

**NFF Submission to the
Productivity Commission Inquiry
into the Impacts of Native
Vegetation and Biodiversity
Regulations**

29 July 2003

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Executive Summary

The National Farmers' Federation (NFF) determined that the issue of land and water resource security was its major priority before the last federal election. The Prime Minister and Deputy Prime Minister both made commitments to NFF and all Australian farmers that the issues of water and land resource security would be accorded a high priority by the Coalition Government in this term of office and significant outcomes would be delivered.

The water resource issue is currently being addressed through COAG processes and the NFF joint development of a national water strategy. The issue of land resource security is being examined at both a Commonwealth and State level through this vital Productivity Commission Inquiry. NFF was disappointed at the delays in establishing this inquiry but now it has commenced we believe it is a vitally important process through which the farm sector can provide evidence of the negative impacts that the current native vegetation and biodiversity regulations are having. We value this important opportunity to outline the real concerns of farmers regarding the efficiency and effectiveness of current Commonwealth and State native vegetation and biodiversity management regimes.

NFF contends that if management strategies are to achieve the desired objectives of conservation, retention, enhancement and improvement of native vegetation and biodiversity, governments must immediately address the concerns of farmers. The farmers of Australia are concerned that:

- The current native vegetation and biodiversity management framework fails to adequately acknowledge and address economic concerns and disregards the importance of issues of social capital leading to sub-optimal environmental policy outcomes.
- The provisions of the EPBC and the lack of consistency between and integration of Commonwealth, State and intra-state native vegetation and biodiversity regulations are resulting in unacceptable development uncertainties for farmers. Where farmers cannot be sure about their legal right to utilise and manage natural resources, they are limited in their ability to develop long term business plans and sustainable environmental management policies leading to poor economic, social and environmental outcomes.
- Existing Commonwealth and State native vegetation and biodiversity regulations result in delay and expense which hinders the development of farm business management plans and removes the capacity of farmers to adapt quickly to seasonal variations and economic pressures.
- There is an excessive reliance by Commonwealth and State governments on command and control regulation to achieve native vegetation and biodiversity conservation. This approach is costly, inefficient and is often based on flawed assumptions regarding the land management objectives of farmers and the requirements for ongoing environmental management.

- Governments have failed and continue to fail to adequately engage with farmers in the development and implementation of native vegetation management strategies.
- Existing Commonwealth and State native vegetation and biodiversity management extension services are currently under resourced and inadequate in their failure to recognise whole farm business management needs.
- The inequitable removal of land value and reduction in potential and actual income without any recognition by government is removing the certainty needed for investment and on-going farm management. The loss of farm value currently results in farmers unfairly sharing the cost burden of conservation whilst removing the economic ability of farmers to actually be involved in conservation through reducing their financial viability.
- Current native vegetation and biodiversity regulations are not fully achieving their desired objectives to conserve, restore and regenerate native vegetation and in certain circumstances are creating perverse incentives to clear native vegetation and reduce biodiversity stocks.
- The present use of Management Agreements is largely failing as these agreements to date fail to recognise or redress the direct and indirect management costs, income loss and forgone opportunity involved in native vegetation and biodiversity management. This has reduced their ability to act as effective economic incentives promoting conservation. NFF is further opposed to the manner in which some state agencies have coerced farmers into entering management agreements during development negotiation processes.

There must be a fundamental shift in the manner in which governments implement systems and process for natural resource management in Australia. The current focus on prescriptive command and control regulation is a failure in terms of its ability to achieve desired environmental, economic and social outcomes. Furthermore the marginalisation of farmers and the removal of their economic viability is essentially undermining the ability of Australia as a whole to effectively manage native vegetation and biodiversity into the future.

Australian farmers are the front-line in Natural Resource Management in Australia and are best placed to deliver National, Regional and Local environmental outcomes both now and into the future. Consequently, they must be adequately resourced and supported by governments and the wider community at large. Farmers should not be unfairly burdened with the maintenance of 'green infrastructure' for the benefit of the wider community and therefore government must:

- Provide certainty for farmers regarding their on-going ability to utilise the natural resources on their farm.

- Address the cost, delay and lack of integration between Commonwealth and State legislation through removing duplication and adequately resourcing the departments responsible for the management programs.
- Provide adequate funding packages and incentives:
 - to off-set any reduction in property values following the implementation of NRM controls where landholder's rights and legitimate and reasonable expectations have been diminished;
 - to encourage voluntary stewardship arrangements for desired conservation, regeneration and restoration policy objectives.

1. The Importance of Farmers to Sustainable Environmental Management

NFF is the peak national lobby group representing the interests of the 110 000 farm enterprises who occupy 60% of Australia's land mass and manage the majority of Australia's native vegetation and biodiversity.

Farmers in Australia currently play a key role in the protection and maintenance of native vegetation and biodiversity through providing a wide range of 'environmental services'. These range from the basic protection of remnant native vegetation through to 'blue ribbon' environmental services such as the creation and management of pest animal 'exclusion zones' through the construction and maintenance of feral proof fencing and rigorous control programs.

Farmers played a key role in the development of the National Landcare program which has grown to approximately 4000 Landcare groups involving 120 000 members actively working to conserve, repair and restore rural landscapes. Today this represents more than 30 per cent of farmers being active members of Landcare and the number is growing.

Farmers live and work in constant interaction with the natural environment and are actively engaged at the front-line of the ecological sustainability issues facing Australia today. These include the day-to-day management of natural fauna and flora habitat, pests and disease, and the arrest and amelioration of major environmental degradation issues such as water quality decline, soil loss, salinity and acidification. Farmers have a history of identifying and proactively managing environmental issues as they arise and long before they become public concerns.

For the most part Australian farmers try to manage these challenges on their own, without resources and support that could be expected given the magnitude of the problems and the current costs to the national economy. Landmark Commonwealth and State reports are testament to the scale of the problem while being conservative in estimating the costs to the Australian public. These reports include The National Land and Water Audit reports, the Commonwealth and State government's State of the Environment reports and the report of the Prime Minister's Science, Engineering and Innovation Council (PMSEIC) Working Group into Biodiversity and Sustaining Natural Systems.

2. Native Vegetation and Biodiversity Conservation – The Aim

NFF has long recognised that the conservation of native vegetation and biodiversity is crucial to the ongoing economic and social development of Australia.

The cost of the ongoing degradation of natural resources in Australia is an issue that faces not just the rural sector but is a national issue that requires government action at all levels. For example, the Co-Operative Research Centre (CRC) for plant pests/weeds has estimated that the cost of weeds to agriculture in Australia (including both cost of control and costs of lost production) is about \$3.5 billion annually (CRC:2003). Similarly, the National Land and Water Audit has estimated that the cost of soil acidification (largely thought to be linked to poor soil health from insufficient or inappropriate vegetation cover) is estimated to be a similar cost. (LWRRDC:1995)

The National Framework for the Management and Monitoring of the Australia's Native Vegetation acknowledges the importance of the issue and acts as a framework by which national, state and local government could develop policies to facilitate the management of native vegetation and biodiversity in Australia on an on-going basis.

The Aim of Native Vegetation and Biodiversity Management

The framework identified the following objectives of:

- a reversal in the long-term decline in the extent and quality of Australia's native vegetation cover...;
- conservation and, where appropriate, restoration of native vegetation to maintain and enhance biodiversity, protect water quality and conserve soil resources, including on private land managed for agriculture, forestry and urban development;
- retention and enhancement of biodiversity and enhancement of biodiversity and native vegetation at both regional and national levels;
- an improvement in the condition of existing native vegetation.

The framework further identifies that sustainable native vegetation and biodiversity management must serve not only environmental objectives but must recognise the importance of economic and social values as part of the development of ecologically sustainable principles of Natural Resource Management (NRM).

NFF argues that it is against these framework objectives that the current operation of respective Commonwealth and State native vegetation and biodiversity management regimes should be assessed. Biodiversity conservation is by its very nature concerned with the complex interactions between all life forms and

processes. These complex interactions also include the complex interactions of people and the environment.

Farmers have long understood innately what is becoming increasingly clear from the scientific disciplines of conservation biology and ecology; that the true success of environmental conservation legislation does not equate with the number of hectares 'behind wire' in reserves and parks. It can only be judged with reference to the ability of policies and programs to conserve, restore and enhance environmental quality over the long term. In his discussion of native grassland management, Sharp notes;

“Whatever level of protection is provided for individual sites, the key factor for their long-term conservation is the implementation of management practices that will maintain, and ideally enhance, the existing biodiversity values...”(Sharp:2000)

NFF argues that recognition of the importance of economic values and social capital within the policy framework is crucial to the success of environmental protection legislation. Management policies that fail to take account of these factors ignore the competing needs and acute pressures on stakeholders and significantly undermine the potential for optimal environmental management outcomes.

3. Native Vegetation and Biodiversity Conservation – The Current Reality

NFF believes that the most important requirement for effective native vegetation and biodiversity management is certainty. In order to be environmentally effective, policies need to be dependable and certain (Young et al:1996). For farmers and communities to develop efficient and environmentally sustainable management practices in regards to native vegetation and biodiversity they must be confident about their on-going access to those and other natural resources on their farms.

Without the ability to plan for the future and have trust and confidence in the process, farmers will be less capable of investing in the environmental management practices required to deliver the environmental outcomes wider society is seeking. Further, without genuinely engaging with farmers during the policy development and implementation process most farmers will not participate in sustainable management practices simply because in themselves these practices will be literally unsustainable. This would result in sub-optimal environmental, social and economic outcomes and take all shareholders further away from the shared objectives of having sustainable and productive farms, regions and catchments.

NFF argues that current Commonwealth and State legislative schemes are largely failing to achieve the desired objectives of the *National Framework for the Management and Monitoring of the Australia's Native Vegetation*. Current policies are not only failing to facilitate the conservation and regeneration of existing native vegetation and biodiversity but these policies are significantly eroding the capacity of Australia to manage these resources in an effective manner into the future. The policy failure is occurring for the following reasons:

- The actual existence of and perception of regulations as complex, competing and unclear creates uncertainty and confusion for farmers;
- Farmers are incurring significant direct and indirect costs and delays under the regulations undermining the ability to manage the farm business;
- Government continues to rely on costly, inefficient and socially undesirable command and control regulatory measures.
- Farmers are not adequately consulted or engaged during the creation and implementation of management policies and strategies;
- Current regulations are resulting in significant losses in property values, income and access to investment needed for management and development of the farm business;
- In both operation and effect, the unstrategic government regulations are creating perverse environmental incentives and poor outcomes; and

- Management Agreements are being inappropriately implemented as de facto regulation in many cases and are inadequately resourced almost everywhere they are used.

4. Uncertainty

NFF argues that current native vegetation and biodiversity regulations are leading to considerable uncertainty for the farmers of Australia, removing their ability to implement long term business and environmental management plans. The uncertainty results from the requirements of farmers to comply with perceived complex and competing regulations that often rely on unclear and non-binding administrative guidelines and inconsistent departmental interpretations of policy requirements at both a State and Commonwealth level.

Uncertainty Caused by the EPBC

NFF has continually been concerned that the provisions and operation of the EPBC (the Act) are unclear and provide farmers with limited resource security and diminished ability to future develop their farm business. NFF brought these concerns to the attention of the government prior to the introduction of the Act during the Senate Committee Inquiry into the EPBC Bill (See attached Appendix A). NFF expressed concern at the lack of clear guidance as to the scope and operation of ‘significant impact’ and ‘action’ within the Act’s administrative guidelines. We further identified the unworkability of the ‘Continuation of Use’ provisions.

In our submission to the Senate Inquiry, NFF also noted the Bilateral Agreements would need to play a crucial role in the effective operation of the Act. NFF argued that the agreements were needed in order to clarify the specific roles and responsibilities of respective governments and therefore should have been finalised prior to the implementation of the Act. It was further identified that the bilateral agreements would be key to the ‘streamlining’ rather than ‘duplication’ of approval processes.

Unfortunately, the Act was implemented without clearly defining the definitions identified above and prior to the Bilateral Agreements being negotiated. This has consequently led to a degree of uncertainty for farmers and regulatory duplication. NFF acknowledges that the Commonwealth has taken some steps to alleviate this uncertainty, however farmers are still concerned that the administration of the Act still removes the resource security they require to effectively develop their farm business.

Environment Australia (EA) in discussion with NFF has asserted that the relatively small number of referrals from farmers under the EPBC is representative of the workability of the Act. NFF however stresses that the small number of referrals is unrepresentative of the real effect of the Act in producing both real and perceived uncertainty within the farming sector. Legal advice commissioned by Deacons Law Firm (see Attached Appendix B) makes the following observations regarding the legal uncertainty faced by farmers when attempting to develop their farm as a result of the Act.

Legal Uncertainty

Section 523 of the EPBC provides that

(6) A person must not take an action that:

- (a) has or will have a significant impact on a listed threatened ecological community included in the endangered category; or
- (b) is likely to have a significant impact on a listed threatened ecological community included in the endangered category

Problems identified with this section relate to the uncertainty regarding what constitutes a 'significant impact'. Deacons advise that

'The EPBC Act does not define the expression "significant impact". The department has offered its own opinion on what amounts to significant impact in its guidelines. But these, although detailed and considered, are not law. They are binding on no-one. And they simply add to the existing uncertainty – e.g.- how much reduction of the community is a significant impact? What exactly is fragmentation? Over what period of time should one determine whether there is a long-term adverse effect on the community?'

They also advise that:

'The legislation is also unclear about the extent to which a range of activities might be aggregated in order to form an action having significant impact. An "action" can include a series of activities...It is possible, then, that a prosecution or penalty recovering proceedings could be based on a series of activities by a landholder which took place on different (and not adjoining) sections of his property...'

Section 523(2) of the EPBC provides

'... a lawful continuation of a use of land, sea or sea bed that was occurring immediately before the commencement of the Act is not an action. For this purpose an enlargement, expansion or intensification of use is not a continuation of a use'

As Deacons note, rather than providing certainty as to the legality of existing farm activity;

"The result is that a land holder's use of land is categorised in terms of its areal scope, level and intensity and quality as at 16 July 2000... It gives no consideration to the ebb and flow of rural life, the highs and lows of seasons, weather patterns nor the normal approaches to land management. If the law is strictly applied in accordance with judgements referred to...then a property which had its stock levels reduced on 16 July 2000 because of market forces, drought or other factors, cannot have the stock levels increased again. The provision is unpractical and unworkable..."

Uncertainty caused by inconsistent Commonwealth and State Regulation

The lack of coordination between the EPBC and State legislation in regard to the same development proposal is a key concern of the NFF. As previously stated, farmers already face difficulty under the administrative guidelines in determining whether a proposed action needs approval under the EPBC. Where a farmer completes this approval process he or she must then determine the legal status of the proposed action under entirely different State regulations based on varying species classifications, management requirements and approval processes. In light of the fact that all native vegetation and biodiversity legislation is allegedly founded on the same National Framework principles and aims, NFF argues the existence of distinctly different management programs is perverse and creates unnecessary cost and delay for farmers. It is largely unreasonable to expect farmers to effectively manage native vegetation and biodiversity to achieve sustainability where the Commonwealth and the states cannot agree on the vegetation that needs protection.

Two leading examples of respective government failure to coordinate Commonwealth and State native vegetation and biodiversity regulation are found in the operation of the Queensland *Vegetation Management Act* (VMA) and the EPBC with regard to farming activity that may potentially impact on bluegrass and brigalow species. The VMA does not provide general regulation of clearing that may affect native grasses and only regulates clearing where it may affect two rare and vulnerable species of bluegrass. Clearing activity which may impact on other species of bluegrass is not regulated. In contrast the EPBC provides that all 'actions' that may 'significantly impact' on the bluegrass ecological community comes within the scope of the Act and must be referred. Similarly the clearing of remnant brigalow is regulated under the VMA but the clearing of re-growth is not. The EPBC in contrast provides that any activity which may have a 'significant impact' on the brigalow ecological community may require referral and assessment approval.

The difficulty for farmers in ensuring they comply with State and Commonwealth legislation is further compounded by the failure of the Commonwealth and State governments to institute the bilateral agreements that were flagged as the key to streamlining the approval process for farmers. Only two such agreements by the Commonwealth have been signed, with Western Australia and Tasmania, with other agreements exiting only in draft form. Where these agreements have not been signed, farmers must rely on the one-off accreditation of approval processes provided under s 87 of the EPBC. Without these assured bilateral agreements, farmers potentially may be required to undergo separate assessment processes for the same proposed development. The possibility of different assessment processes is demonstrably contrary to the principles of simplicity, efficiency, seamlessness and transparency that are meant to underscore current policy.

- The experience of Alistair Hughes under (for details see Appendix C) is a good example of the lack of coordination between the EPBC and Queensland State approval processes. For the same development he has been required to comply with completely different approval processes.

Alistair's proposed development was referred to the Commonwealth Minister of the Environment under the *Environmental Protection and Biodiversity Act (EPBC)* following the listing of bluegrass as an endangered species under the Act. After 20 days the proposed development was deemed to be a non-controlled action however it was to be done in a 'prescribed manner.'

Whilst Alistair had approval to go ahead with development under the Commonwealth Act, he however now had to apply to the Queensland Department of Natural Resources (DNR) for approval under the *Vegetation Management Act 1999*. When Alistair contacted the DNR, he was advised that even though he was not clearing any trees and even though he already had approval under the *EPBC* he would be required to complete a full application for tree clearing and was required to develop a Property Management Plan.

Uncertainty caused by inconsistent regulation within States.

NFF points to the far-reaching, inconsistent, complex and competing intra-state legislation relating to native vegetation and biodiversity protection as a further cause of uncertainty facing farmers in Australia. Successive native vegetation and biodiversity regulations have been introduced without reference to the way in which they operate with regards to other legislation.

A demonstration of this intra-state inconsistency is found in NSW where farmers already face 42 individual regulations relating to the use of their natural resources. Farmers are required to comply with the NSW *Native Vegetation Conservation Act (NVCA)* and must seek approval to clear land containing native vegetation if it constitutes more than 50 per cent of groundcover or represents trees older than 10 years, unless it falls within a statutory exception such as a 'minimal clearing or cutting', infrastructure maintenance or bush-fire management. Yet where a proposed development activity falls within this exception it may still trigger the *Threatened Species Conservation Act (TSCA)* which may result in severe restrictions in property use. Under the TSCA where a species is identified as 'threatened' it is an offence to "harm, pick or damage" the species and potential development is likely to involve an expensive and time-consuming Species Impact Statement. The TSCA provides that clearing done in the interests of 'routine agriculture' may be exempt from the operation of the Act yet fails to provide any definition of what this exemption entails.

Further demonstrations of the uncertainty for farmers in developing their farm business can be seen in the native vegetation and biodiversity legislative failures of Western Australia. Until recently, applications to develop land containing native vegetation and biodiversity have been regulated by the Commissioner for Soil and Land Conservation, the Waters and Rivers Commission, the Environment Protection Authority and the Department of Environmental Protection through a Memorandum of Understanding between these agencies. The complex and uncertain relationship between the agencies has in some cases effectively removed the development capacity of Western Australian Farmers.

- The Klassen's experience (for details see Appendix D) under Western Australian regulation provides a key example of the uncertainty faced by

farmers. Seeking clarification as to whether they could proceed with proposed development some 5 years after their initial application, they received the following responses from the relevant departments and Minister;

“...I am unable to provide the requested confirmation on the information currently available to me.... The above comments should not be taken as an approval to commence clearing. In particular, I assume you will obtain all necessary approvals and clearances from the Environmental Protection Authority before the commencement of any clearing”

“In relation to your question as to whether you may be breaching any law if you commenced clearing, the Commissioner of Soil and Land Conservation has advised me that he is of the view that your 1997 Notice of Intent (NOI) to clear has lapsed.”

“While I am not in your terms “directing” you not to clear, I must again point out that you do not have approval to clear the land. I think you will agree that there could be significant cost to you as a consequence of unlawful clearing and I would therefore urge you not to do so”

- The Underwoods (for details see Appendix E) faced similar uncertainty due to the lack of coordination between competing environmental resource regulations in Western Australia. Following a protracted application to develop uncleared land on their property, the Underwoods were granted approval to clear 820 hectares of their property in December 1998. While limited development approval was around 50% less than their original application, the Underwoods were satisfied that the endorsement would at least allow them to realise the economic potential of a component of their property. However within weeks of this approval the Underwoods were told that the State Water Corporation might require subterranean water on their property for the nearby coastal town of Jurien Bay and that farming activity needed to be suspended in the interests of guaranteeing future water quality. The subsequent declaration of a Water Source Protection Zone over their property resulted in an overnight reduction in the value of the Underwood’s land from \$1,000 an acre (\$3.5 million) to around \$400 an acre (\$1.4 million), a loss of \$2.1 million.

The effect of such uncertainty faced by farmers because of inconsistency can be seen in the frustration felt by Robert Klassen:

“The difficulties associated with the uncertainty of whether we could develop the remaining 37% (bush) on our farm are very real. Trying to develop our business with purpose and direction has been impossible . Not knowing if we need to launch a legal challenge to the Minister, keep the budget for the clearing if it is allowed to proceed, use the resources to develop more intensive agriculture such as irrigation...The strain on the family has been tough. The disillusion with the process is profound...”

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|---------------------------|
| <u>KEY CONCERN</u> |
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NFF maintains the unclear provisions of the EPBC and the lack of consistency between and integration of Commonwealth, State and intra-state native vegetation and biodiversity regulations are resulting in unacceptable development uncertainties for farmers. Where farmers cannot be sure about their legal right to utilise and manage natural resources, they are unable to develop business plans and sustainable environmental management policies. Without certainty, farmers are unable to invest in new technology and further develop best practice farming methods. Farmers are further unable to initiate effective succession planning where they are unsure about the future economic viability of their farms. Current regulations are therefore contributing to economic inefficiencies as well as poor social and environmental outcomes.

5. Cost and Delay

NFF is concerned that current regulation, particularly State regulation, requires farmers to incur delay and immense direct and indirect costs during the application process. The costs include application fees, consultation fees, legal fees, lost potential income and the eventual opportunity cost of not being able to develop their farm as planned. Even where development is allowed to proceed, this follows delays incompatible with the need for farmers to implement long term flexible and adaptive management practices to account for seasonal and economic variability.

- Tripod Farmers Pty Ltd (for details see Appendix F) proposed development should have been completed in 3-4 months and instead took 18 months due the protracted application process under the Victorian application process. During this period Tripod farmers lost an estimated \$2-3 million in projected income and was forced to forgo an opportunity to begin immediately supplying the lucrative Hong Kong Market. Tripod Farmers further incurred consultation and legal fees in excess of \$52000 as well as the cost of retaining recruited and trained staff at a cost of \$260000. During this delayed application, Tripod were still required to make repayments on the \$1.5 million borrowed for the purposes of the development.
- Since 1997, the Blennerhassets have attempted to upgrade and renew their leasehold property ‘Goshen’ in Northern Queensland (for details see Appendix G). Over this time the Queensland EPA has continually changed its position, ignored the repeated and constant requests for adequate consultation and ignored the social and economic impact that this process has had on the three families who rely on the ‘Goshen’ farm business. The Blennerhasset family are unable to develop a solid business plan and invest in the future development of the farm business when they do not know whether their lease will be renewed and what restrictions will be placed on them. Seeking intervention from the Queensland Minister for Natural Resources and Mines so they could finally develop a long-term business plan that took into account already acknowledged environmental outcomes, the Blennerhassets received the following response:

“I suggest you continue to negotiate with the EPA in an endeavour to reach a mutually acceptable outcome, which will allow you to continue your business enterprise, while at the same time protecting the environmental values of your land”

- The Klassens (For details see Appendix D) received the following response from the Western Australia EPA some 4 years after their initial application:

The EPA has been progressing the land clearing assessments it has had before it, including yours, slowly in the anticipation that the EPA’s advice

given in December 1999 report and the report of the Working Group would be given attention by Government. Given the time which has now elapsed, however, the EPA appreciates it should finalise your assessment if it is still your desire to proceed with the clearing, and therefore have your proposal determined by the Minister”

KEY CONCERN

Existing native vegetation and biodiversity regulations result in delay and expense which hinders the development of farm business management plans and removes the capacity of farmers to adapt quickly to seasonal variations and economic pressures. Unless the cost and delay of regulations is addressed by government farmers are less able to successfully implement sustainable environmental management programs due to uncertainty, lost income and delay.

6. Management Agreements

NFF supports in principle the introduction of appropriately resourced management agreements to enable farmers to act in a stewardship capacity in the conservation of native vegetation and biodiversity.

NFF is however opposed to the current manner in which supposedly voluntary management agreements are being implemented in Australia without adequate resources to assist farmers carrying the burden of lost income and the ongoing management costs of the conserved area. Currently agreements generally provide no means to redress the lost income and development potential that results from such arrangements and they are therefore limited in their ability to act as effective incentives to promote the cost-effective long-term environmental management objectives intended by the legislation.

Inadequate Resources

“If management agreements are to be successful, they must seek to achieve and retain strong landholder support and commitment. For their part, government will need to provide funding and service to demonstrate their commitment on behalf of the community to the contract. Incentives that retain the motivation of landholders during periods of changing community expectations are critically important for the attainment of conservation objectives.” (Binning and Young:1997)

The level of assistance provided for native vegetation management differs across states and the Commonwealth. However, under all regimes assistance generally will only extend to fencing and one-off payments to assist with weed management. The provisions for Natural Heritage Trust (NHT) funding accessed through the EPBC does not provide for any ongoing management activity that is required as part of compliance with ‘controlled actions.’ Such relatively token payments are inadequate and fail to recognise recent study findings that native vegetation conservation,

“...imposes a significant net cost on most landholders [and that] one of the major barriers to protecting Remnant Native Vegetation is the economic cost associated with conservation management. Policies designed to achieve conservation objectives for Remnant Native Vegetation, if they are to be successful, are likely to require significant financial incentives for landholders to undertake conservation activities” (Lockwood, Walpole and Miles:2000)

The effect of requiring land to be managed under voluntary agreements without providing ongoing resources for its management and protection not only unfairly burdens farmers with the costs of environmental protection with limited demonstrable economic benefit (and significant on-going disbenefit) but also fails to provide for the retention, regeneration and improvement of native vegetation areas.

Use of Voluntary Agreements as de facto regulation

Management Agreements under most legislation in Australia are ‘voluntary’ yet the aggressive use of management agreements during negotiation processes represent a significant threat to farm business management and development certainty.

Farmers are understandably concerned by the demands of State environment departments on farmers to sign management agreements or otherwise lose all potential development ability.

- The Moons (for details see Appendix H) under Victorian Legislation were allowed to clear only 60 of 430 hectares if the Moons entered into a ‘voluntary’ agreement under s 173 of the *Planning and Environment Act*. Under the terms of the draft agreement, the Moons would be required to conserve up to 2-4 hectares of forest for every hectare cleared for pasture. This would have the practical effect of placing all remaining vegetation on their property under an agreement that removed future development potential. The agreement also required the Moons to fence off all areas governed by the agreement. Grazing restrictions were to mean that no sheep or cattle could graze on any of the protected land between the months of September and January. The unworkability of such an arrangement was ignored by the department.
- In their attempts to develop their property since 1983 under South Australian legislation, the Mahars (for details see Appendix I) were repeatedly pressured to place land under Heritage Agreements that had no connection with the proposed development area. Following bungling of their application a Conciliator awarded the Mahars a Section 33(3) ‘hardship’ payment of \$70 000 to cover grazing income losses incurred as a result of the NVA delay in recognising the exempt grazing status of application areas. Of concern was the fact that the NVA still tried to force the Mahars into placing un-related ‘buffer zone’ land under a heritage agreement prior to the receipt of this hardship payment.
- The three Blennerhasset families that rely on the income from ‘Goshen’ (for details see Appendix G) face the prospect that their lease may not be renewed if they don’t place 60% of their land under a conservation agreement that will make ‘Goshen’ completely unviable as a grazing property.

NFF is also concerned by the increasingly unworkable requirements placed on farmers as a result of ‘net-gain’ principles under management agreements.

- The Smiths under New South Wales Regulation (for details see Appendix J) were required to ‘off-set’ the removal of every tree through the planting of 400 new trees which would involved the planting of 7600 trees. Negotiation saw this reduced to 5000 trees at a cost of \$25,000. Clearing has been so minimal on their property during the past 50 years there are

not any areas suitably big enough to plant 5000 trees. The Smiths proposed that they plant 1000 new trees as a compromise yet the department rejected this proposal

KEY CONCERN

NFF is concerned that the present Management Agreements are failing as these agreements to date largely neglect to recognise or redress the direct and indirect management costs, income loss and forgone opportunity borne by farmers involved in native vegetation and biodiversity management. The inadequate resourcing of such agreements to reflect these cost has reduced the ability of such agreements to act as effective economic incentives promoting conservation and ongoing management. NFF is further opposed to the manner in which some state agencies have coerced farmers into entering management agreements during development negotiation processes.

7. Command and Control

NFF has long recognised the need for a variety of policy measures to achieve effective native vegetation and biodiversity management. NFF is concerned that the current legislative and administrative approach of management are often founded in overly prescriptive regulations to the detriment of other more effective policy alternatives including market-based instruments.

“Coercion is a particularly blunt instrument; monitoring is extremely difficult and expensive, and sanctions lack political acceptability. Moreover, in circumstances where what is needed are positive measures to reverse degradation, in conjunction with the development of an ethic of environmental sustainability, then command and control has little to contribute. Even where command and control is practicable, it is not necessarily desirable (Bates:2003)

Despite the criticism of such an approach, Commonwealth and State governments continue to rely on command and control regulatory measures by which to protect native vegetation and biodiversity in Australia. ‘Command and control’ can be defined as a policy response whereby ‘prescriptive regulations and controls are implemented, compliance is monitored and non-compliance is penalised.’ (ABARE: 1993) Command and control regulation specifically focuses on the processes involved in achieving policy outcomes. The reliance on command and control is at the expense of the effective utilisation of other policy measures. As the Industry Commission has previously noted:

“There has been an over-reliance on regulation to the detriment of other policy measures that have far greater potential to improve environmental outcomes in a cost-effective manner. Markets and market-based policy measures (economic instruments) are widely acknowledged as being superior to command and control regulation in many instances” (Industry Commission: 1998)

In the context of native vegetation and biodiversity management in Australia, this reliance on a command and control approach is manifested in requirements within all states that farmers under Commonwealth and State legislation comply with prescriptive regulation at first instance unless it falls within prescribed regulatory exceptions. Where the prescribed processes and regulations are not followed, the current command and control mechanism sees farmers threatened with civil and criminal sanctions. NFF is concerned that even where the legislation purports to be facilitative rather than regulatory it has largely been administered within this command and control mindset.

The command and control regulatory mentality is further evident in the already discussed use of management agreements as a form of de-facto regulation.

In the absence of evidence to the contrary and plenty of anecdotal evidence from farmers, NFF could be forgiven for interpreting the orientation of governments in relying on command and control regulatory measures and coercing landholders into ‘voluntary’ agreements in a de facto regulatory way as being a reflection of

an entrenched adversative culture within bureaucracies that views farmers with suspicion, distrust and ignorance.

The underlying presumptions of Command and Control Regulation

NFF argues that the reliance on command and control regulation in native vegetation and biodiversity management is inefficient, ineffective and relies on false assumptions regarding the manner in which farmers will use their natural resources. Command and control programs are also limited in the environmental outcomes they can deliver as the ‘locking-up’ of land does not provide for the retention, restoration and improvement objectives of native vegetation and biodiversity management that by its nature must be actively managed in perpetuity.

The farmer in a Command and Control structure

NFF is opposed to the prescriptive regulation of farming activities where it continues to rely on a flawed assumption that;

“Leave it to the farmers and they will respond in a short term profit maximising way”- An environmental expert response to Media Reporting in 1997-1998 on native veg management - UNE26 (Binning and Young: 1997)

Such rhetoric supports the current government reliance on command and control regulation. However it does not accurately portray the manner in which farmers in 2003 interact with their land following changes in scientific understanding, land management practices and the increasing acceptance of sustainable development principles and guidelines. This was acknowledged by the House of Representatives *Inquiry into Public Good Conservation on Private Land* which identified that the continuing regulation of farmers within the framework of command and control “rest[ed] upon a number of assumptions about landholders that may not be true in practice” (House of Representatives:2001)

NFF acknowledges that farmers in the past have been involved in land management practices - most of which were at the least sanctioned by governments and were often conditions of retaining land and water resources - that have led to some environmental problems yet it would be manifestly absurd to think that farmers do not now acknowledge the importance of sustainable land management practices. As science has developed and society has become increasingly aware of the need to conserve biological systems, farmers too have embraced the reality that environmental degradation is intrinsically linked to lost production, lower yields and higher costs. NFF further points to the high occurrence of inter-generational transfer of farms which creates an inherent incentive for farmers to conserve the future environmental and economic sustainability of their farm.

“A strong sense of heritage – of fulfilling the duty to pass the land to the next generation in a better condition – drives the other values of hard work, production and care of the land” (Brown:2000)

NFF believes that government should realise

“The farmer now is not the farmer of yesterday. The farmer now is both a knowledge worker focused on people and work...the knowledge worker needs to be enabled and managed. Farming today is an information based activity ill-suited to a command-and-control based relationship...” (Gleeson and Piper:2002),

A failure to look at the role the modern farmer can and does play in environmental protection significantly limits the ability of society to engage in effective native vegetation and biodiversity management programs. Gleeson and Piper contend that command and control governance fails to achieve local farmer support and contribution towards environmental management as such regulation by its nature “cannot reflect the diverse values, aspirations, and capabilities of the land stewards and hence a socio-political climate against adoption or compliance is established.” (Gleeson and Piper:2002)

Farmers resent their portrayal as ‘environmental vandals’ as they feel that they play an active role in the effective land management of Australia through programs such as Landcare and voluntary on-farm conservation activities. Command and control regulation effectively validates the view that farmers need to be excessively regulated. The farmer resentment caused by such an attitude will result in a decrease in the extent and variety of voluntary conservation activities that farmers currently engage in.

Environmental outcomes under command-and control regulation

NFF has always maintained that command and control regulation fails to provide for the long-term sustainability of native vegetation communities in Australia. Such an approach mistakenly assumes that all agricultural land utilisation risks the on-going viability of the environment, yet as Binning and Young note;

“In many cases, it is useful to recall that a remnant exists only because of prior decisions made by the landholder. Indeed, remnant vegetation might be thought of as a stand of native vegetation that reflects current and past management practices rather than a relic from pre-European settlement. Hence, securing the conservation of remnant vegetation can be perceived as securing and adapting existing management practices rather than imposing a new management regime.” (Binning and Young:1997)

While preventing clearing or establishing reserves is seen as a way to end ‘degradation’ of natural assets by some, the focus on the prevention of activity under command and control regulation fails to turn itself to the long term management of the protected native vegetation and biodiversity assets resulting in ultimate policy failure. As noted by Harris;

“Without management, the vegetation will ultimately disappear as surely as if it had been cleared in the first place. Controlling clearing...has to be seen as only the first step in what must become an ongoing process of native vegetation management’ (Harris:1995)

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| <u>KEY CONCERN</u> |
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NFF is concerned at the excessive reliance of the Commonwealth and State governments on command and control regulation to achieve native vegetation and biodiversity conservation. NFF contends that such an approach is costly, inefficient and is often based on flawed assumptions regarding the land management objectives of farmers and the requirements for ongoing environmental management. Command and control regulation fosters an attitude of resentment and unwillingness to be involved in conservation mechanisms and effectively undermines Australia's future capacity to sustainably manage native vegetation and biodiversity into the future.

8. Consultation

“Whilst not always scientifically based, local knowledge of an individual site and the broader landscape is often the best source of management information” (Binning and Young:1997)

Native vegetation and biodiversity regulations are presently undermined in their effectiveness as a result of the actual and perceived failure of government to consult farmers effectively during the development and implementation of management processes. The lack of consultation occurs at both a policy level and in the application of the regulations. The lack of information flow and an unwillingness to address the social and economic concerns of farmers through consultation has resulted in the following:

- It has heightened the sense of uncertainty for farmers;
- It has allowed and enabled government to ignore the economic and social concerns that farmers have about the adverse affect that the legislation will have on their farm business;
- It has reduced the ‘on-ground’ effectiveness of the native vegetation management regimes through failing to engage and utilise the local land management knowledge and experience of farmers.

An example of the failure to communicate with farmers and the effects of this failure can be seen in the manner in which bluegrass and brigalow were listed under the EPBC. Both species were listed without any consultation with farmers nor accompanied with information packages or support schemes to address the concerns of farmers regarding the impact of the legislation on their farm business. Administrative guidelines were only published well after the listing of the Act however these guidelines are non-binding, provide no statutory protection and do not provide any guidance as to how a referred action will be assessed.

While NFF acknowledges that the Commonwealth government has gone some way to addressing this poor information flow through placing an Environment Australia EPBC liaison officer with the NFF to assist farmers, there still exists a large degree of uncertainty within the farming community regarding the impact and reach of the Act as discussed above. NFF acknowledges that the ‘listing’ process under the EPBC has been further altered to allow for some consultation. NFF is however still concerned that the social and economic concerns of farmers cannot be considered or addressed at the time when a species is listed despite the fact that the very process of ‘listing’ a species potentially impacts on farming activities greatly.

The failure to consult farmers and provide the necessary information to basic questions is further evidenced in the experiences of farmers during application processes where repeated attempts to negotiate and effectively work with departments have been met with resistance and dismissiveness, based on an unwillingness to respect and listen to legitimate farmer concerns.

- Whilst the Blennerhassets (for details see Appendix G) had been unofficially told by another department that the EPA was interested in the potential conservation value of 10,460 hectares of the total 19,684 hectares of their property or 53% of the entire land holding, they had received no official notification of such ‘interest’ from the EPA. When they inquired the Blennerhassets were told that they would be notified when the department was ‘ready’ and that there was no reason as to why they should be included in consultation at this stage despite the fact that this could significantly impact on their business plans.
- Arthur Sleeman (for details see Appendix K) was prevented from developing his property as: *“The proposal contravenes the provisions of a draft environmental planning instrument that is or has been placed on public exhibition and details have been notified to the consent authority”*
- Sally and Gordon Moon (see Appendix H) were similarly prevented from going ahead with a proposed development due to the Draft East Gippsland Vegetation Management Plan about which they were not consulted or made aware until their application.
- Tripod Farmers’ (for details see Appendix F) attempt to clear 3 trees to expand their horticulture operation was refused consent despite their offer to voluntarily revegetate over 1.2 hectares of riverbank. The issue went to the Victorian Civil and Administrative Tribunal (VCAT).

The VCAT hearing was held in May 2001 and it was at this hearing that Tripod Farmers was made aware that on the day prior to the hearing the Victorian Government had gazetted an amendment to the Moorabool Planning Scheme which created a Vegetation Protection Overlay which now required Tripod Farmers to demonstrate that their proposed development “cannot proceed” without removing River Red Gums. The Overlay had been introduced without any consultation of Tripod Farmers despite the significant impact this would have on their proposed development. The introduction of this overlay proved crucial in the VCAT decision;

‘If the Tribunal was required to make a decision on the basis of planning controls in place at the time of the Responsible Authority made its decision, it would, on balance, have upheld the Reasonable Authorities decision which required the retention of 4 of the northernmost River Red Gums.

However...the gazettal of the VPO2 [the vegetation overlay] added a new dimension to the issue. The VPO2 gave strong weight to the need to protect River Red Gum species.”

Overnight the Victorian government effectively introduced further planning controls to strengthen their VCAT case against Tripod farmers without any concern for their rights or business interests.

KEY CONCERN

NFF is concerned that government has failed and continues to fail to adequately engage with farmers in the development and implementation of native vegetation management strategies. Such failure has resulted in uncertainty and fails to acknowledge legitimate business interests of farmers and the important role they play in native vegetation and biodiversity management.

9. Information and Extension Support

NFF is concerned that the information mechanisms utilised currently in native vegetation and biodiversity management are inadequate. This is supported by recent CSIRO research by Morton which identified that whilst there is a vast array of information available for farmers, this was mainly in printed or electronic forms. It was identified that such information is generally shallow, lacking required specificity and is limited in its effectiveness due the lack of complementary backup support.

“One of the most important roles for government in enhancing the protection of remnant vegetation is the provision of research and information to landholders on “best practices” for managing various types of native vegetation.... Landholders often do not have information on the benefits or significance of native vegetation retention or they do not know what management actions can be taken to effectively conserve vegetation. Well-targeted extension services, which ensure regular contact with landholders, provide the basis for stewardship arrangement. It is important however, to emphasise the importance of extension officers harnessing local knowledge and expertise and taking account of “whole farm” management objectives, rather than considering vegetation issues in isolation” (Morton:1999).

NFF therefore argues that there must be adequate resourcing of government departments to fund extension officers to assist farmers with native vegetation management. An example of the under-resourcing of departments is the positioning of one DNR vegetation management officer in Central Queensland to cover an area comparable in size to Victoria. Extension officers must not simply provide scientific, regulatory and compliance information but should be able to understand the management of native vegetation from a whole farm business perspective. NFF points to the success of the “*Grassy white box woodlands: taking action now*” project, as discussed by Elis and Lambert, whereby local landholders were employed as ‘action liaison officers’ to provide advice on native vegetation management. Such a program is a demonstration of the effective role farmer oriented extension programs can have. (Elis J and Lambert:1997)

KEY CONCERN

NFF is concerned that the failure to provide adequate information and extension officers who can assist with vegetation and biodiversity management from a whole farm business approach is undermining the ability of farmers to achieve the long term protection of native vegetation whilst developing their farm business. The under-resourcing of government departments leading to ridiculous and completely unacceptable delays is a further concern

10. Property Values and Income Flows

NFF argues that the current native vegetation and biodiversity regulations are failing to achieve optimal social, economic and environmental objectives due to the immense impact that such regulations are having on farmers' property values and income flows. The effective removal of property value through regulation not only raises severe equity concerns but also removes the capacity of farmers to access investment funds to provide for the ongoing operation and future development of their farm business.

“Land use regulations are introduced to alter the existing set of property rights and hence involve a wealth transfer from landholders to the community” (ABARE:2001)

The largely unrecognised 'transfer of wealth' away from farmers under current native and biodiversity regimes is well documented. In a paper presented to the 46th Annual Conference of the Australian Agricultural Resource Economics Society, Dr Jack Sinden documented the impact of the NSW Native Vegetation Conservation Act on farmers' income, costs and property values in the Moree Plains Shire. (Sinden:2002) He made the following observations:

- Since its introduction, the NVCA has reduced land values by 21 per cent and annual incomes by 10 per cent across the Shire.
- The NVCA will potentially reduce farming incomes within the Shire by 18 per cent by 2005.
- The protection of native vegetation under the NVCA requires farmers to give up 15.6 per cent of their household income where urban household forfeit only 0.55 per cent of their income for the protection of native vegetation.

Sinden concludes that whilst vegetation clearing has decreased:

“...the Act has aggravated equity because farm families have had to bear far higher costs than urban families, the distribution of income in the community is made less equal and costs have been imposed on farms who are struggling financially.”

A further study by (Ashburner:2001) of the economic impact of the Queensland VMA on the Mackay Sugar Region identified that the effect of the 9811 hectares of suitable cane land being declared 'endangered' or 'of concern' vegetation resulted in total marginal profit losses of \$6.6 million and capitalised value losses of \$80.4 million.

- A valuation done on “Lovesby” (for details see Appendix M) made the following observation regarding the impact of the Queensland VMA:

“Lovesby is entrapped by this legislation being comparatively undeveloped by community standards with significant areas of “endangered” ecosystems classified within the boundaries”

“Prohibition on clearing now severely diminishes the economic potential of Lovesby to the extent that viability is threatened on a stand alone basis”

The valuation under the original lease conditions was \$1400000 with this reduced to \$1000000 when restrictions under the Vegetation Management Act are taken into account:

“We consider the overall market value of the property would be further diminished in this instance by the large areas of protected country within the boundaries which would compound management difficulty and increase working costs”

- The Holmes (for details see Appendix L) have been prevented from developing the uncleared land on their property. These restrictions mean that the capital value of the land will increase by only \$75 000 over twenty years instead of the projected \$700,000.

The impact on farmers in terms of lost income during the application process and the forgone income of proposed development needed for farm sustainability is immense and must be addressed.

- Assuming the Klassens (for details see Appendix D) were allowed to proceed with their development as planned and projecting only a conservative profit of \$200 per hectare per annum, they have foregone approximately \$94 000 net income per year. Over the 5 year period of uncertainty and unwillingness of the government to provide a decision this equates to lost net income of \$470 000.
- The Mahars (for details see Appendix I) were never able to develop the cropping land they intended. The Mahars calculate their losses as a result of lost grazing and cropping potential at more than \$477,000. This figure assumes a nominal interest rate of 10% despite the fact that at times they were servicing debt with interest rates of 19.75%.

KEY CONCERN

NFF is very concerned that the inequitable removal of land value and reduction in potential and actual income without any recognition by government is removing the certainty needed for investment and on-going farm management. The loss of farm value currently results in farmers unfairly sharing the cost burden of conservation whilst removing the economic ability of farmers to actually be involved in conservation through reducing their financial viability.

11. Environmental Outcomes

Rather than conserving native vegetation and biodiversity, NFF maintains that current regulation in its administration perversely rewards farmers who clear and promotes poor environmental management outcomes. The already discussed cost, delay, excessive regulation and loss of farm income that occurs when a farmer attempts to comply with current regulation arguably creates incentives to evade legislation through activities such as pre-emptive clearing.

- When Tripod farmers (for details see Appendix F) spoke to developers about the need to get a permit to clear any native vegetation they were advised by one developer that it might be better to go ahead and clear all the trees without the permit and pay the expected fine of \$40,000 so as not to incur the cost and delay of the application process.

Under the current approach where regulation effectively removes the ability to manage farm business, a farmer has an

“incentive to reduce the risk of a taking, and the associated risk of financial loss, by increasing the private use value, or decreasing the potential conservation values, or both. Second, since landholders do not reap any personal benefit from improving conservation value, they lack incentive to invest on behalf of such benefits.” (Innes, Polansky and Tschirhart: 1998)

An example of the perversity of current regulation is found in EPBC guidelines which classify the clearance of re-growth of brigalow as an ‘action’ requiring referral. Land that has been cleared in the past and managed as re-growth will be cleared before it reaches the specified age so as to ensure that a farmer is not affected by the cost, delay and uncertainty for their farm business.

NFF further points to Bowers’ observations that if irreversible losses are to be avoided people need a positive incentive to reveal new findings. If, for example, farmers discover that remnant vegetation on their property contains an endangered species or, more seriously, one thought to be extinct, then unless there is a guarantee of compensation they have a strong financial incentive to fail to act to protect it (Bowers:1994).

KEY CONCERN

NFF contends that current native vegetation and biodiversity regulations are not fully achieving their desired objectives to conserve, restore and regenerate native vegetation NFF is concerned that in certain circumstances such regulations are creating perverse incentives for farmers to clear native vegetation and reduce biodiversity stocks in order to avoid cost, delay and loss of development potential for their farm business.

12. A Way Forward

NFF argues that there must be a fundamental shift in the manner in which natural resources are managed in Australia. The current focus on prescriptive command and control regulation has been demonstrated as a failure in terms of its ability to achieve the desired environmental, economic and social outcomes. The current approach is too much concerned with ‘stopping action’ rather than addressing the need to promote sustainable management. If governments do not acknowledge and engage with the concerns of farmers and appreciate the way in which the current cost, delay and uncertainty is removing the ability to manage their farm business, they will effectively remove the capacity of those who are best positioned to facilitate the on-going management of native vegetation and biodiversity into the future.

NFF believes that farmers are best placed through their on-going land management experience to act as the front-line in sustainable native vegetation and biodiversity management programs. Farmers have local land experience and have shown that they have both a willingness and capacity to be involved in environmental management where there are appropriate environmental, social and economic incentives. Government must not introduce policies that unfairly burden farmers and society as a whole must accept that Australia’s ‘green infrastructure’ on which it relies must be paid for in an equitable and efficient manner.

NFF believes that Australian Governments must:

- Provide certainty for farmers regarding their on-going ability to utilise the natural resources on their farm.
- Address the cost, delay and lack of integration between Commonwealth and State legislation through removing duplication and adequately resourcing the departments responsible for the management programs.
- Provide adequate funding packages and incentives:
 - to off-set any reduction property valued following the implementation of NRM controls where landholder’s rights and legitimate and reasonable expectations have been diminished;
 - to encourage voluntary stewardship arrangements for desired conservation, regeneration and restoration policy objectives.

NFF contends that only through encouraging and rewarding on-going management and directly funding those who are best placed to manage native vegetation and biodiversity will sustainable environmental outcomes be established.

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