



31 October 2019

Resources Sector Regulation
Productivity Commission
Locked Bag 2, 530 Collins St East
Melbourne VIC 8003

Dear Secretariat

RE: NFF Response to Productivity Commission Issues Paper on Resource Sector Regulation

The National Farmers Federation (NFF) welcomes the opportunity to make a submission to the *Productivity Commission Issues Paper on Resources Sector Regulation*. The resources sector plays an important role underpinning the economies of many rural and regional communities. The NFF supports a healthy and sustainable resources sector and the intent to identify best practice regulatory approaches that can be applied across the Australia.

The NFF has a goal for agriculture to become a \$100 billion industry by 2030, guided by a 2030 Roadmap which includes regional development. While the NFF supports regional development through investment from the resources industry, it must be conducted in a manner consistent with best practice, recognising the importance of community engagement and that a collaborative approach that fosters a respectful and trusted relationship between industry and farmers is critical to ensure farmers' rights are maintained.

Prime agricultural land is an invaluable resource that provides the capacity for Australia to meet increasing global demand for food and fibre. The NFF considers the protection of such land to be in the national interest and is therefore important to consider preservation of agricultural land through this context.

The paper rightly identifies the importance of mutually-agreeable relationships between the resources sector and the communities in which they operate. Land and water access are crucial to the long-term sustainability and profitability of farmers that remain at the core of concerns between farmers and the resources industry. The NFF has developed a number of policies aimed at protecting the agricultural capacity of our water resources and soils to meet increased food demand. They include:

- Mining and Onshore Gas policy (**attachment A**);
- Land Use policy (**Attachment B**);
- Industry Engagement Guidelines for on-farm activities (**Attachment C**); and
- Prime Agricultural Land policy (**Attachment D**).

They have been attached below for the Commission's consideration. Key principles underpinning and mining policy include:

- The profitability and sustainability of food and fibre production, and reputation for safe clean quality food must not be compromised.
- There should be not net decline in water quality or water quantity for other water users.
- Water management must be consistent with the National Water Initiative.
- Scientific information and monitoring should underpin exploration and development.
- Social, economic and environmental outcomes must not be compromised.

The NFF developed separate industry engagement guidelines to assist industry to respectfully and constructively engage with farmers where they require access to land. Broadly, the guidelines encompass the life cycle of a minerals mining project from exploration to extraction site rehabilitation, reinforcing the importance of ongoing engagement and mutually agreeable relationships between industry and landholder. Further details are available at **attachment C**.

Rehabilitation of agricultural land is an important area for the agriculture sector. The NFF believes that existing or approved mines should be rehabilitated to their pre-development capacity for the community to continue to derive benefit. Rehabilitation should be appropriately funded by the developer.

The NFF would be pleased to further engage the Productivity Commission on this issue. For further information, please contact Warwick Ragg, General Manager NRM,

Yours sincerely

TONY MAHAR
Chief Executive Officer



NFF Mining and Onshore Gas Policy

June 2016

The acceleration of mining and onshore gas development in Australia and how these industries interact with Australian Agriculture has been the cause of much debate and consternation over recent years. This public policy debate has resulted in calls for the protection of waters sources, the preservation of agricultural land, veto rights, or better defined property rights for farmers. However, most of the regulation, which is the source of much frustration, is state based.

At an Australian Government level, there is clearly a role for the EPBC Act in the protection of matters of national environmental significance listed under the Act – this includes any of the activities undertaken by the agricultural and resources sectors. While the Water Act is focused on better management of the Murray-Darling Basin, it specifically prohibits management of the Great Artesian Basin that underlies much of the MDB. There is also clearly a role for the Australian Government in the approval for use of chemicals that might be used by the mining and onshore gas industries.

The National Farmers' Federation has a role to play in any relevant Government policies at an Australian Government level, while its members (the state farming organisations, national commodity councils and other value chain organisations) have a role in amending or seeking implementation of relevant policies at a State and Territory level.

The National Farmers' Federation is concerned about the long-term sustainability of not just the interests of today's farmers but also of tomorrow's farmers. Sustainability has many facets including the environmental, economic and social sustainability of farmers and their communities as well as the broader agricultural sector. The following policies have been developed cognisant of the role of NFF and its members in this important policy debate with the primary aims of protecting the agricultural capacity of our water sources and soils to meet increased food demand.

The profitability and sustainability of food and fibre production must not be compromised.

Australia's mineral and petroleum industries must recognise and avoid any perverse and unintended impacts across the landscape. This includes direct and indirect as well as current and future impacts arising from exploration, mining and production activities, beyond the confines of the licence area and the life of the licence.

Australia's reputation for safe, clean quality food and fibre must not be compromised.

Australian agriculture plays a crucial role in supplying fresh quality food to Australia and the world and to global food security. The safety of Australia's food must not be jeopardised by the mineral and petroleum industries.

There should be no net decline in water quality or water quantity for other water users

NFF recommends that mineral and petroleum industries are required to show no net decline in water quality and no net loss in water quantity for third parties (stock & domestic, irrigation, town water supplies) against benchmark conditions. Conditions of approval must include provisions to ensure that access to and use of the water resource is not compromised.

Water management must be National Water Initiative consistent. As the blueprint for Australia's water reform, all water use or interception by the mineral and petroleum industries must be consistent with the National Water Initiative provisions, including NWI consistent water planning and management. In providing for ecological and resource security outcomes, and protecting the water rights of all users, NWI consistent water planning must address the risks of aquifer depressurisation, water interception, falling water tables and contamination that may arise from mining and onshore gas activities.

Scientific information and monitoring should underpin exploration and development.

Investment in robust scientific information and pre and post impact monitoring are critical to the protection of the natural resources on which farmers' rely. Governments have a clear responsibility to invest in information, monitoring and transparent compliance to help inform the regulation of the mining and petroleum sector, including the issuing of development approval and the assessment of cumulative impacts. Ongoing monitoring should be the responsibility of the developer and should form part of the condition set of development approval.

Social, economic and environmental outcomes must not be compromised.

The nature of mineral and petroleum industries means that they may have both positive and negative economic, environment and social effects. The mineral and petroleum industries must take all reasonable steps to avoid or minimise the adverse effects on communities, landholders and the environment.

The key to productive relationships between agriculture and mineral and petroleum industries is relationships built on genuine trust and goodwill and appropriate community engagement. Agriculture and the mineral and petroleum industries underpin the social and economic fabric of rural and regional communities. The social licence of mineral and petroleum industries is dependent on constructive, transparent and quality engagement and participatory decision making processes over time. Moreover, best practice engagement should include essential elements such as:

- Transparency and full disclosure;
- Collaboration;
- Inclusiveness;
- Ethical and responsible business practice;
- Integrity and appropriate behaviour;
- Capacity building; and
- Listening and responding to community concerns.

Landholder rights impacted by mineral and petroleum licences must be protected by strong regulatory frameworks.

NFF recognises that the mineral and petroleum industries have a right under State and Territory legislation to explore and mine across the landscape. However, NFF notes that further work is required to ensure there are strong regulatory frameworks with clearly specified legal rights, protections and obligations consistent across all jurisdictions.

This legal framework should encompass responsibilities for management, remediation and compensation where mining or petroleum activities are abandoned or “orphaned” or where there are legacy issues after the finalisation of the activity by the resource company.

Land access agreements should recognise landholder and occupier property rights, and the negotiations must be respectful of farmers.

NFF recognises that land access agreements may be the only time where landholders can actually seek to positively influence the process, and receive some protections and assurances from the mineral and petroleum industries. However, it is worthwhile noting that farmers may be overwhelmed, confused and under stress and therefore should seek legal advice. Access agreements should be activities based, and subject to renegotiation should the schedule of activities change. The companies must undertake best practice during and in finalising land access negotiations, and that such agreements must include among others:

- Appropriate recompense for the full range of costs including land holders time, the use of assets and access;
- Clear agreements with landholders regarding the disposal and acquisition of any exploration/extraction licence;
- Mining practices including complying with drilling legislation, and the use of chemicals;
- Biosecurity arrangements;
- OH&S requirements;
- Rehabilitation of land;
- Appropriate insurance and bond arrangements;
- Clear specification of responsibility for, and insurance arrangements to cover, accidental damage to mining infrastructure as a result of farming operations
- Clear specification of responsibility for, and insurance arrangements to cover damage to land and farming practices causing by mining activities and infrastructure;
- Arrangements for normal agricultural operations;
- Any and all conduct whilst operating within the landscape; and
- Protocols regarding notification prior to access

The NFF supports empowering farmers in their negotiations around access to land for mining and gas exploration. A right to say yes or no, that is reasonably exercised, will provide farmers with greater protection in these negotiations.



Land Use Policy

Policy Position

The NFF promotes the protection of agricultural land. The long term success of the agriculture sector will be dependent on our continued access to land and water. Agricultural land is a valuable resource that all levels of government should preserve for the future prosperity of our sector and our nation.

The land use decisions of governments must:

- recognise agriculture as a pillar of our local, state, territory and national economies
- support growth in the agriculture sector enabling farmers to intensify, improve productivity, and change enterprises;
- ensure that any change in land use is compatible with agriculture by ensuring that water resources are protected, food safety and biosecurity are not compromised and that the ability of farmers to implement modern farming practices is not restricted;
- be based on up to date land use trend information and the best scientific knowledge;
- ensure that farmers have the right to genuinely influence decisions about the activities that happen on their land; and
- recognise the role sustainable and profitable agriculture can play in preserving Australia's biodiversity and managing our natural resources.

Issue

The future for Australian agriculture sector is exciting. The United Nations Food and Agriculture Organisation (FAO) predicts that by 2050 global population will exceed 9 billion (an increase of more than 2 billion from 2012), with an estimated 75% increase in demand for food. Much of the population growth, and growth in a more affluent middle class will occur on Australia's doorstep – in China, Indonesia and India. With the right policy settings, Australian agriculture is poised to double production by 2050. Our ability as a sector to reach this potential will be dependent on our ability to continue to access the land and water resources required to grow production.

While agriculture remains Australia's dominant land use, the share of land used for agriculture is declining. At a local and regional scale, change in land use can have a significant impact on the farm sector. Productive land in high rainfall zones along our coastlines and around our cities is now being used for urban and lifestyle living. As our neighbours change, our ability to adopt new technologies and practices is often curtailed by an idealised view of farming. The development mines and the expansion of onshore gas activities can risk the productivity of agricultural land where there are unacceptable impacts on the integrity of surrounding soil and water resources. The land use decisions of governments at all levels – local, state and federal – have the potential to affect the success of the agriculture sector.

Background

In 2005/06 approximately 59% of the Australian continent is used for some form of agriculture¹. Agriculture remains Australia's dominant land use, covering around 456 million hectares (ha). However the share of land for agriculture is declining, with a reduction of about 4 per cent (almost 19 million hectares) between 1992-93 and 2005-06. The availability of more recent data that tracks land use change at a regional, state and national scale is poor. However, we see land use changes at the regional and local scale that have the potential to significantly affect the agriculture sector.

These changes can:

- displace agriculture entirely (for example from the expansion of urban and peri-urban residential areas or the conversion of use from farmland to conservation areas)
- reduce the net productivity from the land (for example from the expansion of rural lifestyle living in our coastal fringes)
- limit the range of farming practices that can be used (for example, neighbour pressures can limit the ability to intensify or use more efficient practices)
- put at risk the natural resources, such as water, on which agriculture production relies (for example through mining or onshore gas developments that interfere with groundwater); and
- put at risk our international reputation as producers of safe food (for example the risk of land and water contamination from the chemicals used in onshore gas activities).

Local, state and federal governments all have responsibilities and decision making powers that influence access to land for the agriculture sector. The responsibilities and powers are largely enshrined in planning and environmental protection laws.

What the industry needs

The agriculture sector is seeking that all levels of government:

- recognise the important role that the agriculture sector plays – and will continue to play - in the economies of our local communities, our states and territories and our nation;
- ensure that food and fibre production is prioritised in land and resource planning decisions. We must reset the balance between agriculture and other land and resource uses, particularly where co-use and co-existence is achievable;
- commit to protecting agricultural land from unreasonable land use change and land use regulation. We need a more comprehensive and strategic approach to considering the value of agricultural land in land use planning, and development assessments and approvals; and

- strive for cohesive planning frameworks that support the growth of the agriculture sector
- further invest to improve the information and knowledge base on which land use planning and development decisions are made. We need access to more up to date data on the rate of land use change at a national scale, with a finer focus in those areas where the risks to agriculture are most acute. We need a stronger scientific knowledge base to support the regulators who make decisions on developments which have the potential to impact land and water resources. And where decisions are made to change land use or allow co-use, we need regulators to transparently monitor observed impacts and enforce the conditions that are put in place to protect agricultural land.

2017



Industry Engagement Guidelines for On-farm Activities

Context

The National Farmers' Federation has developed a national code of conduct incorporating principles to guide respectful and constructive engagement between farmers and industries that require access to land. It relates to activity on farmland including: renewables (solar and wind) development, cultural heritage studies and surveys, carbon industry, the resources industry as well as others that may emerge in the future.

The advent of mining and gas exploration, and more recently, solar and wind farms on agricultural land has often created significant land use conflicts in many regions around Australia, and stress for farmers and farming communities.

While we support industry investment in regional communities, we recognise that a collaborative approach that fosters a respectful and trusted relationship between industry and farmers is critical to ensure farmers rights are maintained, and are able to make informed decisions. These guidelines provide a general set of principles intended for the specific purpose of industry engagement with farmers.

It should also be noted that, a range of legislative and regulatory requirements exist for different types of activities and development, including:

- Development and planning laws;
- Environmental legislation (particularly for an activity that is likely to have a significant impact on matters of state or national environmental significance); and
- Water licencing and regulation.

Guidelines

General

- Parties should be aware of local, state and federal regulation and legislation regarding the activities and/or development prior to commencement of the activity. Where appropriate, the farmer should share information on specific requirements relating to agricultural activity on the land;
- The farmer should be aware of their rights and options. In advance of any discussions regarding access or development on the land, the farmer should have a copy of the industry guidelines

(where applicable). Depending on the type, scale and risks involved with the activity, the farmer should seek legal advice to ensure they are appropriately protected;

- Industry should be aware that many farmers may have engaged with a variety of parties requesting access and use of their land. These past experiences will influence how a farmer views industry practices;
- Farmers have a right to reasonably expect that industry will comply with the guidelines at all times. Industry must also be able to demonstrate their compliance with industry guidelines and provide sufficient evidence upon request;
- Activity conducted on land used for farming requires a high level of cooperation and trust between the landholder and the activity proponent. This requires long term face-to-face engagement as well as on the ground staff and all subcontractors, where practical, to help facilitate effective communication. The farmer should have accessible channels of communication with appropriate personnel to engage in discussions, raise questions and resolve issues at every stage of the process. These processes should be agreed in writing by both parties prior to commencement of any construction work; and
- Industry must identify all relevant risks associated with the activities or development and inform the farmer, so far as reasonably possible, of these risks and discuss how they can be managed.

Land use agreements

- Land use agreements should recognise landholder and occupier property rights, and negotiations must be respectful of farmers' use and enjoyment of the land;
- Any agreements made in writing with the farmer should be expressed in a clear, accurate and transparent manner using plain English. A farmer is encouraged to have all agreements in writing, although it may not be legally required for some activities;
- Industry must recognise farmers' concerns associated with large scale projects such as impacts on amenity, changes to the microclimate, and potential loss of productive agricultural land. Proponents should work, as far as practicable, with the farmer to minimise these impacts and integrate development into the broader farm system;
- An agreement should establish the basis for which to achieve this and a process for rehabilitation or other compensatory measures. An agreement should provide a protocol for notifying the timing, duration and nature of the activity, access routes, and means of liaising, rehabilitation or compensation of any damages;
- In the design and operation of the project or activity, care should be taken to avoid and/or minimise damage to agricultural land where feasible. These could include areas of high production agricultural land and biodiversity, water supplies, maintaining biosecurity etc. and should be agreed through consultation with the farmer and formalised in a written agreement before commencement;
- An agreement should be reached before the commencement of the activity or development regarding agreed outcomes for restoration of the site and any compensation that is determined to be necessary;

- Industry is strongly encouraged to adopt a ‘benefit sharing’ approach, beyond the landowner directly engaged, when engaging with small regional communities; and
- Responsible stewardship and management should be demonstrated throughout the life of the project. The agreement should detail how this will be achieved and compensatory measures if not.
- Industry must not compromise existing farm practices including: biosecurity, animal husbandry and timing of cropping. Activities undertaken on-farm should respect these operations and be reflected within the agreement.

Community engagement

- A social licence to operate is critical. Community engagement should be genuine, consistent, and based on mutual respect, and occur from the very beginning of a project. The process should seek to build an enduring relationship between the proponent and the community, maximise beneficial outcomes. Engagement and decision-making should be tailored around the needs and expectations of each community;
- Industry should proactively make available information to the broader community in a way that is accurate, accessible and timely throughout the life of the project in a way that reflects the needs and expectations of the particular community;
- Reasonable opportunities where the activity or development can enhance the value of the land in consultation with the farmer are encouraged; and
- Site restitution at the end of the project is critical. The proponent must engage with the farmer to responsibly decommission the site, including infrastructure and possibly recycling (i.e. product stewardship) and ensure that the land is returned to the way it was and or can be used for other agreed purposes.



PRIME AGRICULTURAL LAND

POLICY POSITION

The National Farmers' Federation (NFF) recognises the importance of prime agricultural land. The long-term success of the agricultural industry will be dependent on continued access to land and water resources and requires a long-term strategy centred on the productivity of our food and fibre systems. Prime agricultural land is a crucial consideration in this process.

Prime agricultural land is an invaluable, natural resource that provides the capacity for Australia to meet increasing global demand for food and fibre. It also provides significant environmental and social outcomes. The NFF recognises that prime agricultural land is complex because: land conditions are not static, it is influenced by both soil quality and proximity to water resources, access to infrastructure, and future technology and innovation. It cannot simply be defined by cadastral or other boundaries.

A prime agricultural land policy must not be prescriptive, but would provide a strategic pathway/set of principles for Governments to manoeuvre around inherent difficulties of land use conflicts and the need to produce food and fibre for a growing population. While protecting land is important, decisions made by individuals on the best use of their land must not be compromised and must not stifle future innovation. The NFF believes that a prime agricultural land policy should not be limited to 'protecting' land per se, but rather to provide a framework/set of principles to maintain or improve long-term land productivity that would safeguard Australia's capacity to produce food and fibre.

The NFF has separately prepared a set of guidelines — *industry engagement guidelines for on-farm activities* as an addendum to this policy, to facilitate best practices for industry to respectfully engage farmers for potential on-farm activities.

Issue

Increasingly, land used for farming in Australia is declining whilst demand for food and fibre is increasing globally. However, agriculture remains Australia's dominant land use. The area for agricultural holdings has declined almost 66 million hectares between 1992-93 and 2016-17. Sustainable intensification has become increasingly important to meet the global increase in food demand, and while this has partially offset the reduction in food production due to a loss of land, this alone will not offset the loss of broadacre food production. Securing productive agricultural land remains imperative to maximise Australia's food production potential.

Productive land in high rainfall zones along the coastlines and around cities are now being lost to urban expansion. The development of mines and expansion of onshore gas activities can risk the productivity of agricultural land where there are potentially irreversible impacts on the integrity of soil and water resources. Continued urban expansion and, more recently, the development of solar and wind farms has raised concerns about further losses of prime agricultural land, particularly as many of these developments occur in agricultural areas.

The NFF recognises that land conditions change over time, particularly with climate change expected to increase the variability of weather and decrease rainfall in many parts of Australia. Some areas have already seen a shift in the type of agricultural production due to a changing climate. Additionally, some areas have become areas of high agricultural value due to infrastructure developments providing greater access to water,

particularly in irrigation districts. Given this complexity, protecting prime agricultural land will be a complex task requiring adaptation through time.

This poses a significant challenge to agricultural communities that rely on agriculture for their economic viability. While the NFF acknowledges the diversification of income projects and other land uses provide to communities, non-agricultural on-farm development must be managed in a way so as to complement or coexist with agriculture, not stifle it. The NFF's 2030 Roadmap seeks to stem the loss of productive farmland to protect agricultural land and water assets, and prioritise global food and fibre needs. With the right policy settings, Australia is poised to become a \$100 billion industry by 2030 and double production by 2050.

Acknowledgement of these challenges, and recognition of the importance of agriculture, have led efforts from several state and territory governments to protect prime agricultural land. In South Australia, Environment Food and Production Areas (EFPA) were introduced to protect vital agricultural lands surrounding metropolitan Adelaide from urban encroachments. The Victorian Government is currently looking to protect the long term future of strategic agricultural land in Melbourne's green wedge and peri-urban areas. The New South Wales Government has developed an evidenced based methodology to identify 'important agricultural land' and developed maps to identify 'biophysical strategic agricultural land' for protection. Similarly, the Queensland Government has sought to identify 'Important agricultural areas' (IAAs) and an 'Agricultural land classification' (ALC) to guide planning decision making.

However, there is not yet an agreed national policy to manage prime agricultural land.

BACKGROUND

The United Nations Food and Agriculture Organisation (FAO) predicts that, by 2050, the world's population will exceed 9 billion, and projects that food production (net of food used for biofuels) must increase by 70 per cent. Land for agricultural expansion is met with competition from:

- Resources industry;
- Conservation;
- Urban expansion;
- Renewable energy; and
- Carbon industry.

In 30 June 2017, approximately 51 per cent of Australia's landmass is now managed by farmers. Agriculture remains Australia's dominant land use, covering around 372 million hectares (ha). However area of agriculture holdings is declining, with a reduction of about 14 per cent (almost 66 million hectares) between 1992-93 and 2016-17. However, land use changes at the regional and local scale that have the potential to significantly affect the agriculture sector.

These changes can:

- displace agriculture entirely (for example from the expansion of urban and peri-urban residential areas or the conversion of use from farmland to conservation areas);
- reduce the net productivity from the land (for example from the expansion of rural lifestyle living in our coastal fringes);
- limit the range of farming practices that can be used (for example, neighbour pressures can limit the ability to intensify or use more efficient practices);
- put at risk the natural resources, such as water, on which agriculture production relies (for example through mining or onshore gas developments that interfere with groundwater); and
- put at risk our international reputation as producers of safe food (for example the risk of land and water contamination from the chemicals used in onshore gas activities).

Local, state and federal governments all have responsibilities and decision making powers that influence access to land for the agriculture sector. The responsibilities and powers are largely applied by either planning or environmental protection laws but the framing and delivery also need to involve the arm of governments involved in agriculture.

WHAT THE INDUSTRY NEEDS

The agricultural sector is seeking that all levels of government:

- recognise the important role that the agriculture sector plays — and will continue to play — in the economies of our local communities, our states and territories and our nation;
- develop a national agriculture strategy to guide Australia’s vision for long-term and sustainable production of food and fibre;
- in acknowledgement of farmers local understanding, respect the right of an individual farmer to determine his/her own priority land use within existing planning requirements;
- strive for coexistence between land use practices where possible;
- recognise the importance of consulting local communities. They have a deep understanding of local issues, challenges and opportunities, especially for projects of significant scale;
- recognise that prime agricultural land is an irreplaceable resource that must be protected from permanent loss for agricultural use;
- invest in ongoing research efforts to improve land productivity and sustainable intensification;
- invest in resources that provide stronger scientific knowledge base to support regulators who make decisions on developments which have the potential to impact prime agricultural land;
- safeguard and invest in infrastructure to maximise the potential and sustainable intensification of agricultural land and enables greater control of supply chains, including water infrastructure;
- build a shared, public understanding of prime agricultural land and the role it plays in the production of food and fibre, and the broader environmental and social benefits it provides for farmers and the broader community; and
- provide certainty in the regulatory framework to support long-term investment for the sustainable development and management of prime agricultural land.