



23 April 2010

Senate Finance and Public Administration Committee
Parliament of Australia
PO BOX 6100
Parliament House
CANBERRA ACT 2600

Dear Committee,

Senate Inquiry into Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures

On the recommendation of Senator Scott Ryan, the Victorian Farmers Federation submits a document outlining some specific examples of regulatory requirements of the State government impacting on the property rights of landowners. The VFF would be happy to expand upon the issues raised in the attached submission.

Yours Sincerely,

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Victorian Farmers Federation

Victorian Farmers Federation submission to the Senate inquiry:

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

The greatest regulatory burdens are through compliance costs and the constraints on economic growth and development regulations create. The VFF argues that the promotion of positive environmental protection practices are best served by making the desired outcomes an opportunity through incentive programs. Regulations by their very nature tend to create liabilities out of the very things that are meant to be protected.

Where a positive change in behaviour is needed to obtain the outcome that the community aspires to, regulation should be a last resort. Regulation is a very blunt instrument and in environmental issues has tended to result in making elements of the environment a liability rather than an asset. The VFF contends that more success would be achieved in meeting community aspirations if the reverse were true. That is what environmental outcomes the community values should be turned into an asset for managers of those parts of the environment necessary to obtaining those outcomes.

Counterproductive Regulation

The farm sector across all regions and industries should not be unreasonably hampered in attempts to innovate, improve productivity or adjust to changing circumstances. There are many forms of Government regulation that operate through the planning framework that impact on the ability of farmers to adapt by reducing the freedom to use their property. In many cases the values and outcomes regulation is designed to protect and achieve are affected negatively by the regulation.

The VFF argues that instead of assisting, a regulatory approach is often counterproductive. For example, vegetation protection overlays are counterproductive by turning native vegetation into a liability instead of an asset. They are most unwelcome and need to be accompanied by realistic compensation if applied.

The VFF does not support regulatory approaches that erode the property rights of individuals and in particular, find the regulations regarding native vegetation particularly obstructive to obtaining better environmental outcomes.

The Victorian state government has adopted a three step approach in its assessment of native vegetation clearing permits: avoid, minimise and offset. The practical implementation of the offset guidelines is quite the opposite. The VFF believes that the key problem with the assessment process for native vegetation applications is that there is no requirement to undertake a 'triple-bottom-line' assessment of the application as opposed to the vegetation removal or even a wider assessment of environmental costs and benefits. A development which may propose a valuable water saving option for a farm, a valuable economic development for the region, and can provide significant offsets as compensation, may still be refused because the native vegetation to be removed is assessed as significant.

The recent changes to the Exemptions for the removal of Native Vegetation (Amendment VC49) have resulted in additional restrictions and less flexibility for commercial agriculture. While the changes to the exemptions for a requirement to obtain a permit have addressed some concerns raised by the VFF, the overall regulatory burden had increased and exacerbated the diminution of property rights.

In the more important aspects of farm management the exemptions are now only exemptions up to a point. For example a permit is not required to clear the minimum amount of native vegetation necessary to construct an internal fence, however this exemption is limited. Over a 5 years period the

exemption restricts clearance to less than 1 hectare of native vegetation (excluding trees), 15 small trees and 5 large trees.

In Victoria, the extent and quality of vegetation which needs to be offset is calculated using the 'Habitat Hectares' approach. The example below has been extracted from the Native Vegetation Guide for Assessment of Referred Planning Permit Applications (DSE 2007). Quite clearly the calculations set out require the individual to incur the cost of a nett gain in native vegetation.

Example:

Quantity of loss

If the area proposed to be cleared is 2 hectares in area with a habitat score of 0.5 the loss in habitat hectares would be $2 \times 0.5 = 1.0$ HHa Gain Target

a. If vegetation to be cleared had a conservation significance of **low** or **medium**, the loss would be offset at a ratio of

1:1 (page 54 of the Framework). That is, a gain of 1 HHa for each HHa to be cleared. The gain target would be the same as the loss in HHa, that is, 1.0 HHa

b. If vegetation to be cleared had a conservation significance of **high**, the loss would be offset at a ratio of 1.5:1 (page 54 of the Framework). That is, a gain of 1.5 HHa for each HHa to be cleared. The gain target would be one and a half times the loss, that is, 1.5 HHa

c. If vegetation to be cleared had a conservation significance of **very high**, the loss would be offset at a ratio of 2:1 (page 54 of the Framework). That is, a gain of 2 HHa for each HHa to be cleared. The gain target would be twice the loss, that is, 2.0 HHa

What is the offset required?

For option (a) above, if, using the DSE Gain Calculator and associated user instructions (DSE 2006a), the total gain estimated to result from the offset is 0.2 points out of 1 per hectare, that is 0.2 HHa of gain will be generated for each hectare of offset.

Five hectares of offset would be required to generate 1 HHa of gain. The area needed for an offset in the example above (1.0 HHa gain target) is calculated using the following:

Area of offset required = $\frac{\text{Gain Target}}{\text{Gain per hectare 0.2 HHa/ha}}$ = 1 HHa = 5.0 hectares

There is no allowance for the scale of the enterprise, nor for the status of existing native vegetation stock or consideration to the property rights of the landowner. Farm enterprises have grown in scale in order to remain viable and it is not unusual for single properties to consist of many thousands of hectares. At the other end of the scale there are large amounts of properties, particularly in the "lifestyle" areas, of less than 100 hectares.

The total amount of vegetation that must be removed for essential farm works such as internal fencing will be considerably greater on a large commercial property than on a small non commercial enterprise; however, expressed as a percentage of land under ownership the reverse would be true. In effect the property rights of one class of landowner have been impacted to a significantly greater degree than another, albeit for the same intended outcomes.

The other relevant factor that has been ignored is that the stocks of native vegetation across the state, and even within regions, are not equal. The amount of land clearance that has occurred in the northern and central parts of Victoria is much greater than in the North East and East Gippsland. The impact of the removal of a 5 large trees in North Central, in most cases would be of more significance than the removal of 5 large trees in East Gippsland yet the exemptions treat them as the same.

There are a range of other issues with the changes to the exemptions. The five year limits may be appropriate in design from small non commercial properties but are onerous and will add to the cost of running a commercial farm. Farmers will now need to obtain permits in order to carry out normal and necessary farm activities that in the past had been allowable without permit.

The cost of achieving 'nett gain' has been put on landholders without incentive and . The interaction with the regulations that lead to a requirement for landholders to achieve a nett gain is through the planning process. In effect the changes to the exemptions will result in more commercial farmers applying for permits and in order to obtain that permit be required to provide substantial offsets to achieve the nett gain principle.

Smaller landholders who will not reach the clearance thresholds will avoid this cost, even though in total much more vegetation could be removed across smaller properties than on commercial farms. These changes are inequitable and make existing native vegetation on commercial properties a potential liability.

The habit hectare scores are also ill-conceived. While farmers value the native vegetation on properties and have a history of improving environmental outcomes the concepts of nett gain in conjunction with habitat hectares will cause counterproductive outcomes. As an illustration a landholder planning for a development that requires obtaining a permit, the removal of native vegetation has an incentive to degrade the native vegetation in order to minimise the nett gain calculation.

Market Based Mechanisms

The VFF argues that Victoria requires greater use of market-based mechanisms rather than regulating away the rights of landowners to achieve natural resource values and environmental outcomes.

Market based mechanisms will become increasingly important in driving large scale change in environmental outcomes. The benefits are it provides an appropriate avenue for those conducting activities such as urban construction to offset the loss of vegetation. It also means that the community can contribute to the provision of public goods.

The protection of natural resources is important to the continuing health and productivity of Victoria's farming land. However, the VFF argues that the role of planning in preserving natural resource values is limited. Stewardship programs driven by market based mechanisms would be more useful to conserving natural resource values than diminishing property values by restricting the rights of property owners.

Limiting Property Rights Impedes Innovation

Government policy or regulation should not stand in the way of agriculture responding to demanding conditions imposed by markets and changing climates.

The usual response from the agriculture sector to the viability challenges they face has been to expand or intensify as they drive their operations to become more efficient. However, there are considerable regulations preventing this course of action.

Regulations or planning restrictions that impede the capacity to adapt are likely to result in poor environmental outcomes. A landholder's capacity to provide environmental outcomes cannot be divorced from their capacity to be profitable. If adaption to a changing climate or a changing market is impeded unreasonably, environmental performance is likely to suffer.