

Dear Sir,

Please accept my submission to the Productivity Commission regarding:

**That the regulatory regimes in a number of States and Territories along with the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, particularly within the past five years, have raised concerns over possible negative impacts on farming practices, productivity, property values and returns and the investment behaviour of affected landholders.**

- a. the impacts on farming practices, productivity, sustainability, property values and returns, landholders' investment patterns and the attitude of finance providers, and on other economic activities such as infrastructure development and mineral exploration, and flow on effects to regional communities, arising from the regulation of native vegetation clearance and/or biodiversity conservation, including:**
  - i. both positive and negative impacts;**
  - ii. the level of understanding of the relevant legislative and regulatory regimes among stakeholders;**
  - iii. the likely duration of such impacts and the factors influencing their duration; and**
  - iv. the extent to which existing government measures are mitigating any negative impacts;**

The impact of the Federal and State Environment Protection and Biodiversity Conservation Acts has had a massive negative impact on rural and regional communities. There is much uncertainty surrounding the implementation of the legislation, unclear definitions and a minimal or non-existent communication campaign has generated a climate of fear and doubt as to the legality of normal everyday farming practices amongst farmers.

The enactment of the legislation has been quite complex. The relevant Victorian legislation that regulates land clearing and biodiversity enhancement is the Flora and Fauna Guarantee Act 1988 which pre-dates the federal legislation (*Environment Protection and Biodiversity Conservation Act 1999*). The Victorian State legislation outlines that the minister may protect flora and fauna taxa by gazetting such species as listed for conservation. No community consultation or scientific tests are required as part of this decision making process, its simply at the relevant State Minister's discretion. Further, there does not appear to an effective mechanism for the communication of these decisions to the relevant rural and regional stakeholders including local government.

The changes to the local government regulations concerning environmental and biodiversity issues concerning land use in the Victorian Corrangamite shire were enacted circa year 2000. They solve the problem of mirroring Commonwealth and State legislation by simply listing rural land as having an environmental significance overlay. This then requires the landholder to obtain a permit to “Remove, destroy or lop any vegetation.” Exceptions to this requirement are then explicitly listed. At a practical level there are wide differences in the application and interpretation of the legislation.

For example in Victoria there is a well publicised case of farmer being taken to the Administrative Appeals Tribunal (AAT) by the local council at what seemed to the advice of the Department of Sustainability and Environment for having cleared less than 10 hectares. The farmer maintained that this was due to the area being infested with rabbit warrens – thus under the legislation this was allowable. The AAT ultimately ruled in favour of the farmer as he had followed the legislation. Ultimately this cost the local government shire involved circa \$100,000 in legal costs. This is a cost that comes out the local community and would require cuts to recurrent road funding, health services or something else that the community depends on. If on the other-hand the farmer had been found to be in the wrong he faced a maximum fine of circa \$120,000 and / or a jail term. Either way the rural / regional community has lost money, forcing some-one out of business or cutting back on essential community programs. Furthermore, this and many other cases like it add to the climate of fear and uncertainty among landholders.

At present there is no scientific criteria and policy framework for establishing the sustainability or otherwise of farming practices. There is no program under which a farm can be certified to environmentally sustainable, there are only prohibitive and punitive policy frameworks in place. This creates enormous stress and despair for the farming community especially when there is anecdotal evidence that a senior member of the Victorian Environment Assessment Council (VEAC) who are currently evaluating a proposal to convert all public land in the Victorian Otways region to National Parks has stated that: “we cannot rely on scientific evidence for good environmental outcomes”. This echoes similar recent comments in the media by Tim Fisher of the Australian Conservation Foundation – that “No, matter how much science comes out, for some people there’s never enough. And in reality we’ll never for sure until we do it, let’s just do it”. Tim Fisher has also made recent comment dismissing the impact of environmental legislation on farmers and claims that city people and business are more affected by environmental legislation. Such claims are not only mischievous and cruel, but also are never backed up with any factual comparative analysis of legislative frameworks and their economic and social impacts.

Proposed changes to the local environmental management framework in the Lower Gellibrand district with regards to the river management regime were of such concern that it was all one local person could talk about in how this was going to affect their farming business during the two weeks immediately prior to their committing suicide. The rest of the family walked in on their father hanging from the staircase in the

entrance hall to their home. Whilst it is difficult to say why a person commits suicide one cannot but conclude that the concerns over the fairness and equity of the environmental legislation implementation certainly added to the stresses of farming. The aftermath of this tragedy was heart rending to behold as the local community rallied behind the surviving family. Over \$20,000 was raised to help the widow and her children get back on their feet. A community working bee carried out weed control to enable the family to realize a better sale price for the farm. Subsequent to all this the surviving members of the family have left the district.

The only positive effect of the Environmental and Biodiversity Legislation has been to highlight the importance our natural beauty and importance of conservation values. We've moved away from a policy framework of unregulated land clearing and development irrespective of environmental cost to a framework of intended environmental protection irregardless of the social cost. The social cost is unfairly distributed, the rural and regional communities have to suffer its effects whilst the population in the major metropolitan areas have by and large been spared any significant inconvenience or impact. The notable exceptions to this are the recent bushfires Jan – Mar 2003 where over 500 Canberrans lost their homes. It is arguable that an overly zealous application of the policy intent of the Environmental and Biodiversity Legislation strongly contributed to under-management of fire fuel hazard reduction.

In terms of overall sustainability outcomes the urban population continue to consume an inordinate amount of resources and generate most of Australia's greenhouse gases. This is due to fossil fuel consumption in motor vehicles, the supply of power to the electricity grid and industrial processes. There any many calls to buy back water rights from farmers in order to save the Murray Darling river system. There is no recognition by green lobby groups of the value of these water rights over and above the monetary value of the water license. A similar situation applies to the "right" to have a car license. This "right" is worth far more than its monetary value. If every second person in a metropolitan area were to have their car license repurchased and withdrawn by the State Government the ensuing rioting and civil disturbance would see the downfall of that government in quick order. The politically disenfranchised rural and regional population does not have the same political influence to enjoy the same access to such equitable access to privileges vital for business continuity.

In Australia the rural and regional population has a long history of participation and support of environmental conservation. The landcare movement was founded by farmers who desired to improve the environmental outcomes on their land. A prime motivation for this was to improve the land that their children might one day inherit, a fundamental guiding principle for sustainability. Australia is world leader in the development of environmentally sustainable world's best practices such as no-till farming. Australian farmers have a long history of innovation such as the invention of the combine harvester. We are so well recognized internationally, that for example Swiss farmers regularly come to Australia to study our farming practices and innovations. Australia is the only western country (with the possible exception of Canada) that provides no subsidies to our farmers. This forces Australian farmers to be innovative, efficient and sustainable. There is no room in farm economics for

declining productivity. Farmers either farm sustainably or go out of business as there are no government subsidies to prop up declining farm productivity.

The legislative framework is complex consisting of Federal, State and Local Government legislation and regulations. These legislative frameworks are debated and enacted primarily in Canberra and State capitals. Local government regulations in general enact regulations matching State Government legislation. Thus regional and rural communities are disenfranchised from the legislative process. Even if there was effective community consultation, the every declining rural and regional population numbers mean that these communities do not have the political clout to achieve sensible and sustainable outcomes. This is serious deficiency in the process as there is much legitimate experience and practical knowledge to be gained from the people who live their lives on the land. The stereotype of the ignorant and environmentally uncaring farmers is just not accurate and should not be supported by the government.

The duration and impact of the legislative and regulation frameworks are well documented in the Federal arena, these can be found in documentation such as:

- 1995 Federal Parliamentary inquiry into Catchment and Land Protection
- 2000 Federal Parliamentary inquiry into Conservation of Land for Public Good

In summary these inquiries found a massive impact on rural and regional Australia from these land use changes. The changes go far beyond normal business risks that can be insured against, such a fire, theft and public liability risks for example. Farming has an unusually long planning cycle, as the above inquires documented. For example there are many cases cited where farmers purchased uncleared land in order to be able to expand their farm to ensure the economic viability of their farm into the future, including succession planning for their children. With the environmental legislative changes enacted it now seems all but certain that such land would never be allowed to be brought into agricultural production. Such land unless in close proximity to a major urban center has depreciated in value dramatically as no future economic productive use is possible for this land – it has to remain undeveloped and possibly subject to council rates.

The changes caused by the impact the environmental legislation are not like being made redundant from your job in the city and having to look for another job. The impact of the legislation is permanent as, if land is currently vegetated or is revegetated it effectively is permanently withdrawn from farming availability. The Victorian policy intent is for a nett positive gain of vegetation (i.e. trees) on private land. This is effectively a policy of increasing the land permanently withdrawn from farming. In an environment where the world population continues to grow anyone with common sense has to wonder about the sustainability of such a position.

At present from a rural and regional perspective there are is no mitigation of any the negative impacts of the *Environment Protection and Biodiversity Conservation* legislation, it's simply a disaster.

**b. the efficiency and effectiveness of the above regimes in reducing the costs of resource degradation and the appropriateness of the current distribution of costs for preventing environmental degradation across industry, all levels of government, and the community;**

The costs of the reducing environmental impact are borne primarily and solely by rural and regional communities. There have been minimal impacts of substance to urban members of our society. This is galling to members of the rural population who are effectively subsidizing the lifestyles of those in the city. This is particularly the case in the current prolonged drought and water shortages where water restrictions in the city mean that city people can't water their lawns at certain times or can't hose their driveways. Many farmers have faced the choice of buying water (because the rain water tanks are empty) or buying fodder to feed their livestock. In the city the issue is of convenience, in the country for many its life or death for their animals or reduction of business viability.

There is no discussion of an extra petrol tax in the city to reduce vehicle emissions, yet the idea of a methane tax is frequently floated. There is simply no equity in the distribution of costs in the prevention of environmental degradation.

**c. whether there is any overlap or inconsistency between Commonwealth and State/Territory regimes, including their administration;**

The legislative framework is complex and varies between Federal, State and Local Government jurisdictions and between differing legislative instruments. Administration is varied in its application and has included the prosecution of at least one Victorian farmer when they were clearly in compliance with the legislation.

In Victoria there is in addition to the legislation a Victorian State Government policy to create net vegetative gain on private land. It's simply ridiculous that a farmer is ordered to plant 10 trees for every 10cm diameter overhanging branch pruned from above a fence line, and 200 trees for every 30 cm diameter branch. The stated reason as reported in the media for this was the Department of Sustainability and Environment believed there were not enough trees on the property. Surely there would be negative occupational health and safety implications from allowing large overhanging branches to remain. The required "vegetative compensation" appears punitive. The farmer in question has been trying to obtain a permit for two years to allow the work to proceed.

**d. the evidence for possible perverse environmental outcomes, including those that may result from perceptions of a financial impact, arising from the implementation of the above regimes;**

There are many examples of detrimental environmental outcomes of this legislation. The under management of fuel hazard reduction contributed to a the Jan – Mar 2003 bushfires resulting in excess of 3,000,000 hectares being burnt out in highly destructive wildfires. The long term environmental impacts have been estimated to as long 80 to 100 years in terms of reduced run-off to the already critically stressed Murray Darling river system. In Victoria 1,300,000 hectares of public land was burnt-out and only 90,000 hectares of private land. In the one of the most fire prone environments in the world this is incontrovertible evidence of a failure of positive environmental management.

The Mabo court case overturned the notion of Terra Nullis. Australia's original indigenous inhabitants were hunter gatherers who fished, hunted, gathered firewood, managed forest fuel loads through use selective burn-off and lived in the "bush" environment. The current Victorian Interim fire management policy discusses the management of vegetation succession through the use a patchwork of small low intensity burnoffs. Any sensible person would have to question the rational of a policy of environmental management by "no-disturbance" in that any activity that will "lop or destroy any vegetation" is banned without a permit. The legislative framework goal of returning the environment to the environmental reference point of pre a 1750 condition seems drastically flawed if a policy of no-disturbance is pursued. This land was inhabited prior to 1750, people lived in the bush, hunted, fished, gathered roots and bush fruits and managed the landscape through the use of fire. To suggest that we should return the environment to its pre 1750 glory by fencing land off and closing access tracks is not only a sad misinterpretation of our rich cultural and historical heritage, but also a racist argument. Its no wonder that 3,000,000 hectares burnt out this summer. How much more damage has to be done before State Governments in particular examine the outcomes of their public land management regimes. In NSW it appears that far more damage is required, as the State Government has banned Rural Fire Services and NSW National Parks and wildlife staff from participation in the current Commonwealth inquiry into the recent bushfires.

**e. the adequacy of assessments of economic and social impacts of decisions made under the above regulatory regimes;**

The current Victorian approach to community consultation is totally inadequate. Decision making is based in Melbourne. Economic and social impacts to regional Victoria appear to secondary to populist politics based around key marginal seats in Melbourne outer suburbs and key seats in Geelong. The Victorian policy framework appears to be biased in favour of ensuring that economic and social impacts assessments do not imperil any election promises made regarding environmental outcomes. To date I have not seen any economic or social impact studies for any proposed changes to the environmental legislative and regulatory framework.

At present in Victoria Environmental Assessment Council (VEAC) is investigating the conversion of all crown land in the Otways to National Park. This is known as the Angahook Otway investigation. Originally this investigation was known as the Angahook Lorne investigation and was centred around the Angahook State Forest and

its possible conversion to National Park. The revised investigation was hastily announced during the recent Victorian State Government election campaign with the intent of securing green preferences, primarily in Geelong and outer metropolitan Melbourne. The revised investigation kept the original timelines of the original investigation but expanded the study area by over 1,000%. It is also included the Great Ocean Rd for possible conversion to National Park in what would seem to be a blatant revenue raising exercise.

From the information available to date the process will be managed by a reference group that will meet 3 times for a duration of approximately 2 to 3 hours for each meeting. This effectively excludes the community from any real consultation process. Its difficult to see how the study can be equitably and effectively carried out especially given its governance framework.

**f. the degree of transparency and extent of community consultation when developing and implementing the above regimes; and**

The rural and regional communities are severely disenfranchised when it comes to the community consultation process. Decision making is based in state capitals and consultation in rural and regional areas is severely limited. There is anecdotal evidence of the VEAC consultation process requiring local communities to hire a public hall and provide catering at its own expense in order to host a VEAC community consultation.

Should a farmer disagree with the State or Local government environmental legislation implementation decision their only recourse is take that body to the Administrative Appeals Tribunal or Supreme Court respectively. For farmers struggling with drought, low commodity prices and the impacts of environmental legislation this is a recourse most cannot afford.

**g. recommendations (of a regulatory or non-regulatory nature) that governments could consider to minimise the adverse impacts of the above regimes, while achieving the desired environmental outcomes, including measures to clarify the responsibilities and rights of resource users.**

As with all large scale changes of a regulatory nature that have very significant economic and social impacts a sensible transition plan is required. For example, the manufacturing sector was allowed to phase out ozone depleting substances over a number of years and received assistance during the transition. This policy implementation has been a success story as it avoided large scale economic and social disruption and the ozone hole is on its to closing.

Similarly a 10 year transition plan could be put in place for the farming sector, where current activities on already existent agricultural properties are enshrined as rights. New developments would need to pass environmental regulation tests. Any impacts to agricultural enterprises due to the application of current or new environmental legislation and regulations should be subject to proper social and environmental

impact studies. Where activities are needed to be phased out or modified to the point of commercial unviability appropriate compensation should be negotiated which may include a sunset clause that resides with current farm owner. This issue is complex and needs further examination.

Whilst it is tempting to call for the withdrawal of funding from current State Governments who seem to be the most intransigent in recognising the impacts of the current environmental legislation. Peter Beattie Premier of Queensland was recently quoted as saying: “what a lot of rot” on this issue. This should only be taken as a measure of last resort as it will only inflame an already difficult situation, and unless such pressure can bring a quick positive outcome to country people suffering under the current legislative regime it should not be undertaken. That said action does need to be taken before we rip the heart out of rural Australia.