



Victorian Farmers Federation

*Supplementary Submission
to*

**Productivity Commission
Inquiry in to the Impacts of Native
Vegetation and Biodiversity
Regulations**

January 2004

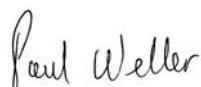
The Victorian Farmers Federation

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 Board of Directors, 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 peers 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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Introductory Comments

This supplementary submission is in response to the Commission's draft report on the Impacts of Native Vegetation and Biodiversity Regulations released for public comment in December 2003.

The VFF congratulates the Productivity Commission on this draft report. We believe it has picked up on the problematic nature of native vegetation regulation and addresses the important issues from farmers' perspective.

To date it would seem Government in Victoria has failed to put in place an appropriate management regime for native vegetation. From first settlement until the late 1980s, farmers were regulated to remove native vegetation or forfeit their properties. With hindsight this may have been an inappropriate policy but the policy pendulum has swung too far in the opposite direction. Now farmers are expected to overcompensate for the removal of single trees, putting more and more of their properties back to native vegetation, sometimes at significant economic cost but with very little environmental gain. Importantly there is no provision in the Victorian regulations to balance environmental benefits and economic and social costs. The regulations require landowners to preserve native vegetation irrespective of cost.

Victorian farmers would like to see a sensible approach to native vegetation management that protects native vegetation of high ecological significance but allows farmers to get on with the business of farming. Regulations restricting clearing must be complimented by policies that equitably share costs between landowners and the community.

While these issues are well addressed by the report, the recommendations as currently framed are likely to be ignored by State Governments. Consideration needs to be given to placing the maximum possible pressure on State Governments to recognise and address the serious deficiencies in their regulations.

1 Effectiveness of regulations in Victoria

Only small amounts of native vegetation are cleared in Victoria each year. Environmental groups use this fact to claim that regulations are proving successful in Victoria and a stronger regulatory response would further reduce the level of vegetation removal. The Native Vegetation Framework estimates the amount of native vegetation removal in Victoria to be at approximately 2500 hectares per year. This estimate, used in the Productivity Commission draft report must be considered questionable at best, as it is determined using satellite imagery and it does not differentiate between native vegetation removal for agriculture and native vegetation removal for urban development.

The VFF suspects that clearing on rural land is more than offset by revegetation and planting works on rural land. Is the satellite imagery accurately capturing revegetation works occurring across Victoria? The Draft Report recommends:

"Ongoing efforts to improve the quality of data and science on which policy decisions are based are required, particularly 'on-the-ground' assessments to test the accuracy of vegetation mapping based on satellite imagery"

This recommendation should be made more specific proposing the Commonwealth, through its own scientific research institutions, undertake an audit of the accuracy of vegetation mapping and an assessment of not only where the clearing occurs but also the ecological significance of cleared native vegetation and the purpose for which the land was cleared.

Clearly, regulations are preventing some farmers from clearing land to provide future development, which they are likely to choose to do over time. Nevertheless at the same time, the environmental benefits of requiring farmers to retain large tracts of native vegetation on a small number of private properties, creates a high level of costs on a small number of individuals.

2 Best Practice approach to Native Vegetation Regulations.

The Commonwealth Government should encourage states to adopt a best practice approach to Native Vegetation Management. There are a number of ways this could be achieved.

The Commonwealth should encourage the development of an Intergovernmental Agreement through Council of Australian Governments dealing with Native Vegetation Regulations. The agreement should outline principles for best practice. The principles could cover:

- Cost sharing arrangements
- Procedures to ensure environmental gains are balanced against economic and social cost
- Clear specification of objectives of regulations and monitoring to measure their impact against the objectives
- The provision of impartial and low cost dispute resolution.

In addition to the above the Commission should identify examples of good regulatory practice within existing state regulations and policies (if any exist). The report's recommendations should encourage states to move towards "best regulatory practice" adopting the best elements of the existing approaches.

3 Recent Developments in Victorian Native Vegetation Regulations

Since the VFF made our submission to the Productivity Commission in August 2003, there have been developments in Victoria's regulatory regime for native vegetation.

3.1 Change to Exemption for removal of rabbit burrow/fox holes

Without consultation the Victorian Government amended Section 52.17 of the Victorian Planning Provisions, which deal with exemptions for native vegetation removal for vermin control. The relevant section now reads (changes in italics):

"A permit is required to remove, destroy or lop native vegetation. This does not apply: To the removal, destruction or lopping of the minimum extent of vegetation necessary to remove burrows for vermin control *subject to the written agreement of an officer of the Department responsible for administering the Flora and Fauna Guarantee Act 1988*. The total area in one ownership to be destroyed must not exceed 10 hectares."¹

This amendment was introduced in response to the Department of Sustainability and Environment (DSE) losing an appeal at VCAT. A Victorian farmer removed a number of trees in order to clean up rabbit burrows on his property. This action is exempt from a permit and consequently the farmer did not seek a permit for the removal of vegetation. The Department then took action against the farmer arguing the exemption did not apply in this case. Subsequently the farmer appealed the Department's decision at the Victorian Civil and Administrative tribunal (VCAT). The tribunal found the farmer had undertaken the works in accordance with a legitimate exemption. The Department did not graciously accept the umpire's decision but rather amended section 52.17 of the VPP to require all farmers to seek permission from DSE if native vegetation is to be removed in the process of destroying rabbit warrens or fox holes. Given the extremely wide definition of native vegetation this in effect means farmers across the state must obtain written approval from the Department before they undertake any works to remove burrows for vermin control.

In practice, DSE has promised to streamline its letters of permission, keeping the response time down to a matter of days, rather than weeks or months. However, this additional regulation serves no real purpose other than to create paperwork for the farmer and DSE. Rarely does DSE inspect the properties of people seeking permission, and many farmers see this requirement to get a letter from DSE to go about normal farming business as unnecessary bureaucracy. The VFF believes that very few farmers will even bother with seeking this approval. Farmers want to be able to remove a rabbit burrow when they see it, not go in to the nearest DSE office and ask for a letter of permission, and wait for it to arrive before they can destroy the hole.

¹ Victorian Planning Provisions section 52.17 Native Vegetation, 24 July 2003.

It does however, provide a legal safety net for DSE should they ever seek to take action against a farmer undertaking vermin control activities in the future.

This change to regulation was undertaken without consultation with the VFF, despite our ongoing involvement on the State's Draft Operational Guidelines Reference Group, and the VFF's clearly demonstrated interest in native vegetation and farm business regulation.

3.2 Draft Operational Guidelines (DOGS)

The VFF briefly discussed the development of Draft Operational Guidelines (DOGS) for the Victorian Native Vegetation Framework (the Framework) in our original submission. The intention of the Operational Guidelines, which are still under development, existing in draft form is to make the interpretation of the provisions within the Framework easier.

The first draft of the Operational Guidelines consisted of 88 pages of material, to assist interpretation of the 59 page Framework. The material included in the DOGS was extremely complicated and unworkable. Practical interpretation of the DOGS would have been beyond the capabilities of most individuals. When the VFF expressed strong concern about the complexity of the document, we were advised that it would be possible for the DSE to develop a further document to assist people with practical interpretation of the DOGS. This approach was considered impractical by the VFF.

A shortened and amended version of the DOGS is to be reviewed by the VFF prior to the Productivity Commission hearing. While the content may be reduced to a more 'user friendly' format, the fundamental principle behind the way in which native vegetation is regulated in this State is flawed.

Since the VFF's original submission was made to the Productivity Commission, we have also become aware that in February 1996, the then Department of Conservation and Natural Resources had produced Planning Guidelines for Native Vegetation Retention Controls. The VFF is unsure of the extent to which this document has been used to assess native vegetation applications. We doubt that it has been widely circulated.

3.3 Regional Native Vegetation Plans

The original VFF submission discussed Victoria's Regional Native Vegetation Plans. To date, these have still not been released. The VFF believes that the Draft plans, compiled in 2000 in consultation with Native Vegetation Steering Committees in each Catchment Management Authorities, have been substantially altered to reflect the State Government's native vegetation management policy.

Despite these plans not being finalised and released, the VFF is aware of the Draft Regional Native Vegetation Plans being used to assess at least one VFF member's current native vegetation removal application in Central Victoria. With the document unavailable, the farmer in question is not able to obtain the material that is being used to assess his native vegetation application.

It is completely inappropriate to use material in a Draft document to assess native vegetation removal applications.

4 Estimating the Impacts

The Commission has asked for further assistance in the estimation of the impacts of clearing constraints on farmers. Impacts in this area are extremely difficult to define, as each farmer's experiences with the regulations, and the impact of them on the farm business, rural communities and development will be different.

The VFF has, nevertheless, attempted to list in broad terms, the impacts of this regulation on farmers:²

² This is an extension of Section in VFF submission entitled "The Problems"

4.1 Unrealised Potential

This includes loss of opportunities to develop a proportion of the property for agricultural industry. It is VFF policy that farmers be allowed to develop farm properties to the extent necessary to maximise farm business, without producing offsite effects to impact upon others. The view is that market forces will determine the extent to which a farmer develops and the value of the land as a resource will ensure optimal environmental outcome to ensure the ongoing sustainability of the land.

Unrealised potential also includes loss of opportunity to use more efficient technology, or intensify farm practices.

Unrealised potential can result from the regulations preventing new native vegetation removal, and also the requirement for large offsets if tree removal is permitted, which can make a development unviable.

4.2 Management Impacts/Costs

The costs incurred by farmers in maintaining native vegetation are easier to assess. Management costs include aspects such as pest and weed control in areas of native vegetation, fire management, grazing management and payment of rates. Farmers also incur costs in fencing native vegetation, and in fencing alongside an area of native vegetation.

Many farmers also report that they actually lose production as a result of native vegetation, which can provide haven for foxes, rabbits, kangaroos and weeds.

Farmers are also greatly restricted in harvesting opportunities for native vegetation due to the nature of the regulations.

4.3 Permit Applications

The problems with the permit application process have been highlighted in our previous submission. The process itself can have significant impacts on a farmers' financial situation, community relationships, interest in the environment and can lead to high levels of personal and family stress.

4.4 Social Impacts

Native vegetation regulations in Victoria are likely to have an increasing detrimental impact on the growth and development of rural communities as it becomes more and more difficult to build rural infrastructure, due to the additional cost of providing native vegetation offsets.

On the other hand, the regulations are also leading to perverse negative outcomes in other ways. For example, in three rural areas of Victoria, agricultural land has been short listed for the site of a toxic waste management facility. A key reason for the use of privately owned agricultural land for such a facility appears to be because the land has been cleared for agriculture. Using this land is much more efficient in terms of the Government's offset criteria, which would require significant replanting if State Forest or other heavily treed public land was used.

A site found on public land in close proximity to where the waste is generated would be a far more appropriate option, ensuring that a community need is funded by the Victorian community as a whole, rather than at the social and economic cost of a small rural community.

4.5 Other Externalities

Public safety appears to now be a lower priority than native vegetation protection, and the offsets required for the removal of a potentially dangerous tree could mean that the tree is not

removed.³ The Native vegetation policies of the Victorian Government are putting the lives of people at risk.

It is extremely difficult to quantify the real cost of this regulation to farmers, especially in terms of unrealised potential.

The VFF believes that farmers on properties with a significant level of native vegetation are bearing an unreasonable proportion of the cost of Victoria's native vegetation regulations. As stated in your report, these costs are extremely difficult to assess.

5 Specific comments on utilisation of VFF submission by PC

Page 337 of the Productivity Commission draft report states "the VFF considered that the FFG Act *had worked well* for farmers." This comment is slightly misleading. Our view is that the FFG Act could potentially work well for landowners, but has been largely usurped by regulation, which does not require the provision of compensation to farmers. The normal process in Victoria is to regulate native vegetation through the Planning Scheme rather than through the FFG Act.

6 Conclusion

The VFF agrees with the findings of the Productivity Commission Draft Report. The cost of native vegetation retention is unfairly borne by a few in this State to fulfil wider community expectations. Native vegetation regulation is failing in that it achieves the protection of native vegetation at a very great cost to some individuals, often for a negligible environmental gain. It can also produce negative effects.

The VFF believes that the best way forward for native vegetation management in Victoria is to remove the current system of regulation, and seek a system that only regulates to ensure that the land management decisions of one landowner do not impact negatively on other landowners. This would lead to a landowner choosing to protect the vegetation that is optimal for the sustainability of the property. Where it is in the best interests of the community to protect native vegetation above and beyond what is optimal for the sustainability of the property in question, then the landowner must be paid by the community to do so.

³ The Regulations do provide an exemption from a permit for the removal of vegetation that is a safety risk. However, determining at what point a tree constitutes a safety risk is extremely fraught. Landowners are generally required to seek the advice of a 'qualified arboriculturalist' to determine safety risk. (See CNR Planning Guidelines for Native Vegetation Retention Controls February 1996)