduce water and wind erosion and add value to our farm. Sandalwood is a high value product that could be harvested in 15 to 20 year time to financially assist our granddaughter.

The application to clear the 23 ha was to compensate for the loss of grain production. The trees being planted along the contour banks reduce the adjacent grain yield considerably. This is due to the competitive nature for water by the trees. In addition, approval of the application would have improved our farm productivity by lengthening the run at seeding, spraying and harvest operations.

From our initial Application, through the Appeal Process, and to the Ministers office for a final decision was 14 months. The appeal was dismissed even though DER agreed that 75% of the application area was classified as degraded due to past intensive grazing and feral animal activity.

At each step of the process, we were given either 7, 14 or 21 days to respond if we wished to continue. There were no similar time constraints on DER despite their access to considerably more resources. Our experience confirmed very few applications for clearing remnant vegetation are received from farmers and even fewer approved. More importantly it is our opinion that the DER applies a strategy to deter, delay and discourage applicants from submitting clearing applications or to withdraw their applications by imposing significant consultancy and revegetation costs.

DER and The Appeals Convenor are governed by current Legislation as detailed in Schedule 5 in which each item must be met for the application to be considered. Consequently, even though The Minister of Environment has the final and binding decision on both parties he is given no flexibility. To uphold any Appeal would mean The Minister is acting contrary to the advice of his Department. Our principal concerns are:

1. The appeal process is completely flawed. Our perception was that the Appeals Convenor is part of the DER establishment and has future career path opportunities within the DER. The Appeals Convenor also must rigidly adhere to the 10 Items detailed in Schedule 5 of the EP Act and therefore only conducts an audit not an appeals investigation process. It was apparent that the Appeals Convenor has no resources to conduct individual research to confirm the assertion by DER that the specified (four) flora or (three) fauna that may or may not exit in the application area. Consequently, a Clearing Permit approval is impossible under existing Legislation as all criteria in Schedule 5 must be met. (Schedule 5 is attached for your information, in addition I have attached Attachment 2 which details the Legislation changes that would be a fairer and better process)

2. DER can impose conditions that require consultants to be employed at the Permit Holders expense to prove the four Flora and three Fauna species may or may not exist even though this flora or fauna is not classified as "endangered". This cost imposition is contrary to "Natural Justice". If the specified flora and fauna are found in the application area, then the application will be automatically dismissed but if the specified flora and fauna are not found, it does not mean the application will be automatically approved. The consultants are required to visit at various seasonal times so this requirement in itself could add a year to the process.

3. We were also informed there may be a requirement to revegetate 72 Ha of arable land on our property with native vegetation as an "Offset" if we wished to clear the 23 Ha. This requirement seemed to defy all logic and only illustrated the lack of empathy with the outcome which we were trying to achieve.

   The application of "Offsets" for owners of rurally zoned properties pursuing "highest value best use" in agriculture is different from a company of Land Developers who need to "Moon Scape" areas for residential and commercial development or Mining companies planning to extract mineral wealth which cover huge areas for developing the mine site. Miners and Land Developers are well resourced and staffed companies who build robust business cases prior to submitting applications. Critical to the business case is the inclusion of the additional environmental costs in their assessment of the project. These costs are incorporated into the final price paid by their clients. In comparison grain farmers, like us, are small business with limited resources, have no control, over the weather and do not have the wealth or skills to hedge world market prices, or the value of the Australian dollar. However DER expects farmers to employ the same costly consultants and fund the equivalent offset requirements to have a clearing applications even considered.

4. The requirement that no clearing should be conducted in Shires that have less than 30% of remnant vegetation is also a tenuous requirement. (It is doubtful if any Central Wheatbelt Shire in WA would have more than 30% of remnant vegetation). Knowing that 92% of land in WA is owned by the State

with over half of the Wheatbelt remnant vegetation also being State owned and controlled one wonders why are 23 ha so important?. Statistically and logically any Flora and Fauna on privately owned property would also exist on State owned property that also exists within the designated 20km imposed radius from the application area. Consequently, it would appear the cost being imposed by requiring offsets and consultants is to only discourage applications from proceeding.

5. We also found that DER is not constrained by the Premiers Circular 2014/4 (Private Property Rights Charter for Western Australia. This Charter states "*Cost, inconvenience and loss sustained by private property owners should be considered when contemplating government action which will adversely affect private property rights in land, so far as the applicable legislation permits*" This requirement apparently does not apply to DER as it has no authority to negotiate compensation and is covered by the existing legislation to avoid this requirement. .

6. There is an inequity in rights and lawful treatment for citizens in WA. Privately owned land in towns and cities are not subject to the same stringent requirements of Schedule 5.or fines. Private property owners in the suburbs, if they want to, can clear all existing vegetation from their property. Consequently, it is only rural land owners bearing the cost of current Environmental Legislation. This is inequitable and needs to be addressed by Governments placing a "Green" tax on all citizens to promote and protect biodiversity as well as to compensate those Agricultural land owners who are adversely affected by environmental legislation.

7. There is a need for financial recognition and compensation for farmers for the annual loss of income, loss of economies of scale, loss of land productivity, increased costs and loss of asset value imposed by environmental legislation. These annual costs are detailed at Attachment 3 and supported by information from the 2013 Bankwest Study of Wheatbelt farms in WA. On most broad acre farmers remote from towns, there is no value, only annual costs associated with remnant vegetation. Land values are generated from calculating arable hectares and the value of the crops that can be grown. Modern farming practices (stubble retention, minimum till, contours to combat salinity, wind and water erosion are far more effective than retained remnant vegetation. The argument that there is requirement for shade is met by non- arable land. In comparison remnant vegetation on arable farm land only provides a suitable habitat for feral animals and weeds that detracting from the aim of protecting biodiversity.

8. Cost / Benefit and Risk Analysis needs to be included in decisions to refuse clearing applications. Without the results of this analysis it cannot be determined if the decision to refuse the clearing application is in the best economic and social interest for the State. Similarly independent collection and analysis of data to objectively prove, remnant vegetation on private property is working in the interests of owners needs to be conducted. Anecdotal evidence and common sense would indicate that current Environmental Legislation with respect to remnant vegetation is out dated and contributing to a long term "Lose / Lose / Lose" situation, for biodiversity, individuals and the State. The State cannot abrogate its responsibility for the protection and promotion of biodiversity without recognising the costs being imposed on individual farmers without financially compensating them similar to Commonwealth Constitution Section 51 (xxxi).

9. We are very supportive of the Commission's suggestion to adopt a 130 regional approach to the Australian Landscape. If the Governments needs to protect biodiversity, a few well managed National Parks within each of these areas, free of feral flora and fauna intrusion, will ensure biodiversity is maintained for future generations. The current view that biodiversity is sustainable by legislation to

retain remnant vegetation where ever it exists is wrong and will not work without adequate financial incentives.

10. Fire prevention and fuel reduction in remnant vegetation are currently being impacted by environmental legislation. Local Shires are unable to reduce excessive fuel along roadsides due to damage it may create to the environment. Similarly, farmers are restricted in the width of the area that can be cleared when replacing boundary fence lines and firebreaks. A fire break of at least 10m width, that is free of trees and shrubs is required along fence lines that boarder public roads. Local Governments and farmers should be encouraged to reduce any fuel loads on their properties. The annual repetitious news of deaths and property destruction by bush fires will continue until politicians accept responsibility to implement recommendations. This absence of accountability needs to be addressed if any reduction in bush fire related deaths and property destruction is to be achieved.

CONCLUSION:

The Productivity Commission states; "The challenge for governments when developing environmental regulatory frameworks and policies is to achieve a balance between the benefits of agricultural production and the potential environmental costs, as well as to ensure that the frameworks and policies have clear and measurable objectives." This is commendable statement. We note that in an EPA Position Paper 2 of December 2000 stated that; "The EPA is aware that matters of equity arise in relation to land clearing decisions" and "how best to address these arising inequities is an issue to be addressed by the State". This was also a commendable recommendation that but has never been actioned. All legislation is doomed to failure unless a funding source is identified and adequate financial resources to action the recommendations are in the budget every year.

Recommendations that clearly identified costs and impacts on individuals and the community must be reflected in policy that results in equitable treatment to all citizens. Regulations that impede fairness, and restrict the best outcome for individuals and the community should be rescinded. Where there is a perceived community benefit at the expense of an individual the community must be prepared to bear this cost not the individual, with State legislation similar to the Commonwealth Constitution Section 51 (xxxi).

Yours sincerely

Steve and Joann Chamarette

Attachments.

1. Schedule 5 of EP Act
2. Flowchart to Simplify Schedule 5
3. Costs faced by Farmers with Remnant Vegetation
4. Fact Sheet 9