Victorian Farmers Federation

# Submission to

# Productivity Commission Investigation in to the Impacts of Native Vegetation & Biodiversity Conservation Regulations

August 2003

**The Victorian Farmers Federation**
The Victorian Farmers Federation is Australia's largest state farmer organisation, and the only recognised, consistent voice on issues affecting rural Victoria.

The VFF represents 21,000 farmer members, representing 15,000 farm enterprises. The VFF consists of an elected Executive, a member representative General Council to set policy and eight commodity groups representing dairy, grains, pastoral, horticulture, chicken meat, pigs, flowers and egg industries.

Farmers are elected by their peer to direct each of the commodity groups and are supported by Melbourne-based staff.

Each VFF member is represented locally by one of the 230 VFF branches across the state and through their commodity representatives at local, district, state and national levels. The VFF also represents farmers' views on hundreds of industry and government forums.

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## Executive Summary

Commonwealth and Victorian regulation introduced to protect native vegetation and biodiversity in Victoria are not working. The overzealous enforcement of these regulations and at times seemingly ad-hoc and excessive restitution requirements are undermining landowner support for conservation and putting environmentally important native vegetation at risk.

The Government in Victoria appears to have a clear "lock it up" mentality for the protection of native vegetation. The policy is fundamentally flawed. We have just experienced some of the most severe bushfires ever seen in this State, which burnt approximately 1.3 million hectares of native bushland. The severity and duration of the fires would have been reduced if the Government had recognised the need to engage in proactive management of public lands. In the same way, Government is prepared to watch public land degrade as weeds and pests build up in it whilst at the same time spending indeterminable amounts of taxpayer money to enforce the protection of an individual tree on private land.

In this state, a small number of people are paying for the environmental demands of the wider community. There is no consideration of the social and economic cost associated with some environmental protection decisions. The focus of regulation is on punishing people for minor infringements. The legislation and regulation is actually stifling market-based initiatives designed to improve environmental outcomes.

Victoria's native vegetation regulators have adopted a 'black armband' view to agricultural development and land use in this state dating back 150 years. In a seeming effort to overturn the 'damage' of a century of agricultural development, departmental and local government officials are enforcing native vegetation control with a religious fervour, as if seeking to punish today's farmer for the sins of their forebears.

The VFF believes the whole community must share the costs of native vegetation retention. We need to protect native vegetation and maintain a sustainable natural resource base, but it should only be in situations where the resulting environmental or biodiversity values exceed the economic and social cost of retaining it. Currently there is no mechanism to prioritise protection of native vegetation with maximum environmental benefit or specific revegetation in sensitive areas.

Regulation must reflect a minimum standard of protection based on duty of care principles, and should be transparent with clear rules that can be easily understood. Farmers are extremely frustrated with the inflexibility of regulation and its role in preventing productive, sustainable agriculture. Existing regulations impose significant inequities on farmers, especially those who have voluntarily undertaken conservation and revegetation works and incur further restrictions.

Instead of heavy-handed regulation and penalties, farmers need good extension support about protection and management of native vegetation and biodiversity.

There should also be security of harvest for those who grow native vegetation as a renewable commodity. Otherwise, farmers will choose to grow non indigenous species for future harvest.

A number of Government departments are working on stewardship and support programs for private landowners. These are supported in principle by the VFF as potential ways for sharing the cost of vegetation retention and management. However, current native vegetation and biodiversity conservation regulations appear to undermine the success of such programs.

In Victoria, the best environmental outcomes occur without the use of regulation.

**General Comments:**

Farmers in Victoria believe that native vegetation and biodiversity conservation should be about achieving a sensible balance of environmental values and economic cost. Farming is predominantly a family business and most farmers are strongly motivated to pass the family business on to the next generation in better condition than when they took it over. But the system we have is too regulated and far too complex.

Under the current legislation, where assessments are subjective, it is impossible for anyone to know where they stand and farmers need certainty if they are to continue to play their vital role in producing top quality food and fibre for our own country, and the world.

The current approach to environmental management in Victoria is all about regulation and enforcement. Those involved appear to have a fundamental distrust of farming, believing that farmers cannot be trusted as stewards of the environment. Farmers every day work with variable climate, different soils, pests and disease. They have a strong economic and social incentive to sustainably manage land. Despite this, many in Government argue for more regulation and more proscription of farmers' activities.

Landowners began to realise the importance of working with the environment long before governments did. In the late 1970s leaders of the Victorian Farmers and Graziers' Association (the precursor of the VFF) "gave attention to the implications for farmers and their representative organisation of the widely published estimates of farmlands needing conservation works and practices. A particular focus for their attention was the decline of trees on farmlands."[1] This led to the establishment of Landcare in Victoria, which remains the most valuable environmental management tool ever seen in this nation. Landcare worked, largely because it was set up by concerned landowners, and the priorities were the priorities of the members of the group, not governments.

Environmental management has now swung away from taming the environment in Victoria, and the current policy principles of Government are based on 'locking up' native vegetation and protecting it by putting a fence around it. Farmers are now able to access financial support from Catchment Management Authorities to fence off remnant or revegetation activities, but rarely are dollars provided for managing it. The implication is that native vegetation does not need managing. The conservation principle is now here in force, but we are missing an important management principle to accompany it.

It seems that, even now, governments continue to make fundamental mistakes in regard to environmental management. Last summer, Victoria went through some of the most severe bushfires ever experienced. The North East and Gippsland fires burnt approximately 1.3 million hectares of National Parks and State Parks and 90,000 hectares of private land. The fires raged for three months. The environmental and economic cost of these events cannot be understated. Concern has been expressed about the possibility of 'sterilisation' having occurred due to the heat of the fire which may now prevent regrowth of pasture and native plants. Such an event could have been avoided if Government had recognised the importance of control burning. The science of biodiversity management currently has a prevailing view that build up of debris is important for habitat, but too much build up followed by a fire will actually create a fire so intense that the environment will be sterilised and nothing can grow.[2]

[1] Carraill, B. (1994) The Contribution of a Farm Organisation to Landcare – the final report of the project 'Victorian Farmers Federation Landcare Liaison Group'. Victorian Farmers Federation.
[2] From comments made by Robert Nelson, Professor of Environmental Policy Programs – University of Maryland. Seminar, Institute of Public Affairs 09/07/2002.

It is also a constant source of irritation to farmers that governments are poor managers of land. While government regulators are focussed instead on ensuring that private land managers are fulfilling their legal obligations, farmers watch the weeds build up in the public land over the fence.

It seems ludicrous in this State that we can spend thousands of dollars of taxpayers' money and months of time and effort to ensure that a farmer like Reg Holt[3] cuts only the right tree branches, but the same government employees are unable to see the loss of biodiversity and quality of native vegetation due to pest and weed invasion on the public land they are supposed to be managing.

**The Legislation & Regulation:**

Victoria has a raft of legislation to protect and nurture native vegetation and biodiversity. At ground level, native vegetation is protected by the *Victorian Planning Provisions* (VPPs), which define native vegetation as "plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses."[4]

The stated goal of the VPPs is "to protect and conserve native vegetation to reduce the impact of land and water degradation and provide habitat for plants and animals."[5] The planning scheme was introduced in Victoria to halt large scale clearing of native vegetation on rural land in 1989. At the time, the regulations were introduced with no compensation or adjustment mechanisms for farmers. The government failed to recognise the severe impact this had on individual farmers, many who had bought uncleared land with the view to developing it for agriculture slowly and carefully over a number of years.

The VPP regulations on native vegetation are extremely draconian. Not only does it cover all Victorian indigenous plant species, but it also requires landowners to seek a permit from their local Council to "remove, lop or destroy native vegetation"[6] unless the vegetation removal is a listed exemption.[7] Farmers are frequently unknowingly in breach of the regulations, for example each time they plough a paddock that has not been cultivated for 10 years or cut a tree branch on their own farms. It is an administrative nightmare. It is simply impossible for farmers to comply with the letter of the law or for Councils to enforce. Every permit application made incurs a fee of at least $90[8] and there is no guarantee that an application will be successful.

The VPPs are supported by a State Government policy document entitled *Victoria's Native Vegetation Management – A Framework for Action* which provides information about how native vegetation conservation principles should be applied, and supposedly provides some flexibility to the process. The Framework was released in August 2002, but it is only now that *Operational Guidelines* for the interpretation of the Framework are being produced. It is ironic that guidelines are needed to interpret a framework that was designed to provide direction for the interpretation of the VPPs. All of this will be available 14 years after the original VPPs were introduced.

The Framework is to be supported by Regional Native Vegetation Plans, which were drafted in 2000 in consultation with Native Vegetation Steering Committees in each Catchment Management Authority. However, in the last few months the VFF has learned that these Draft Regional Native Vegetation Plans have been internally reviewed and edited by Catchment Management Authorities to conform to the State Framework. It is understood

[3] See Case Study – Reg Holt "Overzealous planning makes fencing a nightmare" p 26
[4] Minister for Planning & Local Government, Victoria. Victoria Planning Provisions. Definitions.
[5] See Attachment # 6 VPPs Section 52.17
[6] See Attachment # 6
[7] See Attachment # 6
[8] Planning and Environment (fees) Regulations 2000, Section 7.

that these substantially altered documents are being prepared for imminent release, without the stakeholder involvement required to ensure practical applications are considered.

Then there are local bylaws and vegetation protection overlays relating to management of native vegetation within individual Shires. For example, the West Wimmera Shire requires a permit for the removal of dead trees, overruling the exemption that is provided for dead native vegetation under the VPPs. Some Shires have bylaws specifying distances trees can be removed when constructing boundary fencelines. Application of the provisions is different in each municipality.

Victoria also has other environmental legislation for the protection of biodiversity. The *Catchment and Land Protection Act 1994* (CaLP Act), outlines a number of management responsibilities for landowners, such as the control of pests and weeds. Private landowners are required to conform, to meet appropriate levels of pest and weed management, but public land managers are not.

The *Flora & Fauna Guarantee Act 1988* is designed to "guarantee that all taxa of Victoria's flora and fauna… can survive, flourish and retain their potential for evolutionary development in the wild."[9] The VFF has not had much experience with this Act, and have only been asked to review one draft Action Statement in the last twelve months. This leads us to believe that it is either working well and landowners are satisfied with the approach being used, or, that it is rarely used in Victoria.

The *Flora & Fauna Guarantee Act* is far less adversarial than much of Victoria's other conservation legislation and regulation, and appears designed around consultation and agreement, rather than command and control. There are also provisions within this Act for payment of compensation to landowners who are required to protect a critical habitat. It is felt that this legislation has been largely usurped by the VPPs, which has no provision for compensation and requires protection of all native species at the cost of the landowner.

The Federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) also applies to Victoria. The EPBC legislation is extremely complicated to read and interpret, and the nomination and listing process can be extremely confusing for anyone not directly involved. The legislation imposes complex and confusing obligations on landowners

This legislation is designed to protect every species and every ecosystem at any cost. Any individual or group can nominate a species or ecosystem for protection, and this triggers a 12 month investigation process by Environment Australia (EA). During this investigation process, EA is required to assess only the 'science' and 'conservation' of a nomination, they are not required to consider the social or economic costs that might be disproportionately imposed upon some members of the community as a result of the listing. When assessing a nomination EA do not consider approaches to protecting the species or ecosystem. It is 'conserve at all costs' in accordance with the legislation.

The identity of the individual or group who makes a nomination under this process is kept confidential. The twelve month assessment undertaken by EA would provide some valuable additional science at the taxpayer's expense to groups interested in promoting the cause of a particular species or ecosystem, and if listing is achieved, so is justification for investment dollars in related research.

Listing creates an onus on landowners to ensure that they have taken into consideration the possibility of this species or ecosystem being present on their property when planning development activities. If someone wishes to develop they are required to obtain a permit from EA to proceed. If they are unaware of the presence of the species and develop without a permit, they run the risk of a substantial fine. There are only very broad guidelines about

[9] *Flora & Fauna Guarantee Act 1988* 4(1)(a)

what constitutes a 'significant impact' or an 'action' that would require the landowner to seek a permit from EA.

Yet, there is no requirement for EA to notify potentially affected landowners of a nomination, and it is only if landowners ask the right questions in the right places, they may come across information about a listing affecting their property. Nor is EA required to inform farmer organisations of a nomination. When they do so, it is considered a courtesy rather than an obligation.

Until recently, the inclusion of maps with nominations was extremely rare. It was a common occurrence for the VFF to contact EA to ask where a nominated species could be found so we could make an assessment of the potential impact of the nomination on our farmer members. Sometimes this process of determining the range of a nominated species could take quite some time to establish. In the same way, unless the VFF was regularly reviewing the EA website for nominations, the organisation is unlikely to hear about them or have opportunity to respond. The process has improved somewhat over time, due to improved channels of communication with an officer being based at NFF to advise of nominations, but it remains a frustrating one.

The legislation does not require affected landowners to be compensated for the loss of land use options and/or land values. There is provision under Part 14 of the Act for conservation agreements to be entered into which may provide compensation for landowners, but this like every other part of the EPBC legislation, is complicated. Conservation agreements are for a finite period and rely on the commitment of a Minister and Department to be successfully implemented.

Too often, a listing under the Federal EPBC adds another level of regulation to protect a species or ecosystem that is already legislated for under the State legislation. In these instances there is no additional environmental benefits from federal intervention, but inevitably there is more cost.

**The problems**

There are significant problems with the design and interpretation of Victoria's 'command and control' regulation and legislation.

1. *The legislation doesn't work*

Victorian legislation has coincided with an end to large-scale clearing in Victoria. Large-scale land clearing in Victoria was likely to end case because of the expiry of conditional purchase lease agreements in the Mallee. Any statistics on the alleged success of the legislation in limiting land clearing in Victoria must be discounted by the reduction in large scale clearing which was bound to occur in any case. However, the planning controls on native vegetation clearing have produced an adversarial process for farmers and it has created a disincentive for landowners to protect or foster remnant native vegetation on their own properties. It has also created a disincentive to landowners revegetating by encouraging natural revegetation.

The cost of protecting native vegetation under this legislation has never been assessed. It may be less expensive for the community if Government entered in to native vegetation and biodiversity conservation management agreements with landowners based on extension advice, support and compensation. In this way, the cost of achieving the State's environmental aspirations are more fairly shared throughout the community.
The adversarial process has meant that many landowners now feel a disincentive to protect native vegetation. Farmers such as Murray Davis & John Croft[10] probably wonder why they bothered fencing out their creeks and maintaining the quality of native vegetation on their farms when Councils and the Department won't recognise the voluntary environmental

[10] See attached case studies.

management activities they have done or attempt to strike a balance that recognises both retention of environmental values and the maximisation of economic potential of the land.

Cooperation of the farming community is essential to the preservation of natural vegetation on private land. After all farmers can effectively deal with native vegetation by fencing the area off and stocking heavily. As one VFF member remarked "any farmer having a problem with NVR must have a short time horizon."

*2. The legislation cannot possibly be complied with*

Farmers are unable to meet with the requirements of the legislation.

From a technical point of view, every time a farmer ploughs up an old pasture paddock that had not been developed for more than 10 years or spreads superphosphate on native pasture they should seek a permit to do so. Every time they cut a tree branch, they should have a permit.

Farmers who seek permits for farming activities often regret trying to conform with the regulations. More often than not, a development application will incur great expense and the requirement for flora and fauna studies and consultant reports. A decision can take months or even years. Many Victorian farmers feel they are better off quietly doing the job in the hope they don't get caught. Even if they are prosecuted the penalties can be less than the cost of trying to comply with the Law as would appear to be the case with Tripod Farms[11]

*3. The rules look the same, but they keep changing*

While the wording of the VPPs have not changed since 1989, the interpretation has varied significantly over time. For example, the exemption for clearing "the minimum extent of native vegetation necessary for the construction, operation or maintenance of a farm structure including… fences"[12] is now being interpreted much more rigorously. Despite having a clear exemption, Reg Holt needed a permit to lop tree branches for his own safety when renewing a fence.

Some farmers have reported that it is just easier to move their own boundary fencelines further in to their own properties to avoid falling foul of Councils or the Department. Following the recent bushfires in the North East, this recommendation was actually provided in writing to landowners seeking to rebuild fencelines. The 'wild dog electric fencing specifications' actually state:

*"where fence is to be constructed on the current or proposed boundary with State Forest the distance to be cleared from the boundary into the State Forest will be no more than 5 metres unless otherwise stipulated. Current position is 3 metres clearing for fence lines with* ***access to individual trees on agreement with the adjoining agency*** *to clear* ***'problem' trees*** *up to 5 metres from the freehold boundary.*

***Landowners that require a greater area of cleared land can re align fences within their own boundary to create a wider zone between bush and freehold."[13]***

In almost all farming situations, clearing 3 metres on either side of a fenceline is rarely adequate protection from falling limbs, as established trees are more often than not, taller than 3 metres. 3 metres barely provides safe access for a vehicle.

Farmers also frequently come into conflict with the VPP re-developing previously cleared agricultural land. The VPPs require a permit for removal of native vegetation that is more than 10 years old The 10 year rule discourages farmers revegetating land via natural

[11] See Case Study Tripod Farms P 23
[12] See Attachment # 6 VPPs Section 52.17
[13] DPI Wild dog fencing specifications 2003.

regeneration. There are farmers all over this State like the Boyd family[14] protecting remnant native vegetation on previously cleared agricultural land at their own cost. Farmers like Reg Holt[15] consciously try to remove natural regrowth from their property before it is 10 years old

The use of Section 173 agreements under the Planning and Environment Act is starting to be seen by environmental planners as a way to further strengthen the level of control of landowner activities. Section 173 agreements are administered under the Planning and Environment Act, and are based on a registering of native vegetation as a covenant on title ensuring protection in perpetuity. When the Native Vegetation Framework was released in 2002, the VFF had obtained a clear agreement from the then Minister for Conservation & Environment that Section 173 agreements would not be used as a tool for native vegetation protection. We argued native vegetation offsets could be managed as conditions of a planning permit and approval. There are already clear protections under the current regulations. It is an unnecessary overload of regulation to further protect native vegetation with covenants. However, landowners who seek a permit and are approved, are often forced to enter in to a 'voluntary' covenant to protect revegetation works or other remaining vegetation in perpetuity and have the agreement registered on title. This restricts the possibility of future development decisions on the land, and can dramatically reduce the saleability of the property. The end result is state and local governments keep shifting the Native Vegetation goalposts, choosing to build their green credentials at the cost of landholders.

*4. The application of the regulation is inconsistent*

The regulations are applied inconsistently and can vary greatly from property to property even within the same Shire. Farmers who put in a planning application are unlikely to have any idea of what is likely to be required as an offset.

Many councils advise farmers to put in planning applications so that Councils can determine if the farmer really has an exemption. There is an inconsistency in the definitions of what a farmer can do. Nor does there seem to be the same requirements for offset plantings for the same number of trees removed in all instances. There is a view amongst VFF members that the assessments of allowable activities and offset requirements are determined ad hoc and inconsistently by different officers.

For example, there are farmers who have had an officer mark trees able to be removed, but then a subsequent officer has ruled that some of these same trees cannot be removed.

*5. There is no accountability for Shire/Departmental decisions*

There is no requirement on those who apply native vegetation and biodiversity legislation to assess the cost of their decisions or to balance costs against environmental benefits. The current policy position of the State Government is to produce a 'net gain' at any cost. The Federal position through the EPBC Act is also to conserve everything at any cost (even the cost of improved native vegetation management).

Sensible and sustainable agricultural decisions that require some native vegetation removal are often rejected because there is no requirement to undertake an economic assessment of a decision. The Tripod Farmers case study[16] is an excellent example. Three trees with limited biodiversity value were valued more highly than the economic value of the proposed development. It is difficult for farmers to invest in improved management practices if they are restricted from running profitable businesses.

Similarly, there is no real assessment of the cost of enforcement of the legislation in Victoria or at a National level.

[14] See Case Study: Bill, Laurence & Raymond Boyd (Iris Haw) and family – Native Grasses Force Farming Agenda p 20
[15] See Case Study: Reg Holt – Overzealous planning makes fencing a nightmare p 26
[16] See Case Study: Tripod Farmers Pty Ltd – 3 Trees Cripple Export Opportunity p 23

*6. Few are paying for Environmental values of many*

The benefits of protecting native vegetation are shared by the whole community. Yet, it is only a few members of community who are paying for this. There is no responsibility for the community or Government to assess what it is they value most and determine environmental priorities on this basis. Prioritisation of native vegetation protection is non existent. Instead, farmers are expected to protect all native vegetation on their own properties irrespective of cost. Farmers frequently question the environmental value of protecting a small area of native vegetation on private land when there are thousands of hectares of exactly the same vegetation across the fence on public land.

If the whole community had to pay for environmental outcomes there would be a far more realistic assessment of the costs and benefits of maintaining such vegetation. If Government officials had a defined budget for native vegetation protection they would use that budget to protect and enhance only areas of high environmental significance where benefits exceed cost.

*7. The focus is on punishing people*

The current situation perpetuates overzealous Shire planners and Department personnel who wish to catch farmers breaking the law. In this State, regulation is creating a lot of big sticks, and a lot of officious planners and Departmental staff to carry them. The regulations appear to vary significantly from Shire to Shire, and region to region, depending upon the way in which Department personnel or Shire planners are willing to interpret them.

This process is made even more adversarial because Councils do not have the resources to enforce the regulations on every farm. They largely rely on people "dobbing in" their neighbours as a means of finding breaches of the regulations. This creates a system where personal disagreements between neighbours can be played out through actions to enforce compliance with the native vegetation regulations. Because the regulations are so onerous, most farmers will from time to time be in breach.

*8. We lose out on vital infrastructure & necessary resources*

It is not just farm and industry developments, which are impacted upon by native vegetation legislation in Victoria.

We are also facing growing problems in being able to develop rural infrastructure such as roads, which have a real social and economic value to the State. Road developments are now required to conform to the State Government's 'net gain' principle, which is to offset development with revegetation or conservation greater than that taken for the development.

Road reserves are likely to have good quality native vegetation, and therefore VicRoads and Councils, when seeking to construct roads face significant offset costs. Usually additional land has to be purchased and revegetated to compensate.

Rare species of plants and animals such as the 'growling grass frog' forced the movement of the location of the Craigieburn bypass at great additional expense to the community.

Similarly, State forests that were initially put in place to provide sustainable timber harvesting, are being increasingly locked up for preservation's sake. Victoria faces a real timber shortage in a few short years as access to available resources is being increasingly refused and replacement supplies on private land have not yet been developed.

*9. Safety is not considered*

The protection of individual trees or tree branches has now become far more important than human safety.

For example, if farmers cannot clear sensible buffers when replacing fencelines, they run the real risk of death or severe injury from falling limbs from trees they were not allowed to remove during the construction of new fences. This danger is very real particularly when fences are destroyed by fire.

The Netherby Lorquon branch of the VFF have reported that in their local area, they were pleased that lobbying for a widening of the Netherby Nhill road had resulted in Council deciding to proceed with this development. Not long after they were amazed to find a big gum tree right up against the bitumen of their new road. This tree was not permitted to be removed for the development. This tree will severely reduce the lifespan of the recent investment in this road and it is only a matter of time before someone passing at that section of the road will hit the tree. Who is responsible if someone dies? Is this particular tree more important than a human life, or lives?

*10. Protection of rare and endangered species by lines on maps*

State boundaries can produce perverse outcomes in regard to protection of species. For example, the saltbush plains in north west of Victoria support a number of species that are rare within this State, but across the border in NSW, there are hundreds of thousands of hectares of the same saltbush plains. Species rare in Victoria can be extremely common across the border. The allocation of huge resources to save this vegetation type in Victoria seems ludicrous when it is widespread in an adjoining state.

*11. Poor policy and interpretation of legislation will set back the commitment to landcare and voluntary support for revegetation activities.*

Farmers are frustrated by the lack of flexibility with the native vegetation controls. Many Victorian farmers have undertaken voluntary revegetation works on their own properties. Yet these same farmers are given no flexibility in removing other native vegetation in areas to improve production, and this is even more frustrating when they see thousands of hectares of the same vegetation type just across the fence.

Ron Beach[17] has argued that although he is a landcare member and values land conservation activities, he sees little point in progressing with important revegetation activities on his property where there would be environmental benefits, when he is unable to remove trees in areas where there is almost no environmental benefit. This view is shared by many farmers within the State.

For some, the sheer cost of paying rates to maintain large tracts of native vegetation may mean that other revegetation activities where there would be a significant environmental benefit on the same property cannot afford to happen.

*12. No security of Harvest*

For those who plant native vegetation for the purposes of harvesting as a renewable resource, there is no security that they will be able to later harvest it. Those who encourage natural revegetation with a view to later commercial harvest are in a worse position. There is an exemption in the current VPPs which states that a permit is not required if: "the native vegetation has been planted for timber production, agroforestry (the simultaneous and substantial production of forest and other agricultural products from the same land unit), shelter belts…"[18] This should be enough to ensure harvest, but farmers are more comfortable planting non indigenous species to Victoria to ensure there is no confusion at harvest time about whether the species were planted or regenerated. As stated before, the rules are prone to constant shifts in interpretation.

[17] See Case Study: Lost Opportunity, Ron & Margery Beach p 17
[18] See Attachment # 6 VPPs Section 52.17

**How can we achieve native vegetation retention and biodiversity conservation sensibly?**

Perhaps the biggest threat to environmental outcomes in this state is the regulations imposed upon farmers. In general, farmers want to do the right thing, but the expectation that the farmer understands his responsibility under a myriad of legislation, finds time to interact with all of these agencies *and* run a profitable business is too great a burden.

Regulation should not be seen as an environmental 'cure-all' for Victoria. It is neither a productive or cost efficient way to produce change. It also creates a bureaucratic mentality that the letter of the law must be followed at all costs, and the cost is often the environmental values we are all trying to protect.

The answer to this mess is quite simple. The costs of native vegetation retention must be shared by the whole community. There is clearly some native vegetation on private land the community, including farmers believe is worth preserving. However this should only be in situations where the resulting environmental or biodiversity values exceed the economic and social cost of retaining it.

If the whole community rather than individuals were required to pay for native vegetation and biodiversity outcomes, we would see a far more sensible approach in Victoria. The community would need to make an assessment of what is important, and then back that up with the dollars needed to protect and maintain it.

We are starting to develop some potentially good tools in Victoria that may assist us in taking this more sensible path. But we still have a large ideological difference about the role of regulation.

Regulation needs to reflect a minimum standard of protection based on duty of care principles, and should be transparent with clear rules that can be easily understood. Farmers are not out to destroy the environment, but they are extremely frustrated with the inflexibility of regulation and its role in productive and sustainable agriculture.

Instead of heavy-handed regulation and penalties, farmers need good extension support about protection and management of native vegetation and biodiversity.

There should also be security of harvest for those who grow native vegetation as a renewable commodity. We should be able to consider native vegetation and biodiversity conservation as a renewable resource to be utilised, rather than locked up only to degrade because no-one is managing it.

The VFF has been a partner in the development of Environmental Management Systems for Victorian agriculture. The vision of EMS is for "profitable and ecologically sustainable agriculture in Victoria assisted by the widespread adoption of voluntary, industry-led Environmental Management Systems."[19] The real value of EMS is that it provides a framework for farmers to integrate environmental management in to agricultural systems and develop their own priorities.

The Victorian Catchment Management Council is also working on a 'land stewardship' concept for private landowners. The VFF strongly supports the fundamental principles of this project, which recognises the need to more equitably share the cost of land management outcomes in Victoria and pay for the things we want to protect. The project talks of developing a system where farmers can interact with buyers in a market to provide ecosystem services. However,

[19] *The Way Forward: An Action Plan for Adoption of EMS in Victorian Agriculture.* Joint Publication of the Victorian Farmers Federation and the Victorian government departments of Primary Industries and Sustainability and Environment, June 2003 p 3

this approach is still a long way from real use in Victoria and will have limited effect whilst people are entitled to these services for free.

The VFF believes that for native vegetation or ecosystems that are deemed important for protection, the most efficient way to protect them would be to identify them and pay farmers to manage them.

The Bush Tender concept, which has been trialled in Victoria is based on this premise, and has the potential to work well. The current problems with Bush Tender at present are that it is a once-off payment, and does not recognise on-going management costs incurred by private landowners. The VFF believes that Bush Tender has great potential to be expanded and to provide the framework for cost sharing of Victoria's environmental responsibilities as an ongoing, market driven cost-sharing arrangement. Yet, this program, which had so much potential appears to be floundering. Payment for environmental management outcomes is not very attractive to government when the alternative is draconian legislation which requires the landowner to protect all indigenous flora and fauna at his or her own cost anyway.

Unfortunately, while governments are now tentatively exploring tools to facilitate community financial contribution to the protection of native vegetation, the core policy framework supports institutional undervaluing of management of public land and over regulation of private land.

Rural landholders are angry at the hypocrisy of government departments when strict requirements are imposed and enforced on farmers management of their private land but proper management of public land is neglected. This disparity of treatment cultivates disenchantment and cynicism towards government land management policies and programs.

The disparity between treatment of public and private land set aside for conservation is compounded when consideration is given to the financial cost of having responsibility for the land.

Private land that is put aside for protection of native vegetation and taken out of productive use, imposes clear costs on farmers. The first and most obvious cost is where land was purchased with the intent of using it productively and that ability is denied or reduced due to native vegetation. In these circumstances there is no or reduced return on land investment, with clear cost to the landholder. The second is the cost to the farmer of paying local government property rates on the unproductive land. The rating of land set aside for native vegetation imposes significant real financial costs on farmers in addition to management costs and any potential revenue foregone. This can provide a financial disincentive to voluntarily encourage native revegetation.

On the other hand, public land is exempt from local government rating which means the costs to the community of managing public land are artificially diminished making it an attractive option for governments and metropolitan communities to advocate fencing-off ever larger areas of public land. This places a significant economic and policy bias in environmental management towards public management of natural resources compared to the more expensive private management. By not incurring costs of rating, there is less economic incentive for government's to most effectively manage public land, or to be selective in opting to manage those areas that return the greatest environmental return for scarce conservation funds.

It is also the case that while public land is exempt from local government rating, the only recurrent cost to the government is not the land itself, but the effective management of it. Thus, when budgetary resources are constrained, or prioritised elsewhere, management of the resource suffers.

If Crown land is to be exempt from local government rating, farmers strongly believe private land put aside for conservation should similarly be exempt. There is no justification for the current discrimination between public and private land.

However, the VFF note that public land is not without costs to the community. If the broader Victorian community does not have to pay for public land, then the costs are borne by those communities that live in and around public land. Not only do these communities incur the costs of controlling pests and weeds from neighbouring Crown land, and the costs of bushfire started and fuelled within state and national parks, local communities pay higher local government rates than would be imposed if the Crown land also paid its share of property rates.

The exemption of Crown land from rating places a significant disadvantage on rural councils for which there is a high proportion of Crown land, such as the East Gippsland Shire.

The VFF recommend the current exemption of Crown land from local government rating be abolished and Crown land be rateable equivalent to private land put aside for conservation.

**Conclusion**

Good environmental management is actually being thwarted by the legislation designed to protect it. Regulation is extremely expensive, adversarial and confusing and doesn't actually work to ensure good quality environmental outcomes.

The VFF believes that environmental outcomes should be governed by market forces, which would require a far more even sharing of responsibility for the cost of managing the State's indigenous flora and fauna on private land. It also has the potential to produce some additional 'spin-offs' for public land, in that if the Government and the community were required to apportion a value to the land they want to protect, Government might be prepared to do a better job of managing their own.

There is plenty of common ground between farmers, environmentalists and Government on the environment. The problem is that good environmental initiatives are being undermined by overzealous regulation. The best environmental program we have ever seen in this country, Landcare, got off the ground long before there was regulation. The best environmental management outcomes in this state are done outside of the regulatory boundaries.

**CASE STUDIES**

*EPBC Legislation: The Western (Basalt) Natural Temperate Grasslands as a case study.*

The recent nomination of the Western (Basalt) Plains Grasslands as critically endangered across approximately 2 million hectares of south west Victoria is proving an excellent example of the problems with the EPBC process.

This process is proving extremely frustrating for the VFF, as all sensible and cost effective options for management of this native grass must be rejected in favour of working through the rigid processes under the 'Act.'

The VFF is strongly opposed to the listing, primarily because of the potential restrictions on development and growth of farm businesses within the region. These legitimate concerns cannot be taken in to consideration as the assessment must be based purely on the 'science' and 'conservation' of the nomination. Some of the key threatening processes listed as part of the nomination are normal farming activities such as the spreading of superphosphate, cultivation, spraying of herbicides and fire.

If the nomination is successful, there is a very real possibility that all farmers within the listed area face the prospect of requiring a permit from EA to undertake these practices on their own properties. Farmers wishing to plough a paddock could be required to employ a botanist at their own expense to prove that they do not have the nominated grassland community on their property.

In reality, given that many farmers have, in the past developed pastures using the above practices, there probably isn't a great deal of Western (Basalt) Plains Grassland around on private land. But nobody really knows how much there is. The nomination documents suggest something in the order of 5000 hectares of native grass land remain of which probably about half is on private land. However the research used to determine the amount of grasslands in the nomination was compiled in 1986.

The real issue for the VFF is that nomination and listing of the grasslands is probably the worst possible way to try and protect them. Farmers with native grass have a strong incentive to fertilise heavily this year. If the nomination goes ahead it will create an expensive, bureaucratic and adversarial process that will be ineffective in protecting remnant native grassland on private land. It would be far simpler and more effective to find out where the endangered grasslands is. If it is on private land the Government should offer to either purchase the land or pay the farmer to protect the grassland communities.

It seems ludicrous that anyone can submit an anonymous nomination, which triggers a 12-month assessment process by EA. There is no accountability on the part of the 'nominator' and it is necessary for other parties to try and disprove the seriousness of the nomination rather than for the person who makes the nomination to make the case for listing.
This particular case is further complicated in that the Western (Basalt) Plains Grasslands are already protected under Victorian legislation. This proposed listing will add another level of bureaucracy cost without achieving any additional improvement to the environment and further protect with Commonwealth legislation what is already being protected by legislation.

*Case Study – Lost opportunity: Ron & Margery Beach, Porepunkah.*

Ron & Margery Beach own a farm in the Alpine Shire at Porepunkah, near Bright. Like many other farmers in Victoria, he is unwilling to seek a permit from his Shire to remove native vegetation to make his farm more productive. This is not because feels that the Shire would be unlikely to grant him a permit, but the process of getting to the decision would be long, drawn out, probably expensive and final. In the same way, the possibility of being granted a conditional permit, which is likely to mean a Section 173 covenant[20] over the remainder of his farm, also makes seeking a permit highly unattractive.

His property is 160 hectares, and approximately 75 percent of his property is thick bushland. Only 40 hectares of this property can be used for grazing. The other 120 hectares is too thick with native vegetation to run any stock on. The majority of his property is also surrounded by a large area of public land covered in native vegetation of a similar condition.

The Beach family runs beef cattle on the property. They have previously run angora goats, but can no longer do so as constant damage to boundary fences have made keeping the goats on the property too difficult. The fences on this property face constant bombardment from kangaroos and other wildlife coming through from the neighbouring public land and the cost of maintaining fences and having the time to check them every day to keep the goats in had become prohibitive.

Despite the significant proportion of native vegetation on the property, the Shire's planning scheme has designated the whole property as farmland, and the property is rated as such. The Beach family pays local government rates on non productive uncleared land. Even though the land is zoned rural, the Beach family pays rates based on the real-estate value of the land, which is significantly higher than the current farming value of the property.

Even with some limited funding through their involvement with Landcare, the Beach family also incurs costs in keeping the 300 acres of native vegetation weed and pest free. The property is under constant threat of blackberry infestation from neighbouring public land where weed control is a much lower priority. Ron Beach estimates that between 80 and 90 per cent of the total chemical cost is spent on controlling weeds within the native vegetation. Blackberries spread rapidly in bush areas and are difficult to control. Rabbit control has also been a constant challenge. The Beach family is frustrated that, despite their good land management practices, they are prevented by arbitrary native vegetation regulations from making their property more productive as well as easier, and safer to manage.

The property has been in the ownership of the family since 1966. Over time, costs associated with agricultural production have increased, but returns from production have not improved according to the same scale. This means that the Beach family, like many other farming families need to consider further development options to remain viable.
The Beach family would like to be able to clear 48 hectares for tractor access and grazing. The location of the property puts them at significant risk of fire from the neighbouring public land, and they would like to be able to protect themselves and their farm assets from this risk.

The Beach family also feel that there should be options available to them to utilise the timber resource on their own land. In the steeper areas of the property that would be less conducive to grazing, a good alternative to make the native vegetation of value to the owners would be to harvest and regenerate the timber, turning this land from a liability in to an asset.

Mr Beach is a member of the Upper Ovens Landcare group, and would like to undertake some revegetation works on other areas of his property, in particular, creek frontages.

[20] See section on covenants – p 10

However, given the limited area of productive land available to him at present, he is unwilling to revegetate any more land and take it out of production.

Mr Beach feels that until farmers see some benefit from maintaining large tracts of native vegetation, they will be unwilling to undertake further environmental works to protect it.

The Beach family would like to see a more sensible approach to native vegetation management in Victoria which values realistic and sensible management practices rather than blanket banning of tree removal and preventing productive use of the land.

*Case Study – Lost Opportunity – John & Lorraine Croft, Meringur Vic*

John and Lorraine Croft's property borders the Murray Sunset National Park on the west and south sides of the property.

Their 2640-hectare property was purchased in 1974. While the property had been fully cleared for agriculture some years prior, when the Crofts purchased the property, only 160 hectares could be used for farming, as much of the vegetation had regrown.

After purchasing the property, the Crofts undertook a gradual development process to increase the productivity of the farm. The native vegetation regulations, introduced in 1989 left the Croft family with more than a third of their farm still undeveloped.

They were able to obtain a permit in 1991 to clear a small amount of vegetation, but have been trying for 12 years to obtain a permit from the Mildura Rural City Council to clear about half of the 900 hectares of remaining native vegetation in designated areas of their property.

The Crofts have developed a farm plan with clearly identified areas of native vegetation that they wish to maintain and protect. A vegetation assessment has also been done on the property, which highlighted 153 hectares of blue mallee mixed with other mallee species, similar to that found in the adjoining National Park. The Crofts were prepared to maintain and protect this mallee in return for clearing in other areas.

Council referred the planning application to the Department who refused the application, and did not even inspect the property.

The Crofts pay a water rate on the 900 hectares of uncleared land of $312 per year, as well as Shire rates for the whole property of $2642.70 part of which is for the uncleared portion. They are frustrated that they have been paying these rates for 10 years without receiving any value from this land.

Retaining such a large portion of native vegetation on their property also results in other additional costs for the Croft family. The crops sown are constantly invaded by pests and native animals from the adjoining public land who use the native vegetation on the Crofts property as the way to access the family's crops.

The Government have assisted the Crofts in putting up an electric fence on the boundary fenceline by paying 60% of the cost of materials, but animals still get in underneath. The Crofts pay for electricity and the maintenance of the fence. The fence is 11.5 km on their property, so management and maintenance is a significant job. The Croft family also spends a significant amount of time controlling pests and weeds, which come from adjoining public land.

John Croft has been a member of the Millewa Landcare group since it started approximately 15 years ago. He sees significant opportunities on his property for further improvement of environmental outcomes, but is unwilling to do so because of the inflexibility of the Department by refusing to allow him to improve the productivity of his own property.

*Case Study - Bill, Laurence & Raymond Boyd (Iris Haw) & Family – Native Grasses force farming agenda, Pyramid Hill Vic.*

Ms Iris Haw has owned her property in the Pyramid Hill area for close to 50 years. Bill, Laurence and Raymond Boyd are Ms Haw's nephews and in partnership the family farms a number of adjoining properties, including Ms Haw's property. The family has always been close and farms together as a team.

Ms Haw's property is 287.73 hectares in total and the property was cleared for agricultural use at the time of settlement.

The properties owned by the Boyd family adjoin the Terrick Terrick State Park, which is home to approximately 11,000 acres of white cypress, yellow box and pattersons curse. The family properties also surround the Terrick Terrick native grasslands, which consist of approximately 5000 acres of native grass indigenous to the area.

The problems with Ms Haw's property started in about 1998. The property had not been used for purposes other than grazing for a number of years. In 1998, sharefarmers were cultivating some of the property when they were visited by either Shire or Departmental representatives who verbally informed them that they shouldn't be cultivating the property. The Sharefarmers reported this incident back to the Boyds but nothing was ever provided in writing, and the works were completed without incident.

The following year the Boyd family decided to further cultivate the property for cropping themselves. The gypsum was purchased and the tractor was in the paddock ready to go when the Shire contacted Bill Boyd and informed him that he could not cultivate the property. He was informed that if he intended to proceed with cultivation, the Shire would prosecute.

The Boyds went and saw their family solicitors (Robertson Hyett in Bendigo) to seek resolution of this issue. The solicitors' advice was to cease activity until resolution could be achieved.

Robertson Hyett wrote to the Shire and gave them a timeframe to respond. No response was made. The Boyds went back to Robinson Hyett who requested a response within 24 hours or the Boyd family would continue work. This inspired action, and the Shire obtained a botanist to examine the property, where they determined a number of native grasses were present.

Following the botanist reports to the Shire, Shire & Department representatives met with Ms Haw, Laurence Boyd and Robinson Hyett to discuss the situation. A short meeting of 15 minutes was held and the Department informed the family that 144 hectares of the property could not be used for cultivation. The part that had been cultivated by the Boyds and the sharefarmers before the Shire and Department intervened could still be used for cropping.

Upon the advice of Robinson Hyett, the Boyd family engaged their own botanist to assess the property. The second botanist's report was done within a week of the Shire's botanist. However, the two botanists were unable to agree as to which species were actually present on the property.

Despite the discrepancies between the reports the Boyd family decided not to pursue this case through legal avenues. Some native grasses were present on the property and a legal challenge would not be straightforward. Ms Haw was also 87 years old, and the Boyds felt that a protracted legal battle regarding her property would not have been fair to her.

Bill Boyd is President of the Mologa & District Landcare group and has been actively involved in the group for a number of years. He is however, very concerned about the arbitrary rules for protection of native grasses on farmland.

A verbal offer had been made by the Department to purchase the property at some stage, but wasn't really pursued. Ms Haw's property adjoins the other family owned property, and any alternative purchase would be some distance away from the rest of the family business.

Ms Haw paid $665.80 in rates for the last year. She can only run 300 merino sheep for woolgrowing on the property, a rate of 0.5 sheep to the acre for perhaps 3 months of the year. The quality of the pasture is too poor to fatten sheep for prime lamb production, which would be more profitable. This is in contrast to the high value of the property for cropping. The east end of the property, which can be cropped, has produced on average over the last 3-4 years 12 bags to the acre.

The Department has purchased a number of properties in the area for the protection of native grasses. Local farmers in the area have reported that the Government's willingness to buy agricultural land in the local area is pushing up land prices and making it difficult for farmers in the area to expand.

The sudden interest in protecting native grasses in the Pyramid Hill area has also created some perverse outcomes for the environment. Farmers in the local area were also able to confirm that when the Boyd family first started having problems with the Department in regard to native grasses, many of the neighbours in the area who had not cultivated properties for a number of years were out on the weekend cultivating or spraying their pastures.

*Case Study - Murray & Lorraine Davis and Family – Lost Opportunity, Dergholm Vic.*

The Davis family have owned the property known as "Hillgrove" situated at Dergholm in far western Victoria and has been in the Davis family for over 100 years. The property has been in the ownership of various members of the family during that time.

The surrounding land to the west and south west is bounded by State forest and a portion to the south and north west is planted to blue gums. A large area of the land in the Dergholm district is State Forest, pine plantations and blue gum plantations with pastured grazing land being less than half of the land mass in the area. The district has an annual rainfall of 700 mm.

Murray and Lorraine were interested in developing their property to improve production. However, this process, while planned, was unable to be done before clearing controls came in to force in 1989. Murray and Lorraine had to buy out the property interests of Murray's two brothers before being in a financial position to undertake property improvement works.

Murray is currently President of the Red Cap/Dergholm Landcare group and has been actively involved in landcare activities with the group since it was set up over 12 years ago. They understand that there needs to be a balance between production and environmental sustainability so over the last ten years all the waterways on the property have been fenced off for revegetation. All stock have been excluded from the waterways due to the fencing along the creeks. This consists of approximately 40 hectares plus other areas retained for shelterbelts.

As farm production costs increase, it is necessary to generate additional income to cover these and future costs. This can be achieved by increased productivity (of which the farm is near maximum capacity) or by the development of currently undeveloped land.

The Davis family pay $1864.24 in rates for the whole property per year. A recent Shire valuation on their property, valued the land with native vegetation at approximately $100 per hectare, whilst the productive grazing land was valued at $1000 per hectare.

From benchmark studies it has become clear that to support these and other production costs it is necessary for a grazing property to be running around 8,000-10,000 dry sheep equivalents. With the current carrying capacity on the effective 360 hectares of 6500 dry sheep equivalents, this shows that there needs to be opportunities to expand in our local area if the family is to retain a viable farming operation. They have limited opportunities to expand in the local area, the development of 160 hectares of native vegetation on their existing holding would increase the carrying capacity of the property by another 2800 dry sheep equivalents. This in turn would strengthen their position as a highly efficient farm unit and would enable them to pass on the farm as a viable enterprise to the next generation.

Murray and Lorraine wish to remove patches of remnant native vegetation to compensate for the landcare improvements and to improve productivity of the land. Because of the native vegetation clearing controls, future development opportunities have been lost.

*Case Study - Tripod Farmers Pty Ltd – 3 Trees cripple export opportunity, Bacchus Marsh Vic.*[21]

Tripod Farmers are a family owned company that is the largest growing operation of 'fancy lettuce' in Australia. Since 1990 their farming business has grown from an 8 hectare family property operation supplying the Footscray Wholesale Markets, to a 79 hectare operation employing 75 people supplying major supermarket chains in inter-state and international markets. Bacchus Marsh is ideal for lettuce growing due to the highly fertile floodplain soils.

In a bid to increase production and access markets in NSW and Hong Kong, Tripod Farmers purchased 28 hectares adjacent to their existing properties. The purchased land was weed infested and undeveloped despite its considerable potential to support intensive agriculture. The proposed development required the removal of 11 mature red gum trees scattered on the property and isolated from vegetation corridors. The tree removal was necessary as the trees would increase shading and water uptake, reducing the quality and shelf life the lettuce produced. The trees in question were also likely to restrict the ability to laser profile the property and construct economically efficient and environmentally-sound irrigation systems.

Prior to the purchase Tripod Farmers sought legal advice as to any planning restrictions that existed on the proposed farming land. They were advised that whilst a permit would be required to remove native vegetation on the property there was no relevant Vegetation Protection Overlay (VPO) in the region that would specifically impact on the area of proposed development.

When Tripod farmers 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. Tripod farmer's did not follow this advice and instead believed that they could work with the then Victorian Department of Natural Resources (DNRE) to develop their business whilst also providing environmental protection consistent with the 'net-gain' principle of the state *Native Vegetation Framework.* Following their experience with the development application process they seriously reconsider the decision to not follow the advice of the first developer.

Tripod farmers lodged their application to council in July 2000 before DNRE advised the Moorabool Shire Council in October 2000 that they objected to the proposed clearing of the isolated trees. Following a period of negotiation with DNRE, Tripod Farmers compromised and advised that they only remove the three trees in the middle of the proposed paddocks. As part of this compromise Tripod Farmers advised their willingness to revegetate approximately 1.2 hectares adjacent to the Werribee River. Moorabool Council granted the permit to clear based on the compromise agreement in January 2001.

Shortly after permission was given by the council to proceed with the development DNRE advised that they objected to the council's decision. The permit application therefore was sent for review to the Victorian Civil and Administrative Tribunal (VCAT) leading to further cost and delay for Tripod farmers.

The VCAT hearing was held in May 2001 and it was at this hearing that Tripod Farmers was made aware that on that day of the hearing, during proceedings, the Victorian Government had gazetted an amendment to the Moorabool Planning Scheme which created a VPO seeking to preserve River Red Gums in the region. The specific provisions of the VPO now required Tripod Farmers to demonstrate that their proposed development "cannot proceed" without removing Rive 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;

[21] See also National Farmers Federation Submission.

> *'If the Tribunal was required to make a decision on the basis of planing 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 VP02 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

At the VCAT hearing DNRE sought to justify their objection to the proposal based on the aesthetic values of the River Red Gums in creating the 'impression of rural tranquillity. DNRE claimed that the 'community would miss them particularly in a flat bland paddock which will be either ploughed or full of lettuce plants for most of the year.' It is unclear why an issue of aesthetics should be of any relevance to concerns regarding sustainable native vegetation and biodiversity management. DNRE also sought to rely on evidence that the trees provided habitat for a range of fauna dependant on the hollows in the trees such as the Brush-tailed Phascogale. Yet, at the VCAT hearing it was determined that the Brush-tailed Phascogale was not even in the local area.

When it is noted that that a recent council vegetation survey identified 100 to 120 mature River Red Gum in the region it is largely unclear how the loss of 3 isolated trees (or 2.5% of all trees in the region) could have such a significant impact on fauna habitat and biodiversity intensity in the area.

VCAT ruled that Tripod Farmers could remove one tree but only if they prepare an environmental management plan and enter into a 'voluntary' Section 173 agreement to undertake conservation works along the Werribee River. This decision failed to acknowledge the practical difficulties and economic impacts that the existence of mature trees in the middle of the proposed horticultural operation would have.

Following the VCAT decision, Tripod farmers entered into negotiations with DNRE regarding the 'voluntary' section 173 conservation agreement. DNRE's proposed agreement was to require Tripod Farmers to engage in specified activities involving plantings, the building and maintenance of nesting boxes and restrictions on land use simply to remove one tree. Tripod Farmers decided not to go ahead with the clearance of any of the River Red Gums.

> *"The fear of the development being delayed further, the pressure to sustain repayments to the bank, the fear of not being able to fulfil commitments projected to clients, the fear of the increased cost of consultation fees, the staff that had already been trained ready for their positions, all these factors pressured us" - Frank Ruffo, Tripod Farmers*

Tripod Farmers have proceeded with the proposed lettuce growing operation albeit at significantly reduced potential.

Consultation fees and legal costs incurred by Tripod farmers during the application process have been in excess of $52,000.

Despite the loss of expected income, Tripod Farmers still had to make repayments on the $1.5 million borrowed for the purposes of the development during the long and seemingly endless application process.

Tripod farmers had also recruited and trained staff in September 2000 in readiness for the new development. These staff had to be kept on unnecessarily at an approximate cost of $260,000.

Of more concern is the fact that the protracted application process and actions of the DNRE has stopped the first crop being harvested for 18 months where the development should have taken 3-4 months in total to complete. Tripod farmers estimate that this in itself has resulted in a turnover loss of $2-$3 million. The uncertainty over whether or not development could go ahead meant that the immediate opportunity to begin supplying the lucrative Hong Kong market was lost.

The lost opportunity in terms of future production levels continues where flowers and leaves falling into produce creates rot making some product unsaleable. Shading problems continue to make some of the product unsaleable especially during the key months of winter.

"*I would never ask DNRE for their assistance because of my personal experience*" – Frank Ruffo Tripod Farmers

Tripod farmers have been leading participants in voluntary conservation and sustainable land management practices with the region over a number of years. They were personally responsible for the introduction of the *Enviroveg* environmental audit program to the Moorabool region. The program requires the adoption of stringent European environmental audit standards to horticultural projects. 90% of other vegetable growers in the region have adopted the *Enviroveg* management program. Furthermore, even though Tripod Farmers did not enter into a conservation agreement, they have voluntarily removed boxthorn, willows and other noxious weeds that were choking rivers adjoining their property at a cost of 4 full time people for 2 weeks. Tripod farmers have provided the local council with a further $3,000.00 to continue this management program.
These conservation and management programs implemented by Tripod farmers have been achieved without either direction or support from DNRE. The programs are representative of a conservation ethic and capacity of many farmers across Australia. It is however an ethic and capacity that is being eroded by governments as a result of the manner in which they appear to disregard the legitimate interests of Australian Farmers. If society is to achieve optimal natural resource policy outcomes, there is a need for government and farmers to constructively work together in an on-going manner. The ability to achieve this on-going relationship is significantly diminished where farmers undergo experiences similar to that of Tripod Farmers.

*Case Study - Reg Holt – Overzealous planning makes fencing a nightmare, Wedderburn Vic.*

The Wedderburn area was settled in the 1850's. At this time, the area was extensively cleared for agricultural purposes.

Since that time, vegetation has re-grown significantly along roadsides and fences.

In Mr Holt's case, boundary fencelines had reached the point where they needed to be replaced. Mr Holt sought to remove some trees from along their fenceline and trim some overhanging tree branches in the road reserve that had the potential to fall on a newly constructed fence.

While council generally manages road reserves, under section 55 of the Planning and Environment Act 1987, Council needs to refer applications to the Department in regard to trimming, lopping or destroying of native vegetation on road reserves.

The relevant exemption to Mr Holt's case in the Victorian Planning provisions in regard to native vegetation is "the removal destruction and lopping of the minimum extent of native vegetation necessary for the construction, operation or maintenance of a farm structure including… fences."

The Department assessed Mr Holt's application stating that it was unnecessary to remove trees along the fenceline, and any lopping of branches should not exceed a height of 4m as this is the necessary height to drive a tractor underneath to construct a fence.

Any branches considered in danger of falling could be removed at the discretion of the Department Officer overseeing the operation. Any branches not considered to be an immediate risk, required Mr Holt to prove they are a risk. The Department required Mr Holt to employ a qualified arborist to assess tree branches to determine if they were a danger.

For the lopping of tree branches, Mr Holt were required to undertake revegetation works according to the following scale:
Every 100mm diameter branch pruned = Mr Holt to plant 20 trees
Every 30cm diameter branch pruned = Mr Holt to plant between 50 and 100 trees
Every branch exceeding 1m in diameter = Mr Holt to plant more than 100 trees as compensation.

These revegetation works were then to be protected under a section 173 agreement registered on title.

The Department was willing to employ a woodcutter to prune the trees.

Mr Holt found the requirements in this case to be unduly onerous. He has since been granted a permit for the 4m high pruning and after discussions with senior staff has not been required to plant trees. However, recently senior Department staff visited his property, and he is waiting for confirmation that his pruning regime can continue.

Mr Holt's situation has not yet been resolved, and similar requirements are being imposed on other farmers in the local area.

However, farmers in other areas of the State do not incur such a zealous interpretation of the planning scheme.

*Case Study - Harry Haralambous – Development Opportunity choked by red tape, Melton Vic.*

Harry Haralambous recently purchased his 40 hectare property "Rockbank Park."

The property, which had been previously cleared for agricultural use, had been used by the previous owner for intermittent grazing.

When Mr Haralambous purchased the property, it had no covenants on title or planning overlays.

He purchased the property with plans of growing an orchard and turning the home in to a bed and breakfast enterprise.

When he started removing rocks from the surface of the land in preparation for irrigation system and planting of the trees he had been cultivating the Shire came to visit and informed him that he had native grasses on the property and could not remove them without a permit.

Mr Haralambous felt that his orchard would be conducive to the regeneration of the grasses along the rows between the trees. He had also intended to plant native trees along his boundaries as part of his property improvement process.

It is very difficult to establish an economically viable agricultural business in the Melton/Rockbank area. From an agricultural perspective, the land is generally of poor quality and infested with weeds. Yet, the State Government's Melbourne 2030 strategy for management of urban growth has identified the area where Mr Haralambous' property is, as green wedge land which is to be preserved for commercial farming.

After negotiations with the Council, Mr Haralambous agreed to a flora survey, commissioned at his own expense. The survey found the most significant plant on his property to be onion grass. The property also has serrated tussock at an estimated percentage rate of between 1 – 10% on the property. The best method of control for serrated tussock and onion grass is cultivation. The site was nevertheless assessed as a "relatively intact example of Basalt Plains (Western) grassland."

After putting in his planning permit application, Mr Haralambous has been required to fulfil an extremely long list of additional requirements provided by the Department of Sustainability and Environment. (This list is attached).

Mr Haralambous has been advised to consider growing the native grass commercially, rather than proceed with his orchard. The seed would not provide him with the income necessary to sustain a commercial farming enterprise. Mr Haralambous has also been advised that the grass will die if overgrazed or if the soil fertility is altered, but the fact that the seed can be harvested does mean that the grass can be replaced.

Mr Haralambous has since done his own research on native grasses and found that they grow extremely well a variety of soil types including potting mix.

At a rough estimate, Mr Haralambous estimates that costs associated with his native vegetation permit which has not yet been resolved is already in excess of $8 000 taking in to consideration payment of a botanist, solicitor and lost income.

In a meeting with the Department yesterday 14/8 he was informed that he must enter into an agreement for section 173 agreement to covenant 10 hectares (one quarter) of his property in order to develop the remaining land.

**Attachments**

*1. Weekly Times – May 14th 2003, p. 1.*

*Weekly Times – May 14th 2003, p. 7.*

*2. The Weekly Times – May 28th 2003, p. 5.*

*3. Stock and Land - July 3 2003, p. 49.*

*4 Weekly Times – July 23 2003, p. 1.*

*Weekly Times – July 23 2003, p. 2.*

*Weekly Times, Opinion 'Restore sense to zealous land clearing laws'*

*5 Stock and Land – July 24th 2003, 'Urgent need to rethink environmental needs' Paul Weller.*

*6. PARTICULAR PROVISIONS - CLAUSE 52.17 17 AUGUST 2000*

52.17 NATIVE VEGETATION

**Purpose**

To protect and conserve native vegetation to reduce the impact of land and water degradation and provide habitat for plants and animals.

**Permit requirement**

A permit is required to remove, destroy or lop native vegetation.
This does not apply:

**Scheduled area**

- To an area specified in the schedule to this clause.

**Site area**

- On land which, together with all contiguous land in one ownership, has an area of less than 0.4 hectare.

**Dead vegetation**

- If the native vegetation is dead.

**Emergency works**

- If the native vegetation presents an immediate risk of personal injury or damage to property.
- If the removal, destruction or lopping of native vegetation is necessary for emergency access or emergency works by a public authority or municipal council.

**Fire**

- If the removal, destruction or lopping of native vegetation is necessary for fire fighting measures, periodic fuel reduction burning, or the making of fire breaks up to 6 metres wide.
- To the removal of ground fuel within 30 metres of a building.
- If the removal, destruction or lopping of native vegetation is in accordance with a fire prevention notice under:
  - Section 65 of the Forests Act 1958.
  - Section 41 of the Country Fire Authority Act 1958.
  - Section 8 of the Local Government Act 1989.
- To any action which is necessary to keep the whole or any part of a tree clear of an electric line provided the action is carried out in accordance with a code of practice prepared under Section 86 of the Electricity Safety Act 1998.

**Planted vegetation or harvesting**

- If the native vegetation has been planted for timber production, agroforestry (the simultaneous and substantial production of forest and other agricultural products from the same land unit), shelter belts, woodlots, street trees, gardens, horticultural purposes or the like.
- To timber harvesting carried out under licence from the Secretary to the Department of Natural Resources and Environment.

**Extractive industry**

- To the removal, destruction or lopping of native vegetation necessary for carrying on an extractive industry, including an extractive industry authorised by a licence or a lease under the Extractive Industries Act 1966. This does not apply to an extractive industry exempted under Section 5 of the Extractive Industries Development Act 1995.

**Surveying**

- To the removal, destruction or lopping of the minimum extent of native vegetation necessary for establishing sight-lines for the measurement of land by surveyors in the exercise of their profession, and if using hand held tools.

**Rural activities**

- To the removal, destruction or lopping of the minimum extent of native vegetation necessary for the construction, operation or maintenance of a farm structure, including a dam (other than on a stream), tracks, bores, windmills, tankstands, fences, stockyards, loading ramps, sheds and the like.
- If the native vegetation is seedlings or regrowth less than 10 years old and if the land is being re-established or maintained for cultivation or pasture.
- If the removal, destruction or lopping of native vegetation is in accordance with a land use condition or land management notice under the Catchment and Land Protection Act 1994.
- To the cutting of reasonable amounts of wood for personal use by the owner or occupier of the land.
- To the removal, destruction or lopping of native vegetation as a result of grazing by domestic stock. This includes unused roads specified under Section 400 of the Land Act 1958.

**Stock movements on roads**

- To the removal, destruction or lopping of native vegetation as a result of moving stock along a road. This does not include the removal, destruction or lopping of native vegetation as a result of holding the stock in a temporary fence (including an electric fence) on a roadside for the purpose of feeding.

**Weeds and vermin**

- If the native vegetation is proclaimed as a noxious weed or is bracken (Pteridium esculentum).
- If the removal, destruction or lopping of native vegetation is in accordance with a notice under the Catchment and Land Protection Act 1994.
- If the native vegetation is burgan (Kunzea ericoides (previously Leptospermum phylicoides)) or manuka (Leptospermum scoparium) and is on land which meets each of the following conditions:
  - It is outside the Metropolitan Region.
  - It is more than 30 metres from a water course.
  - It is being re-established or maintained for cultivation or pasture.
  - Ground slopes are less than 30 percent.
- To the removal, destruction or lopping of the minimum extent of native vegetation necessary to remove burrows for vermin control. The total area in one ownership to be destroyed must not exceed 10 hectares.

**Buildings**

- To the removal, destruction or lopping of the minimum extent of native vegetation necessary for the construction, use and maintenance of:
  - A dwelling.
  - Any building or works which are ancillary to a dwelling including tennis courts, barbecues, swimming pools, utility services or vehicle accessways.
  - Any building, including utility services or vehicle accessways which are ancillary to the building.
- To the removal, destruction or lopping of native vegetation within 10 metres of a building.

**Utility services**

- To the removal, destruction or lopping of the minimum extent of native vegetation necessary to maintain public utility services for the transmission of water, sewage, gas, electricity, electronic communications or the like.

- To the removal, destruction or lopping of the minimum extent of native vegetation necessary to continue the activity on land which has previously been cleared where seedlings or regrowth are less than 10 years old and the land is:
  - Within the formation of a road or railway line.
  - On or adjacent to a helipad, airfield or the like.
  - In an existing gravel pit.
  - On crown land or land owned by a public authority or municipal council.

**Mineral exploration and mining**

- To the removal, destruction or lopping of native vegetation necessary for mineral exploration or mining authorised by an approved work plan and in accordance with an authority to commence work issued under the Mineral Resources Development Act 1990.

**Decision guidelines**

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The policy on retention and re-establishment of native vegetation.
- The conservation and enhancement of the area.
- The preservation of and impact on the natural environment or landscape values.
- The role of the native vegetation in:
  - Conserving fauna and flora.
  - Protecting water quality.
  - Providing shade and shelter.
- The role of the native vegetation in preventing:
  - Land degradation, including soil erosion, salinisation, acidity and water logging.
  - Adverse effects on groundwater recharge.
- The need to retain native vegetation:
  - Where ground slopes are more than 20 percent.
  - Within 30 metres of a wetland or waterway.
  - Where groundwater recharge occurs.
  - On land subject to or which may contribute to soil erosion, slippage or salinisation.
  - On land where the soil or sub-soil may become unstable if cleared.
  - In a proclaimed water supply catchment.
  - In areas where removal, destruction or lopping could jeopardise the integrity or long term preservation of any identified site of scientific, nature conservation or cultural significance.
  - If it is rare or supports rare species of fauna or flora.
  - That forms part of a wildlife corridor.
- The conservation of native vegetation protected under the Archaeological and Aboriginal Relics Preservation Act 1972 or the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.
- Any relevant permit to remove destroy or lop native vegetation in accordance with a land management plan or works program.
- Whether the application includes a land management plan or works program.
- Whether provision is made or is to be made to establish and maintain native vegetation elsewhere on the land.
- The benefit of a condition requiring:
  - Planting, replanting or other treatment of any part of the land.
  - The retention of a buffer strip of native vegetation within specified distances of wetlands, waterways, roads and property boundaries.
  - The fencing off of areas of native vegetation, in particular to exclude stock or vermin.
  - The identification of native vegetation that is to be retained, including the methods to be used to protect and manage the native vegetation.
- The approved Regional Vegetation Plan (where prepared).
- In the case of timber production, the benefit of including a condition requiring

operations to be carried out in accordance with any relevant code of practice under Section 55 of the Conservation, Forests and Lands Act 1987.

**Land management plan or works program**

A permit may be granted to remove, destroy or lop native vegetation in accordance with a land management plan or a works program.