

Productivity Commission 2016 – Regulation of Australian Agriculture, Draft Report

Submission - Department of the Environment and Energy

The Australian Government Department of the Environment and Energy welcomes the opportunity to provide comment on the Productivity Commission's Draft Report on its Inquiry into the Regulation of Australian Agriculture. In addition to our comments below, a small number of minor technical corrections are included at [Attachment A](#).

Well designed and implemented environmental regulation creates social benefits and economic value for the community through the maintenance or improvement of environmental standards.¹ Environmental regulation can build community and market confidence and provide a social licence to producers to use natural resources. This can increase productivity and increase access to markets and premium prices.² The Productivity Commission could consider including further discussion of the benefits of good environmental regulation in its final report.

Some farming practices can lead to positive impacts for the environment and community, however, like all sectors, farming practices also have the potential to negatively impact the community and other businesses – including other farms. It is reasonable to regulate the farming sector and on-farm activities in order to manage impacts. Although the Department points out the benefits to farmers of on-farm environmental activities in its original submission³, good regulation can also provide a necessary stop to those activities with negative spill-over effects resulting in adverse impacts on the environment, adjacent land holders, other businesses (including other farms, producers and service providers) and the community.

The Department agrees with Draft Recommendation 3.1 and notes that the *Environment Protection and Biodiversity Conservation Act 1999* Act (EPBC Act) already requires or allows for the application of risk-based and landscape-scale approaches, and explicitly requires that social and economic matters be taken into consideration by the Minister (or delegate) when making an approval decision under section 136(1)(b) of the EPBC Act. The Department will continue to develop further policy and guidance in relation to our treatment of risk in the assessment process as part of our ongoing work to increase trust in, and transparency of, the EPBC Act decision-making process. This work will be undertaken cooperatively with state and territory governments wherever possible, noting that these jurisdictions have primary responsibility for regulation of natural resource management, land use and vegetation clearing.

Market Mechanisms

The Department supports the greater use of market based approaches and recognises that they can provide flexibility and efficiencies that traditional regulation does not. Market based mechanisms are likely to be most effective when used in conjunction with other policy levers such as regulation, public awareness campaigns, information provision and direct government management.⁴

A good example of this complementarity is in the context of the Reef 2050 Plan, which brings together scientific, regulatory, policy, spending and operational commitments from all levels of government and partners to support a holistic and adaptive management framework. The combination of these commitments, delivered in partnership with relevant industry, community and scientific organisations, provides the blueprint for protection of the Great Barrier Reef over the next few decades.

¹ Productivity Commission. (2004). Impacts of Native Vegetation and Biodiversity Regulation. pg Overview XXXIII, available: <http://www.pc.gov.au/inquiries/completed/native-vegetation/report/native-vegetation.pdf>

² The Centre for International Economics (2015). Final Report, Drivers of demand for Australian agricultural products, prepared for Australian Council of Learned Academies. pg 41, available: <http://acola.org.au/PDF/SAF07/drivers%20of%20demand.pdf>

³ Department of the Environment (2016). *Productivity Commission Inquiry – Regulation of Australian Agriculture* Submission from the Department of the Environment. pg 2, available: http://www.pc.gov.au/data/assets/pdf_file/0008/197747/sub080-agriculture.pdf

⁴ Evans, M (2016). 'Deforestation in Australia: drivers, trends and policy responses' in *Pacific Conservation Biology*, pp O –P.

The Report could also broaden its scope to consider mechanisms such as tax incentives for conserving biodiversity on private properties. There are several international examples of additional incentives for private land conservation. In the United States and Canada, there are a mix of tax incentives including, conservation tax deductions that allows landowners to claim federal income tax deduction for the value of a donated conservation easement. In the United States, for example, farmers can deduct up to 100% of their income, while other landowners can deduct up to 50% of their income.

When considering market based mechanisms, care should be taken not to demotivate desirable existing behaviours, or to provide ongoing payments for activities which are in the long term financial interest of the recipients⁵. The Productivity Commission may therefore wish to consider expanding on Draft Recommendation 3.2 to note the benefits of complementary policies. In this context the report should:

- encourage the Australian, state and territory governments to continue to develop market-based approaches to native vegetation and biodiversity conservation, to harness private willingness to pay and to promote cost effective use of public funds, where they can complement and extend other policy mechanisms;
- note that paying for voluntary action is particularly appropriate where the community is seeking environmental benefits that go beyond reasonable community expectations of landholders; and
- note that other policy tools (such as extension and capacity building) will continue to play valuable roles alongside regulation and market based approaches.

Targeted engagement with the agricultural sector

With regard to Draft Recommendation 3.3, the Department is building its regulatory capability including putting in place measures to ensure that communication with key stakeholders is user-focused and consistent, and engagement is two-way.

Recognising that farmers are important stewards of the land, the Department is working with the agricultural sector to improve the effectiveness of communication on issues of mutual interest, including the listing of matters of national environmental significance, compliance with the EPBC Act, and opportunities under the Emissions Reduction Fund.

Other matters the Productivity Commission may wish to consider

Pastoral leases

We support facilitating and encouraging the co-location of different types of land uses through regulation. The Draft Report could benefit from greater discussion of the idea that the variety of land use outcomes are not necessarily exclusive of one other – in many cases conservation outcomes can coexist efficiently with pastoral lease outcomes. Reducing the regulatory burden on pastoral land may encourage conservation (and eco-tourism) when it is the highest value of the land.

Environment Protection and Biodiversity Conservation Act 1999

At the Commonwealth level, the number of interactions between the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the agricultural sector are low. In its analysis of environmental regulation, the Draft Report provides more detail on the EPBC Act than other pieces of environmental regulation. This may suggest to readers that the EPBC Act plays a predominant role, when this is not the case. State and Territory regulations are the clear primary regulator of the agricultural sector and land use decision more broadly. They interact more commonly with the agricultural sector and the report would in our view be strengthened through a more detailed focus on these.

⁵ Hatfield-Dodds, S (2006). 'The catchment care principle: A new equity principle for environmental policy, with advantages for efficiency and adaptive governance', *Ecological Economics*, vol 56, pp 374- 385.

Approach to compliance and enforcement

The Draft Report makes reference to compliance activity undertaken by the Department. Species and ecological communities are protected under the EPBC Act because they have undergone a severe decline or naturally have a very restricted distribution, leaving them vulnerable to further threats or environmental pressures such as land clearing.

The Department's compliance and enforcement function is delivered within a Compliance Framework and is guided by a comprehensive Compliance Strategy. Compliance and enforcement activities under the EPBC Act are subject to the Department's EPBC Act Compliance and Enforcement Policy; which recognises that a range of compliance and enforcement mechanisms are necessary to provide an effective and flexible regulatory system.

The Department is committed to conducting compliance and enforcement activities in accordance with the principles of procedural fairness. This includes ensuring that enquiries, investigations and any decisions which result from these are objective and unbiased. Like most regulators, the Department tailors its enforcement response to the nature and consequences of the activities which in some instances may cause irreversible impacts on the environment, and the attitudes and cooperation of those responsible.

The EPBC Act, like most environmental assessment regimes internationally, is fundamentally based on self assessment. As such, the Department promotes self regulation and encourages the community to act in accordance with its administered legislation and programs through measures such as targeted communication and education activities, timely provision of information and advice, co-operative assistance and collaboration. The Department also applies a range of administrative, civil and criminal sanctions to ensure the most appropriate response to breaches of the legislation.

Environmental Water

Regarding the example cited in Box 3.5, the Department agrees that current natural resource management regulatory regimes which control the licensing, management and use of rivers and water entitlements are complex, and can frustrate the effectiveness (including optimal timing) of environmental water delivery. There is scope for state governments to better harmonise these regimes within and between different catchments to improve the overall efficiency and effectiveness and support landholders and other water entitlement holders who seek to use water rights to achieve environmental outcomes.

The Commonwealth Environmental Water Office (CEWO) actively supports the development of partnerships with state government agencies, industry and community groups and private landholders in environmental watering actions. These partnerships provide enhanced environmental benefits, improve shared outcomes and strengthen local engagement.

For example In April 2016, the Commonwealth Environmental Water Holder entered into a five year Partnership Agreement with the Renmark Irrigation Trust. The Partnership Agreement allows the delivery of Commonwealth environmental water to floodplains in the Renmark area using the Trust's extensive irrigation infrastructure during the off-peak irrigation season (usually May to August). The Commonwealth Environmental Water Holder will be treated as a customer of the Trust on an equivalent basis to existing irrigators.

Under the Agreement, Commonwealth environmental water will be used to rehabilitate floodplain areas affected by salt from rising water tables (caused by past irrigation practices) and increase the abundance and health of vegetation and native fish populations, such as expanding areas of Black Box and restoring River Red gums. It will also provide complementary social and economic benefits. The delivery of environmental water will flush pipes during a time when irrigation demands are low and can

foster recreational and tourism benefits by providing healthy and vibrant public places for walking, cycling and visiting.

While the CEWO will work with state government agencies to facilitate environmental watering through these partnerships, where there is the capacity to do so, ordinary liaison between private landholders and state government agencies is neither a primary responsibility nor priority for the agency.

Minor technical corrections*Page 6*

It is not clear what climate change legislation Table 1 of the Draft Report, “*Regulation across the agricultural supply chain*”, refers to. If this reference is to the impact of reporting emissions for farmers, the two relevant areas are *National Greenhouse and Energy Reporting Act 2007* (NGERs) and the National Pollutant Inventory (NPI). Both of these have little to no interaction with farmers.

NGERs does not require emissions from livestock or cropping to be reported. Emissions from fuel combustion, for example diesel used in tractors, are reportable if they exceed certain thresholds. Farms would typically only exceed these thresholds if operated by large corporations.

In this context, the only two areas of agriculture usually affected by NGERs are:

- Transport: where rail and road freight corporations that exceed prescribed emission or energy consumption/production thresholds are required to report; and
- Manufacturing: where corporations responsible for the processing of meat, dairy, wine etc that exceed prescribed emission or energy consumption/production thresholds have to report.

The Commission could also note that climate change policies such as the Emissions Reduction Fund (ERF) can provide support for a range of emissions reducing activities or projects across the land sector that provide direct benefits to farmers, like lower energy bills, improved water quality and better soil productivity. Projects under the ERF can range from capturing methane produced by livestock, to revegetating unproductive pastures, and storing carbon in the soil. This is in keeping with the Draft Report’s acknowledgement of the significant contribution to carbon emissions that land clearing makes and, conversely, that native vegetation conservation can be considered as a form of carbon abatement under the ERF.

In relation to the NPI although the NPI has a threshold for electricity usage/rating, this threshold is designed to capture larger industrial emitters, such as metal smelters. It is not relevant to intensive agriculture facilities as they, to date, have not met or exceeded the threshold.

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The Draft Report states:

“The thresholds relate to the quantity of fuel, electricity and NPI substances used by the facility”.

The Department suggests amending the text to read:

“The thresholds relate to the quantity of fuel used, and NPI substances used, generated or emitted by the facility.”

The Commission may like to note that the Commonwealth has no role in granting commercial confidentiality exceptions for the NPI

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It is stated that decisions under the EPBC Act must be made within six months. While in many cases an approval decision could be expected within this timeframe the statutory timeframes for approval decisions vary depending the assessment method used. This decision is made on the basis of the scale of the proposed action and complexity of the issues involved.