

**Submission by the Department of the Environment, Water,
Heritage and the Arts**
to the
Senate Standing Committee on Finance and Public Administration

***Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change
Measures***

Purpose

This purpose of this submission is to provide background information on the relationship between Departmental activities, including the administration of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), and native vegetation laws and legislated greenhouse gas abatement measures.

The submission addresses the Standing Committee's first Term of Reference, namely:

The impact of native vegetation laws and legislated greenhouse gas abatement measures on landholders, including:

- (a) any diminution of land asset value and productivity as a result of such laws;
- (b) compensation arrangements to landholders resulting from the imposition of such laws;
- (c) the appropriateness of the method of calculation of asset value in the determination of compensation arrangements; and
- (d) any other related matter

The submission does not address the Standing Committee's second Term of Reference related to the Government's proposed Carbon Pollution Reduction Scheme as this is outside the Department's responsibility.

The EPBC Act

The EPBC Act does not directly regulate native vegetation or contain greenhouse gas abatement measures.

The EPBC Act protects matters of national environmental significance, such that any action that is likely to have a significant impact on a matter of national environmental significance requires an assessment and approval under the EPBC Act.

The matters of national environmental significance protected by the EPBC Act that are most relevant to the issue of native vegetation clearing are:

- Nationally threatened species and ecological communities,
- Migratory species,
- Wetlands of international importance,
- World Heritage properties, and
- National Heritage places.

Although the EPBC Act does not regulate native vegetation laws or greenhouse gas abatement measures, it does on occasion affect native vegetation clearing but only in the context of regulating actions that are likely to have significant impact on matters of National Environmental Significance. To date, these have been small in number.

Between the commencement of the EPBC Act on 16 July 2000 and 4 March 2010, the agriculture and forestry sector accounted for 63 of the 3,409 referrals made under the EPBC Act. Of the 63 referrals received from the Agriculture and Forestry sector, 16 (15 Agriculture and one Forestry) were found to be controlled actions (required approval). Of the 15 Agriculture projects, six involved potential impacts related to land clearing. None of these six has been refused approval under the EPBC Act but several have not proceeded beyond the initial referral for various reasons.

There are also qualifications to the application of the EPBC Act to land clearing. Specifically, the EPBC Act allows for the lawful continuation of existing land use if it commenced before the EPBC Act came into force on 16 July 2000, as long as the use has continued uninterrupted or regularly from before this date and is not an enlargement, expansion or intensification of use that results in a substantial increase in the impact of the use on the land.

Should the effect of a Minister's decision under the EPBC Act, including those related to native vegetation clearance, constitute an acquisition of property, Section 519 (1) provides that:

If, apart from this section, the operation of this Act would result in an acquisition of property from a person that would be invalid because of paragraph 51(xxxi) of the Constitution (which deals with acquisition on just terms) the Commonwealth must pay the person a reasonable amount of compensation.

In relation to determining compensation Section 519 (3) states that:

If the Commonwealth and the person do not agree on the amount of compensation to be paid, the person may apply to the Federal Court for the recovery from the Commonwealth of a reasonable amount of compensation fixed by the Court.

No formal claims have been made under Section 519.

Key Threatening Processes and Threat Abatement Plans

Section 183 of the EPBC Act provides for the listing of Key Threatening Processes (KTPs). A KTP is a process that threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community. Once a KTP has been listed, the Minister must decide whether to develop a Threat Abatement Plan (TAP). TAPs establish a national framework to guide and coordinate the Commonwealth's responses to listed KTPs. They are developed if the Minister believes that implementing a TAP is a feasible, effective, and efficient way to abate a KTP.

A TAP provides for the research, management, and any other actions necessary to reduce the impact of a listed key threatening process on native species and ecological communities.

Listing of a process as a KTP has no direct regulatory effect. However, a Commonwealth agency must not take any action that contravenes a TAP. The Commonwealth Minister is a Commonwealth agency for the purposes of the EPBC Act and cannot therefore make approval and other decisions under the Act which contravene a TAP. This includes the application of conditions on a proposed action subject to a 'controlled action' decision or 'particular manner' provisions.

Although 'land clearance' was listed under the EPBC Act as a Key Threatening Process in April 2001, the then Minister accepted the advice of the Threatened Species Scientific Committee that development of a TAP was unnecessary. The Threatened Species Scientific Committee formed this view given the number of relevant national and state strategies and programs addressing the issue.

Non-Regulatory Approaches to Land Clearing

The importance of effective measures for the conservation and management of native vegetation has long been recognised by all governments in Australia. Conservation and, where appropriate, restoration of native vegetation was identified as one of Australia's key challenges in the *National Strategy for Ecologically Sustainable Development*, endorsed by the Council of Australian Governments (COAG) in 1992.

The importance of native vegetation has subsequently been endorsed in a range of other documents such as the *National Strategy for the Conservation of Australia's Biological Diversity*, endorsed by COAG in 1996; the 1997 COAG *Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment*; and the *National Framework for the Management and Monitoring of Native Vegetation*, adopted by a joint meeting of Primary Industries, Natural Resources, Environment and Water Ministers from across Australia in 2001.

In this context, the Australian Government works with other jurisdictions through the Natural Resource Management Ministerial Council to develop and implement national policy frameworks and associated supporting activities. These include national policies for biodiversity conservation, the national reserve system and native vegetation management.

Cross-jurisdictional work under the Ministerial Council also supports technical issues including the development of a national vegetation information system, use of market-based approaches for conservation and development of approaches for landscape-scale conservation that takes account of vegetation dynamics and the provision of ecosystem services for a mix of productive and non-productive uses.

Alongside these activities, the Australian Government's *Caring for our Country* initiative identifies a number of long term environmental outcomes and specific targets, including for native vegetation and habitats, to be achieved through competitive investments under an annual Business Plan. In addition, the Australian Government has implemented several market-based programs for biodiversity conservation that provide opportunities to address the risks of further loss of native vegetation.

These include the Forest Conservation Fund established under the Tasmanian Community Forest Agreement to protect high value native forests, including old-growth forests, on private land, and the Environmental Stewardship program established under the *Caring for our Country* initiative, to protect specific matters of National Environmental Significance on private land. Support for land acquisition for conservation purposes is conducted through the National Reserve System program under the *Caring for our Country* initiative.

Department of the Environment, Water, Heritage and the Arts
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