



**Submission to the
House of Representatives
Standing Committee on the Environment**

**Inquiry into streamlining environmental
regulation, 'green tape', and one stop
shops**

11 April 2014

MEMBER ORGANISATIONS



CORPORATE
AGRICULTURAL
GROUP



Goat Industry Council
of Australia Inc.



RICEGROWERS' ASSOCIATION
OF AUSTRALIA INC.



CANEGROWERS



COTTON
AUSTRALIA



GrainCorp



RIDLEY



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1. Introduction

The National Farmers' Federation (NFF) welcomes the opportunity to make a submission to the House of Representatives Standing Committee on the Environment inquiry into "green tape".

The NFF is the peak national body representing farmers and the agriculture sector across Australia. It is one of Australia's foremost and respected lobbying and advocacy organisations.

Since 1979, NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers.

The NFF is dedicated to proactively improving the awareness and understanding of decision makers and the broader community on the value of the agriculture sector to the Australian economy and to Australian society.

The NFF's membership comprises all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. NFF's associate members are involved in the agricultural sector beyond the farm gate. Our associate members span the breadth and the length of the supply chain.

While our members address state-based 'grass roots' or commodity specific issues, the NFF's focus is representing the interests of agriculture and progressing our national and international priorities.

Summary - Key points in our submission

TOR 1 - Jurisdictional arrangements, regulatory requirements and the potential for deregulation

- Navigating regulatory requirements in relation to environmental approvals is difficult and cumbersome. The Commonwealth Government's transition to a one stop shop model is supported by NFF.
- Each new listing of a matter of significance under the *Environment Protection and Biodiversity Conservation Act* expands the regulatory reach of the EPBC Act. There is no requirement for a periodic comprehensive review to ensure that the list reflects contemporary scientific understanding and information. Commitment to periodic comprehensive review of the list is required.
- When developing and adopting the new methodologies for estimating emissions for the National Inventory, NFF seeks a commitment from Government that new approaches to reporting will not add to the green tape burden of farmers.

TOR 2 - the balance between regulatory burdens and environmental benefits;

- Offset conditions may restrict development that could result in productive and environmental benefits. The EPBC Act focuses narrowly on the significance of the impact of the removal of

trees for example, without consideration of the potential for broader environmental benefits of the proposed activities.

- While NFF accepts that some regulation is required, we urge Governments to more comprehensively consider non-regulatory approaches for achieving environmental outcomes. Non-regulatory mechanisms can provide a win/win solution. The Environmental Stewardship Program is an example of this.

TOR 3 – areas for improved efficiency and effectiveness of the regulatory framework; and

- The registration of chemicals by the Australian Pesticides and Veterinary Medicines Authority (APVMA) is another area where regulation hinders the achievement of good environmental outcomes.
- More can be done to support farmer awareness and understanding of farmer obligations under national environmental law. When compared to the extensive costs associated with compliance activities additional investment in education and awareness warranted.
- A more streamlined process under the EPBC Act is required to enable a farmer to seek formal advice as to whether a proposed activity is significant and will actually trigger the Act.

TOR 4 legislation governing environmental regulation, and the potential for deregulation.

- NFF seeks Government commitment to further work to specifically identify and remove unnecessary regulations on the farm sector – including green tape. In addition the work should also establish a process to proactively and routinely assess the efficiency and effectiveness of regulation affecting agriculture.

2. Jurisdictional arrangements, regulatory requirements and the potential for deregulation;

2.1 Environment Protection and Biodiversity Conservation Act

Listings process increases the regulatory burden

The Environment Protection and Biodiversity Conservation (EPBC) Act requires farmers to gain Commonwealth approval on matters of national environmental significance. Such matters include activities on heritage listed sites, Ramsar wetlands, and nationally threatened animal and plant species and ecological communities.

The process of listing matters of significance continues to increase the green tape burden on the agriculture sector. Each new listing expands the regulatory reach of the EPBC Act.

Revisions of the lists are only possible through a cumbersome process of application to the Scientific Committee. Unlike many other regulations, there is no requirement for a periodic comprehensive review to ensure that the list reflects contemporary scientific understanding and information.

There is an opportunity as part of the Government's commitment to reduce red tape to instigate a comprehensive review the current EPBC lists.

A clear need for a one-stop shop

In addition to the Commonwealth approval process, for specific activities, farmers may also require environmental approval from relevant State authorities. State authorities have different guidelines, rules and requirements than those required by the Commonwealth Department of the Environment for the EPBC Act. In some states and territories – the regulatory burden is compounded by the involvement of Local Councils in this arena. An activity may be exempt from requiring approval by the State (or local) authority but still require approval by the Commonwealth.

Species or ecological communities listed at the national level may have different definitions and geographic distributions to those listed by States. State Governments have exemptions for the need for approval for certain activities, this may not exempt the landholder from the need to obtain Commonwealth approval. For example, under State based legislation, approval may not be required for clearing native vegetation regrowth under a certain age or for an activity that falls within approved routine agricultural management activities. However, if the activity will have a significant impact on a matter of national environmental significance (for example if the regrowth is habitat for a species listed as threatened under the EPBC), national approval is still required.

Navigating the regulatory requirements is difficult and cumbersome. There is confusion that is generated by a lack of harmonisation between State and Commonwealth laws. The Commonwealth Government's transition to a one stop shop model is supported by NFF. State, Territory and Federal Governments must continue their efforts to streamline environmental approval assessment and approval processes. The one-stop shop model must

address not only those areas where there is direct overlap of Commonwealth/State regulation, but all areas so that farmers can be certain of their regulatory responsibilities.

2.2 Green tape for water information

There is considerable duplication in the requirements for rural water authorities to provide information and data to State and national regulators. While this is not a direct regulatory impost on irrigation farmers, as water authorities operate under full cost recovery models, the cost associated with this regulatory duplication is passed on directly to irrigation farmers. For example, at a Commonwealth level, rural water authorities are required to report information to the Murray Darling Basin Authority, the Bureau of Meteorology, the Australian Bureau of Statistics and to a lesser extent the National Water Commission. Each of these regulators requires similar information to be provided in different formats for different timescales. This is in addition to their requirements to report to State Government environment and water regulators.

NFF's view is that there are opportunities to streamline the reporting requirements to ensure that appropriate information is collected in the most efficient manner. While initial steps have been taken to consider this issue, focus seems to have waned and more effort is required to achieve results.

Reporting under the National Pollutant Inventory – for intensive livestock businesses

The National Pollutant Inventory requires individual intensive livestock businesses (such as piggeries, beef cattle feedlots and poultry farms) to submit individual annual reports. While there has been some streamlining of this with the availability of online reporting, more can be done to reduce green tape in this area.

As per other industries, such as petrol stations and bakeries, there is an opportunity for livestock sectors to aggregate their emissions as we know the trigger responsibilities for reporting ammonia. Industry bodies could potentially report on this annually on behalf of the industry.

As Australia shifts to the next phase of reporting under the Kyoto Protocol, adjustments are being made to the methodologies used to estimate emissions across the Land Sector. In developing and adopting the new methodologies, NFF seeks a commitment from Government that new approaches to reporting will not add to the green tape burden of farmers.

3. The balance between regulatory burdens and environmental benefits;

3.1 Environment Protection and Biodiversity Conservation Act

Offsets and consideration of broader environmental outcomes

The environmental approvals regulatory framework – chiefly the Environment Protection and Biodiversity Conservation Act can unduly restrict development that could result in productive and environmental benefits. The EPBC Act focuses narrowly on the significance of the impact of the removal of trees, without consideration of the potential for broader environmental benefits that may arise from the change in practice.

An example of this is the removal of isolated paddock trees that may be required to adopt controlled traffic and precision cropping practices. Precision cropping has many benefits, including reduced chemical and fertiliser use (and run-off into water ways), reduced soil compaction, and considerably lower fuel consumption with associated reductions in emissions. Under the EPBC – if the action is likely to have a significant impact, referral is required. Recently, the Queensland Government has adopted a self-assessable code for operational efficiency that includes the 'clean up' of small pockets of vegetation within cropped areas.

While the application of the EPBC Act allows for approval of projects with offset provisions, in reality, realistic offset opportunities in the agriculture context are limited. The current offset policy of the Environment Department for the EPBC Act requires 90% of offsets to include direct offsets – that is “...actions that provide a measurable conservation gain for an impacted protected matter. The policy does consider deviation from the 90% minimum offset requirement only in certain circumstances.

In the farming context, offset conditions may restrict development that could result in productive and environmental benefits. The EPBC Act focuses narrowly on the significance of the impact of the removal of trees for example, without consideration of the potential for broader environmental benefits that may arise from the change in practice.

In reality, farmers will generally meet the offset requirement from within their current land resources. Unlike larger industries, the purchase of additional land to achieve the offset is unlikely. Unrealistic offsets that are too costly to implement will mean that many proposed developments will not proceed. NFF advocates a more flexible approach based on the nature of the project, the availability of direct and indirect offsets and whether the offset delivers improved environmental outcomes for the protected matter.

Cost recovery

The Australian Government is currently considering a cost-recovery approach to EPBC assessment and approvals. The Cost Recovery Impact Statement prepared by the then Department of Sustainability, Environment, Water, Population and Communities proposed that a simple landholder referral will cost \$7,808 and a simple assessment for approval will cost the landholder \$80,409.

For agricultural activities - where the cost of the EPBC process relative to the overall level of investment in the proposal is high – cost recovery provides an strong disincentive for farmers to refer activities to the Department for assessment and approval.

These fees in addition to all other costs associated with development on agricultural land would mean that landholders would decide not to proceed with the proposed activity. Regrettably, for a very small proportion of landholders, this may result in some farmers taking land use decisions into their own hands, with instances of poor judgment leading to bad environmental outcomes.

3.2 Chemical Registration Processes

The registration of chemicals by the Australian Pesticides and Veterinary Medicines Authority (APVMA) is another area where regulation hinders the achievement of good environmental outcomes.

For example, the rice industry currently uses Copper Sulfate to manage snails in rice crops. Niclosamide is a far superior treatment for this issue, as it kills not just the snails but their eggs, reducing the number of applications required. It also has no negative effect on our soils, as is the case with the current Copper Sulfate. The bureaucratic process adopted by the APVMA means that industry efforts to successfully register Niclosamide for use have been significantly delayed.

Another example is the use of diuron in the sugarcane industry. Industry had adopted the 'green trash blanket harvesting system', part of which involved effectively controlling weeds using diuron. In the absence of the ability to use diuron, mechanical weed control (through cultivation) is required. This increase in tillage activity can lead to increased risk of soil erosion and runoff and the flow on impact of sedimentation and nutrient loading in the ocean which affects the health of the Great Barrier Reef. APVMA's review of the use of diuron resulted in it being permitted for use within a very narrow band of conditions – rendering it un-useable in cane farming systems.

3.3 Consideration of non-regulatory options

While NFF accepts that some regulation is required, we urge Governments to more comprehensively consider non-regulatory approaches for achieving environmental outcomes. Non-regulatory mechanisms can provide a win/win solution. Such mechanisms include incentives and market based instruments.

The Environmental Stewardship Program (ESP) has shown that better biodiversity outcomes can be achieved using alternatives to a “lock up and leave” regulatory approach that is adopted under the EPBC.

ESP has focused on maintaining and improving the condition of matters of national environmental significance – including threatened species and ecological communities. The program involves grants to support a range of agreed management activities to protect, rehabilitate and improve particular ecological communities. Land managers received funding for activities that are additional to their normal legislative responsibilities, for up to 15 years. A Review of the Program conducted by Marsden Jacob in 2010 found that overall the program has “*generally been a well-designed, well run, effective and efficient approach to enhancing on private land*”¹

Outcomes from the Environmental Stewardship program include improved habitat, increased viability of remnants of ecological communities, protection and improved condition and function of nationally endangered species and ecological communities, and a shift in land manager attitudes and behaviors to adopted more sustainable practices.

To date, ESP has focused on selected ecological communities in Queensland, NSW and South Australia. Given the success to date, there is an opportunity to expand the program to cover other listed ecological communities.

¹ ibid

4. Areas for improved efficiency and effectiveness of the regulatory framework

4.1 Environment Protection & Biodiversity Conservation Act

Investment in education and awareness

Anecdotally, NFF's members highlight that awareness of EPBC issues among grass roots farmers is low. Research into investigating farmer awareness of the regulatory responsibilities under the EPBC Act has been limited. In a 2009 survey of xx farmers, respondents were asked whether they knew how national environmental law applied to their property (e.g. activities requiring approval, opportunities for assistance etc). Only 2 % responded affirmatively, 60% said no and 37% did not know.

The large majority of landholders genuinely want to do the right thing but often simply do not know about the EPBC Act, let alone their regulatory obligations. For many years the NFF has advocated that the Australian Government provide sufficient funding to ensure adequate communication of the legal obligations of landholders under the EPBC Act.

Currently, the only Australian Government investment in any education and awareness for the farm sector is the resources of 2 days per week of an officer from the Department of the Environment. Hosted by the NFF, the Environment Liaison Officer's role seeks to communicate with both farming organisations and individual farmers regarding landholder responsibilities, the production of materials targeted to farmers and responding to farmer inquiries to assist them to better understand their obligations. NFF's view is that this level of resourcing is insufficient.

NFF's view is that more can be done to support farmer awareness and understanding of farmer obligations under national environmental law. When compared to the extensive costs associated with compliance activities additional investment in education and awareness warranted.

The need to enhance focus on education and awareness is supported by research conducted Productivity Commission. In its Research Report on Regulator Engagement with Small Business², The Productivity Commission's recommendations included among other matters that:

- Regulators adopt an educative and facilitative approach to achieving compliance.
- Licensing, registration, and other processes and requirements are as simple and streamlined as possible — for example licences are rationalised and less frequent or comprehensive inspections are required for low risk businesses.
- Regulators should ensure information and advice on regulatory requirements is brief, readily available, reliable and provided in user friendly language and formats and that multi-channel engagement strategies should be employed.

Clarifying the definition of significant impact and rapid appraisal

² Productivity Commission 2013, Regulator Engagement with Small Business, Research Report, Canberra. http://www.pc.gov.au/__data/assets/pdf_file/0007/128338/small-business.pdf

Key to understanding whether an activity requires referral under EPBC is the test of “significant impact”. In essence, the Act requires a farmer to self-assess whether the proposed activity will have a significant impact.

The significant impact guidelines published by the Department provides the following definition:

A ‘significant impact’ is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. You should consider all of these factors when determining whether an action is likely to have a significant impact on matters of national environmental significance³.

This broad definition, embedded within a 35 page manual provides little if any clarity for a farmer seeking to understand his or her responsibilities. With the limited resources available for specific farmer communications, the Farmers and the national environment law (EPBC Act) fact sheet is similarly broad:

Whether or not the impacts of an activity are significant depends on several factors, including how long the impact will last and the sensitivity of a nationally protected matter⁴

To be certain that an activity does not require approval, a detailed application process that requires the provision of independent technical reports and a period of public comment on the proposed activity. This process – and the costs associated with it – are a barrier to referral.

An example of this is of a landholder seeking to clear 1.2 hectares of land near Coffs Harbour NSW for a blueberry farm. The clearing was considered to be clearing of "regrowth" under State native vegetation laws, and as such no state approval required. However, proposed clearing area included one EPBC listed threatened plant species and potential habitat for six EPBC threatened animals or birds. The proposed clearing action was going to remove 5 plants in the 1.2ha area, and it was estimated that there was 6270 plants on the total property.

Landholder did the "right thing" referring the development to Commonwealth to determine whether approval required. This application required the following details:

- 19 pages application information
- An Independent expert report on proposed environmental impacts – which included 22 pages detailed text, 18 GIS maps, 19 pages of detailed list of potential species on sit and likelihood of occurrence site
- A period of public comment was required.

The outcome of the referral was that the action was "not controlled" and as such Commonwealth Approval was not required. A more streamlined process for seeking formal advice as to whether the proposed activity is significant and will actually trigger the EPBC is required.

³ Commonwealth of Australia (2013) Matters of National Environmental Significance Significant impact guidelines 1.1 Environment Protection and Biodiversity Conservation Act 1999
http://www.environment.gov.au/system/files/resources/42f84df4-720b-4dcf-b262-48679a3aba58/files/nes-guidelines_1.pdf

⁴ <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/information-for%E2%80%A6/farmers>

Given the challenges associated in providing highly specific guidance about what may or constitute a significant impact, NFF supports the recommendation of ABARES (2013) to provide a quick, low cost appraisal of proposals to indicate whether a proposed activity is likely to require referral⁵. This is likely to also reduce the costs of administering the Act for Government, in that more detailed application and assessment processes will not be triggered unnecessarily.

Completing the establishment of a one stop shop.

NFF supports the Federal Governments ongoing commitment to establish a one stop shop for environmental assessment and approvals. NFF's view is that the one-stop shop model must address not only those areas where there is direct overlap of Commonwealth/State regulation. Full harmonisation is required so that the current ambiguity created by different Commonwealth and State regulations can be clarified.

5. Legislation governing environmental regulation, and the potential for deregulation.

Throughout this submission, NFF has highlighted specific examples where there are opportunities for deregulation.

ABARES (2013) reported⁶ that farm businesses in Australia are highly regulated with around ninety Commonwealth Acts governing activities on farm, as well as those common to all businesses. The report revealed that this number of Acts represents approximately eight per cent of the total stock of Commonwealth Acts for an industry that contributes around two per cent to Australia's gross domestic product. In addition, rural businesses were subject to various state and territory government legislation and other policy instruments that affect their operating environment. ABARES found that further Australian Government action could reduce unnecessary regulatory burdens for a quarter of the issues investigated.

NFF seeks Government commitment to further work to specifically identify and remove unnecessary regulations. NFF is of the view this can be done via demonstration of a number of specific case studies of on farm activities to illustrate the impact and overall burden facing farmers for what are often regular or routine business activity. In addition the work should also establish a program to proactively and routinely assess the efficiency and effectiveness of regulation affecting agriculture. The investment in such research would provide significant value to the farm sector and result in improved competitiveness and productivity further driving the future of farming in Australia. This commitment would align directly with the government's commitment to remove \$1 billion worth of red tape on industry and clearly demonstrate that the government is serious in its objectives.

⁵ See Gibbs, C, Harris-Adams, K & Davidson, A 2013, *Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses*, ABARES (Report to client prepared for the Department of Agriculture's Agricultural Productivity Division), Canberra, November. pg 58

⁶ Gibbs, C, Harris-Adams, K & Davidson, A 2013, *Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses*, ABARES