

**SUBMISSION**

**to**

**PRODUCTIVITY COMMISSION**

**on**

*Impacts of Native Vegetation and Biodiversity  
Regulations*

**by**

**TASMANIAN FARMERS AND GRAZIERS ASSOCIATION**

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## INTRODUCTION

The Tasmanian Farmers and Graziers Association (TFGA) welcomes this inquiry and wishes to be centrally involved in it.

The TFGA is the peak representative body for farmers in Tasmania. It has some 5 500 members in the dairy, wool, meat, vegetables and cereals and seeds industries. Members are also involved in a range of other agricultural product areas including poppies, berries and pyrethrum, and in forest management and wood production in both native forests and plantations.

TFGA members are directly affected by Tasmanian legislation relating to the protection of native vegetation and biodiversity. Such legislation applies equally to private as it does to public land and the vast majority of private land in the State is farm land that belongs to TFGA members. Any restriction placed by legislation on the way in which farmers can manage their land reduces their ability to produce the commercial returns they need to generate from their farms. This not to say that measures to protect native vegetation and biodiversity should not be implemented, but there should be no doubt about the fact that they have a commercial impact on farm businesses and that this needs to be taken into account when measures are being developed and implemented.

TFGA members are also affected by Commonwealth legislation in the form of the *Environmental Protection and Biodiversity Conservation Act*. In particular, the provisions of the Act which relate to threatened species and threatened community protection have a direct bearing on land use in affected areas in the State.

This submission presents in turn:

- a brief account of the basic needs of farmers in the context of government regulation;
- a statement of the TFGA's position with respect to the conservation of natural values on private land;
- comment on current legislation and related measures;
- comment on selected issues; and
- a conclusion and a recommendation on potential improvements.

## **FARMER NEEDS**

The vast majority of farms in Tasmania are run as commercial business enterprises. The fact that there is usually a life style preference as well does not in any way detract from this.

As with all commercial enterprises a primary concern in farming is to generate an adequate net return on assets.

The principal asset in a farm enterprise is its land base. Management skills and financial capital are other prerequisites for successful farming, but the land base effectively sets the limits on the enterprise.

For practical purposes the return on the land asset in farming is determined by the level of net farm earnings, and the basic management objective on a farm is to maximise net farm earnings, having regard to sustainability.

To maximise net farm earnings it is fundamentally important for farmers to be free to manage their farms to best effect. This includes freedom to bring as much as possible of the land of a farm into production, freedom to improve productive capability (by, for example, fertilising, draining or irrigating) and freedom to vary land use to best effect from time to time in response to market developments.

In the circumstances, where Government puts constraints on land use, including constraints related to the conservation of biodiversity values, these need to be:

- justified in terms of resulting benefits,
- linked to specific and identified values,
- the minimum necessary to achieve necessary outcomes,
- designed to minimise impact on farm management freedoms,
- clear, “up front” and consistent over time,
- designed to minimise compliance costs.

However, underlying all of this must be a major effort by Government to win the support of land owners for programs of measures as a whole. Regulators will find that if farmers are convinced of the importance of protecting specific biodiversity values in their districts they will contribute constructively and effectively to their conservation, and the Government will attain its objectives more effectively and efficiently. On the other hand, if farmers feel they are being directed without their agreement, regulators may well find their task impossible.

## TFGA POSITION STATEMENT

The following sets out a TFGA position on key issues relating to conservation of native vegetation and biodiversity values on private land.

- ***Government must fully justify claims that vegetation or biodiversity values on farm land warrant specific protection measures before imposing such measures.***

Farmers are no different to other members of the community. They have the same attachment to natural and cultural values in their surroundings as do others. However, they also have businesses to run. Before Government imposes restrictions on the way they can run their businesses, the principles of simple natural justice require it to justify its proposed action.

However, in addition, Government needs to work more actively to secure farmer support for its objectives. With that support will come the local knowledge that may well suggest ways of securing more effective outcomes and, without doubt, will suggest ways of securing outcomes at less economic cost.

There are widespread doubts among farmers with regard to both the competence and the good faith of Government where imposed conservation measures are concerned. For example there is a perception that “academics” have an undue influence in decisions relating to the conservation of natural values and that this leads to a disregard for the cost of measures on farmers as a result. There is also a perception that Government will do just about anything to avoid paying for its fair share of the cost of protecting identified values, including putting undue emphasis on “duty of care” as an approach to protection.

- ***The impact of conservation measures on farm businesses must be a fundamental consideration when Government is deciding the extent to which measures are applied on private land, and how they are applied.***

Farm enterprises depend for their success on the commercial use of land. Any constraint that is placed on the freedom of farmers to add value to their land will affect the commercial success of their businesses. Depending on what those constraints are and how they are applied, the impact can be very serious indeed. Tasmanian farmers operate in very competitive markets and any reduction in their ability to compete must be justified.

In the circumstances, when Governments design conservation measures for farm land they need to pay a lot of attention to their likely impact on individual farm businesses and look for ways to minimise that impact. The following are important principles in this regard.

- Conservation measures which restrict land use freedoms should only be applied on private land where (and to the extent that) needs cannot be met fully on public land.

- The need for and nature of conservation measures on a particular property should only be decided after full consideration of their commercial impact on the property.
  - No more than an absolute minimum of the impact of conservation measures on farm enterprises should be accountable to “duty of care”. Anything more than such a minimum must be compensable.
- ***Conservation measures which Government seeks to apply on private land must be linked to clear and specific conservation outcomes.***

Because conservation measures will have an impact on farm businesses (the question being one of how much rather than whether) it is incumbent on government to be precise about what such measures are supposed to achieve and how they will do so, and to demonstrate that there is not another way of doing the same thing at less cost.

Of particular concern here is a tendency by Government to fall back on the “precautionary principle” to justify ambit measures.

There is a marked inclination among parts of the community, notably parts of the scientific community, to claim a lack of adequate knowledge with regard to particular values and invoke the “precautionary principle” as justification for ambit measures as a result, regardless of impact on landowners.

There is also a tendency for parts of the community (again notably parts of the scientific community) to discount the knowledge that farmers have with regard to natural values on their land and how they might best be conserved, and to underestimate the overall extent of knowledge as a result. This reinforces the tendency to revert to the “precautionary principle”.

Government must put controls on the extent to which the “precautionary principle” is invoked in relation to conservation regulations.

- ***Conservation measures must deliver envisaged outcomes effectively.***

Conservation measures impact on landowners and it is therefore fundamentally important for Government to ensure that when measures are applied, they will in fact deliver what they are supposed to. Where measures are found to be ineffective they should be modified or discontinued. The fact of the existence of particular measures should not be a reason for keeping them.

A very important issue here is that of the “condition” of the value being conserved. Where values are run down there has to be less justification for costly conservation measures than where they are in good condition.

- ***Conservation measures must deliver outcomes with maximum economic efficiency.***

No conservation measure comes free of economic cost to society. When a Government decides that a value needs to be conserved in a particular area it is based on an assumption, explicit or implicit, that benefits will outweigh costs.

It is in the interests of society that the economic cost of conservation measures be minimised, and it is invariably the case that economic cost savings can be found when conservation measures are looked at closely. One important way of doing this is by involving farmers in decisions, giving full weight to their knowledge of values in their districts and how they can be looked after most efficiently.

- ***There must be an equitable distribution of the cost of conservation measures between private land owners and the community.***

It is invariably the case, under present regulatory regimes in Tasmania, that farmers pick up essentially all of the cost of conservation measures that are applied to their land, in the form of additional direct expenditure, income opportunities foregone or loss of asset value.

There is a tendency in parts of the community to see this as fair and equitable, justifying that view by saying that the measures involved should be simply part of the general “duty of care” obligations of individual farmers.

The concept of “duty of care” has a legitimate place in any regulatory system but it is a limited place. Equally important is the concept of “compensable loss of land use rights”. This is particularly important where new conservation measures are introduced which will impact on the commercial value of a piece of land by reducing management options for the owner. It is far too easy for Government to abuse the concept of “duty of care” in an effort to get out of paying fair compensation in those circumstances. Government must contribute its fair share to the cost of conservation measures. After all, we are looking at the creation of a public benefit.

The nature of Government’s contribution may vary. One option might be to cover additional farm management costs directly, for example the cost of controlling additional browsing damage by native animals occasioned by the retention of a piece of native vegetation adjoining crops or pasture. On the other hand there may be a need for compensation payments where farmers are prevented from using a particular piece of land altogether in order to protect vegetation or biodiversity values.

It is equally important that costs and compensation payments be commercially realistic. Compensation must be based on the actual commercial cost of measures to individual farmers, not some notional valuation by Government valuers.

None of this should be construed as farmers simply looking for payouts. Rather it should be seen as a discipline on Government to be sure that what it does needs to be done, and that it is done in the most efficient way.

## CURRENT REGULATORY FRAMEWORK IN TASMANIA

Two pieces of Tasmanian legislation are of particular importance for farmers in the context of this inquiry:

- *Forest Practices Act*
- *Threatened Species Protection Act.*

Until recently the *Forest Practices Act* applied only to commercial operations within native and plantation forests. Administration of the provisions of the Act is by the Forest Practices Board. Central to forest practices regulation by the Board under the Act, are:

- a Forest Practices Unit, headed up by a Chief Forest Practices Officer;
- a formal, periodically reviewed, Forest Practices Code, which sets out “the rules” for forest operations;
- delegation of authority to Forest Practices Officers to approve forest operations as being in accordance with the Code;
- availability of expert assistance for Forest Practices Officers where they need it (eg fauna, flora, etc);
- systematic audit of the work of Forest Practices Officers and of forest operations generally, to monitor compliance with requirements;
- legal sanctions which can be applied in the case of misdemeanours.

In 2001 the *Forest Practices Act* was amended to task the Forest Practices Board with regulating all clearing operations in native forest, above a defined threshold level, regardless of whether they related to commercial forestry or not. This has suddenly brought regulatory measures into the orbit of farmers who have not had to deal with them before. A notable example is farmers on King Island, where there are no commercial forestry operations and where the Act has therefore not really had application before. Many King Island farmers are now facing real financial costs as a result, with the introduction of vegetation clearance regulation.

The *Threatened Species Protection Act* has applied to all categories of farm operations since it was passed a decade ago. A recently signed Bilateral Agreement between the Tasmanian and Commonwealth Governments means that we can expect amendments to the *Threatened Species Protection Act* in the next few years to introduce the concept of threatened communities. It is critical that these amendments are well thought out and equitable.

The Commonwealth’s *Environment Protection and Biodiversity Conservation Act* also applies to farmers in Tasmania.



## KEY POINTS OF COMMENT

- ***Current conservation measures have a real financial impact on farmers.***

There should be no doubt in the minds of the Commission that conservation measures in Tasmania currently entail real financial costs for farmers. These include the following.

- *Additional operational cash outlays.* An example is the increased cost of controlling browsing damage in crops or pasture, by native animals emerging from adjoining native vegetation which farmers are compelled to retain as such.
- *Prevention of productivity improvements.* An important example is the prevention of clearing of native vegetation on farms on King Island where farmers want to establish pasture. A second example is the prevention of clearing of areas of native vegetation in parts of the Midlands where farmers want to put land under pivot irrigation.
- *Reduction in the asset value of a farm.* To the extent that conservation measures reduce the potential net return from a farm they reduce the value of the farm. This has immediate consequences in terms of, for example, the borrowing capacity of the farmer because it reduces the collateral he has to offer the bank. It also has consequences for the retirement income of farmers who see the sale of their farm as funding their retirement.

The significance of these costs will vary between farms. However, in some cases it can be substantial. For example, where a large part of a property is covered by a native forest type which is limited in overall extent, and therefore where further clearing is forbidden, the value of the farm can be substantially degraded below what it was previously.

- ***Government must not rely on a “duty of care” approach to securing conservation goals.***

There must be a strict limit to the level of constraint of farmer freedoms which can be attributed to “duty of care”. Where this limit is set calls for a judgment on the extent to which it is reasonable for an individual property owner to be expected to pick up all of the cost for the protection of natural values on his land, and to what extent the cost is more fairly picked by the community (ie the property owner is compensated).

There is a marked tendency for Government to put as many conservation measures as it can into the “duty of care” category, because it effectively secures conservation benefits at no cost to itself. This approach is unreasonable, and is unacceptable to the TFGA. It is incumbent on Governments to think very carefully about whether the values they are seeking to protect are worth the economic cost of that protection, and

if they are worth that cost they should be prepared to fund the community's fair share of it. "Duty of care" should not be used as a way of avoiding this.

- ***The formula for compensation calculations must reflect true value to farmers.***

Having addressed the issue of where "duty of care" should stop and compensation start, it is critically important that the basis for compensation is set fairly.

It is fundamentally important that compensation should be based on the real cost of conservation measures to the property owner, not the ability of Government to pay. Available indicators are:

- sale value of the property,
- value as collateral for financial borrowing,
- capitalised value of an income stream,

In all cases value needs to be ***potential value***, that is, value if land were developed to potential without the restrictions imposed by conservation measures.

Real value means that these factors need to be addressed on a commercial basis. Property value needs to be calculated on a market basis, for example, not on the invariably conservative "government valuation".

This approach is standard in transactions between private sector entities and there are mechanisms, such as jointly appointed arbitrators, for establishing fair values in most circumstances. There is no reason at all that Government should not operate by the same rules.

- ***There must be process disciplines on Government in resolving issues.***

Farmers should be able to expect clear and unambiguous process from Government when establishing what they can and cannot do with their land, and they should be able to expect prompt decisions from Government where decisions are necessary.

There must be provision for farmers to be fully informed on any investigation which is proposed, or under way, which could impact on their businesses.

There must also be provision for farmers to register appeals to decisions if they wish to do so.

Before buying a piece of land a farmer should be able to work out in detail what his management freedoms will be, and be confident that once purchase is completed there will be no change in the rules.

A farmer should also be able to expect that decisions will automatically go his way if there is unreasonable delay in decision making.

- *There are opportunities to streamline process and reduce costs.*

There seems to have been very little effort to date in Australia, to streamline process and reduce the economic cost of conserving native vegetation and biodiversity values by closer involvement of land owners themselves. No doubt this reflects, at least in part, a belief that land owners cannot to be trusted to look after natural values on commercial farms. However there are examples of where the approach is working and these should be used as models to explore its wider application.

Specifically, the approach is working well in the forestry sector in Tasmania. The Tasmanian forest practices system provides for the delegation of key elements of process by Government to accredited Forest Practices Officers (as noted earlier in this submission). Most of these are employees of forestry businesses, others are private consultants and others again State employees. In their capacities as Forest Practices Officers, however, they are directly accountable to the Forest Practices Board, with disciplinary sanctions imposable by the Board in the event of misdemeanour. Forestry businesses value the fact of this delegation of authority to individuals among their staff, because it makes the smooth flow of operations far easier and more cost effective. The integrity of the process is monitored continuously by an audit process.

A second example is the Private Timber Reserve system. Private Timber Reserve is a status awarded to forested land in Tasmania, where the owner undertakes to manage for wood production in the long term and to do so in strict accordance with the Forest Practices Code as amended from time to time. In return the Government undertakes to limit the application of otherwise applicable Local Government regulations to the land in question. Under this arrangement land owners are freed from what can be a very frustrating process of land use regulation, and in return Government receives a commitment that the land in question will be managed in accordance with its conservation needs.

These examples illustrate the fact that Government can secure effective and efficient conservation outcomes relating to native vegetation and biodiversity, where they can link this to outcomes that land owners are looking for, including the opportunity to benefit from use of their own resources to do things in their own way and at times which suit them. Both the Forest Practices System and the Private Timber Reserve system have delivered good outcomes for the Tasmanian Government and community for nearly twenty years. They carry important lessons for the conservation of values on private land, including farm land.

## CONCLUSION AND RECOMMENDATION

The TFGA accepts the need for identified native vegetation and biodiversity values to be conserved in Tasmania where these are important values.

Where conservation needs can be met on public land, that is where they should be met. Conservation needs should only be met on private land to the extent that they cannot be met on public land.

Where it is necessary to extend conservation measures to private land, and in particular to farm properties, this must be done in full recognition of their financial impact on those properties. Specifically:

- the impact needs to be acknowledged,
- the element of “duty of care” needs to be minimised,
- compensation needs to be paid for impact beyond “duty of care” level,
- compensation must be on the basis of real commercial value,
- assessment and settlement process needs to be certain, fair and efficient.

There are ways of improving things from a farmer point of view, beyond the present system. Specifically, it is possible for Government to delegate a range of conservation decisions and functions to individual farmers without compromising conservation outcomes. This allows farmers to maximise efficiencies by using their own resources and time availability to good effect.

### **Recommendation:**

***The Tasmanian and Commonwealth Governments, perhaps together with those of other states, should initiate a review of the way in which conservation measures relating to native vegetation and biodiversity values are implemented, with special reference to establishing:***

- ***how the economic cost of conservation measures can be reduced,***
- ***fair limits to the application of “duty of care” obligations on land owners,***
- ***a fair approach to calculation of compensation where obligations are imposed on land owners beyond “duty of care” levels, and***
- ***strict obligations on Government to provide clear and timely response to land owner queries, with the default situation being that the land owner is able to undertake the proposed action.***