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24 August 2012

The Honourable Robyn Parker  
Minister for the Environment

**Submission to the Review of the Native Vegetation Regulations 2005**

Dear Minister Parker,

Thank-you for the opportunity to comment on the review of the Native Vegetation Regulations.

We are graziers from the New England Tablelands of NSW. Our family has been producing beef cattle and Merino wool on our Properties for 38 years. We manage about 35% of our properties purely for conservation outcomes. These areas are maintained with live trees and dead timber, bushrock and native understorey and midstorey vegetation. Fire and livestock are excluded where ever possible. The remaining areas of our properties are a mixture of native and introduced grassy woodlands and are managed for productivity with rotational grazing, fertiliser and clover. We spend considerable time and money controlling feral pests and weeds. We live in an environment where the regrowth of native vegetation is constant. Vegetation management is an ongoing and normal management activity to maintain the visibility across our landscape so activities involving interaction with livestock, such as mustering, can be undertaken safely. Every property requires a balance between productivity and conservation.

We have concerns with some aspects of the proposed changes to the Native Vegetation Regulations. We make specific recommendations regarding

- Property Vegetation Plans (PVPs);
- the Environmental Outcomes Assessment Methodology (EOAM);
- Routine Agricultural Management Activities (RAMAS);
- housing approvals;
- Natural Resource Management Plans;
- local government; and
- penalties

The concerns with aspects of the Native Vegetation Regulations include:

1. The adherence to the system of Property Vegetation Plans that requires in perpetuity offsets, limiting future development opportunities for individual landowners and the State.
2. The ongoing commitment to the Environmental Outcomes Assessment Methodology which is an inflexible computer based system for assessing whether clearing will improve or maintain the environmental outcomes. The system has a very strong bias towards threatened species offsets that are not practical or achievable and has no realistic process for appeal of decisions. It is a system that can only be used and understood by highly trained Catchment Management Authority (CMA) staff.

3. The inability to carry out the same Routine Agricultural Management Activities (RAMAs) across the different regions of the State despite carrying out the same businesses.
4. Varying buffer distances for RAMAs that fail to reflect the hazards caused by differing tree heights and densities in different regions across the State.
5. The inability to harvest timber for construction on farm where the potential of threatened species habitat exists.
6. The inability to clear a site to build a home on agricultural land unless the dwelling requires development consent under the EPA Act.
7. Natural Resource Management plans that can be developed by the Minister that remove the ability of landholders to undertake normal and legal clearing of regrowth by reclassifying regrowth as protected regrowth on RAMAs, land previously the subject of a PVP and on excluded land. These plans have no public scrutiny, no input from CMAs and no appeal process.
8. The removal of the ability of Local Government to undertake limited native vegetation management as a RAMA which will lead to more red tape and hence less necessary vegetation management.
9. The lack of a system of appropriate penalties for breaches of the Native Vegetation Act. Under the Native Vegetation Act individuals and corporations are treated the same which is unusual for breaches of criminal law and fails to reflect the low level of damage often resulting from breaches of the Act and the nature of many farms which are often family partnerships or sole traders rather than companies.

### **Part 3 Property Vegetation Plans**

Property Vegetation Plans (PVPs) are an inflexible and over regulated system of vegetation management. The process is slow to gain approval and fails to take account of social and economic outcomes from vegetation management. The requirement for in perpetuity offsets to meet demands to maintain or improve environmental outcomes is unfair and severely limits the future potential for landholders and the State.

PVPs should be removed from the Native Vegetation Act and replaced with a more advisory, self regulatory approach to native vegetation management that is supported with incentives for undertaking positive management activities.

### **Part 4 Assessment of broadscale clearing – environmental outcomes**

The Environmental Outcomes Assessment Methodology (EOAM) is a computer generated outcome that either gives the green light to clearing or does not and is based on inputs of vegetation types and regional, local and site conditions of that vegetation as well as lists of potential threatened species that could potentially be found on the site. Other resources such as salinity and soil condition are also assessed. The threatened species component of the biodiversity section of the EOAM is so heavily weighted that it requires offsets that significantly outweigh any management activities that could be undertaken to mitigate any negative impacts of clearing.

We recommend that

1. the EOAM is modified to significantly reduce the weighting of the threatened species component compared with other environmental impacts.
2. the EOAM is made significantly more transparent so operators other than CMA staff can access and use the methodology as a management tool to assess the impact of different management techniques.
3. the maintain or improve test is applied across the whole property and assessed over the medium to long term rather than just the area of proposed clearing and in the short term.

## **Part 6 Routine Agricultural Management Activities (RAMAs), Division 2 Infrastructure, Subdivision 1 Rural Infrastructure**

The RAMAs relating to the construction, operation and maintenance of infrastructure allowed to be undertaken across the different regions of the State are defined in Section 11 (1) (a) of the Native Vegetation Act 2003. The Native Vegetation Regulations extend the types of activities that can be undertaken in some regions but not in others. This lack of consistency discriminates against landholders undertaking the same business in different regions.

For example in the Western Division a landholder can undertake to clear for the following RAMAs in addition to the activities listed at S 11(1) (a):

access trail, cut line for stock movement, telephone line or cable, power line or cable, drain to a water storage, bore drain, pipeline, irrigation channel, firebreak, airstrip, or ground tank.

These activities are not permitted in the Central, Eastern Central or Coastal Regions as the Native Vegetation Regulations do not extend these activities to these regions. For example a grazier in the Western Division is able to move a mob of livestock along a 'cut line for stock movement' cleared to a distance of 30 metres. This allows for the safe movement of livestock by providing visibility and manoeuvrability around the livestock. This RAMA is not permitted in the Central region despite the livestock mob being exactly the same size and temperament while the tree size and density are greater and the terrain is much more challenging for safe mustering. Firebreaks are also a significant issue with no allowance for firebreaks in the Central, Eastern Coastal or Coastal regions. In the Central region where we farm we have a high rainfall environment that grows a significant body of grass every summer which then dries off in the winter frost period. We are in a lightning prone area and often suffer summer bushfires. We need to be able to clear firebreaks to control fires before they become large and unmanageable. Uncontrolled fires cause significant damage to infrastructure, pastures and to our conserved native vegetation.

There needs to be flexibility in providing RAMAs that allow for the safe management of land. It is possible to use cleared lines across the country for multipurposes. That is, it is possible to use a cut line for stock movement as a firebreak however in the Central region neither of these RAMAs are permitted and the fenceline RAMA is too narrow for either mustering or firebreaks.

In addition to the inequitable nature of the activities permitted to be carried out, the distances allocated to the same activity in different regions do not accurately reflect the dangers imposed by the differing height and density of tree growth in different regions. We understand that this is not likely to be possible in the Coastal region or the Eastern Central region where the higher rainfall leads to tall tree growth however the property size is often smaller than further west so clearing percentages become unacceptable.

For example, in the Western Division it is permissible to clear a permanent fence line to a distance of 20 metres either side, however a permanent internal fence in the Central Region is only permitted to be cleared to a total width of 10 metres. This is despite the fact that trees in the Central Region grow significantly higher and thicker than in the Western Division. As the RAMA is for the construction, operation and maintenance of rural infrastructure such as fences, tracks or buildings etc. it is nonsensical to allow trees to remain in a position where if they fall or branches fall from them, the structure is placed at risk of being severely damaged and rendered unworkable.

In response to these concerns regarding RAMAs, we recommend that:

1. Firstly that there is a single, comprehensive list of activities that are permissible as RAMAs

under Part 6, Division 2, Subdivision 1 – Rural Infrastructure of the Native Vegetation Regulations for all Regions of the State.

2. Secondly that the buffer distances described in Part 6, Division 2, Subdivision 1, 26 (1) to (3) be changed to reflect tree heights and densities in different Regions.

An example of these RAMAs may be:

<b>RAMA</b>	<b>Western Division</b>	<b>Central Region</b>	<b>Eastern Central Region</b>	<b>Coastal Region</b>	<b>Small Holdings</b>
Boundary fence	20 metres either side	25 metres either side	25 metres either side	6 metres either side	6 metres either side
Permanent internal fence	20 metres total	25 metres total	25 metres total	6 metres total	3 metres total
Temporary fence	10 metres total	15 metres total	10 metres total	3 metres total	2 metres total
Gateways	100 metres from gateway	100 metres from gateway	50 metres from gateway	30 metres from gateway	10 metres from gateway
Roads and tracks	6 metres total	10 metres total	10 metres total	6 metres total	4 metres total
Existing habitable building	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006
New habitable building	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006	The asset protection zone as defined in the document Planning For Bush Fire Protection 2006
Sheds for rural infrastructure purposes	30 metres from outside edge of structure	40 metres from outside edge of structure	20 metres from outside edge of structure	20 metres from outside edge of structure	5 metres from outside edge of structure
Dams and ground tanks	5 hectares from centre or 100 metres from outer edge	5 hectares from centre or 100 metres from outer edge	2 hectares from centre or 50 metres from outer edge	50 metres from outer edge	10 metres from outer edge
Stockyards and associated holding paddocks	50 metres from outer edge	100 metres from outer edge	50 metres from outer edge	20 metres from outer edge	10 metres from outer edge
Windmills,	1 hectare	3 hectares	3 hectares	10 metres from	3 metres from

bores, tanks, pumps, water troughs.				outer edge	outer edge
Pipelines, bore drains, drains or banks to water storages, irrigation infrastructure	10 metres wide	15 metres wide	10 metres wide	8 metres wide	2 metres wide
Firebreaks	30 metres	40 metres	20 metres	20 metres	6 metres
Firebreaks where mallee species predominate	100 metres	100 metres	50 metres	50 metres	10 metres
Cut line for livestock movement and management	30 metres	40 metres	30 metres	10 metres	3 metres
Regrowth thinned for safety purposes	10 overstorey trees per hectare to remain	10 overstorey trees per hectare to remain	10 overstorey trees per hectare to remain	20 overstorey trees per hectare to remain	30 overstorey trees per hectare to remain
Private telephone or power line	30 metres	40 metres	20 metres	20 metres	10 metres
Airstrip	Distances and area sufficient to meet civil aviation standards	Distances and area sufficient to meet civil aviation standards	Distances and area sufficient to meet civil aviation standards	Not applicable	Not applicable

This table should only be finalised after consultation with landholders in the relevant Regions to ensure all rural infrastructure are covered and the distances are appropriate.

## RAMAs

We make the following recommendation on RAMAs in general. Rather than be prescriptive on what activities are allowed and to what distances they can be carried out to and in what regions, a better approach to the process of regulating clearing may be to use a percentage tree cover equation. For example in each region a desirable minimum native vegetation percentage could be defined. The native vegetation could include grasslands and woodlands as well as forests or other woody vegetation. If a property has under this percentage then no clearing is permitted without input from the CMA to address specific infrastructure issues and would then be offset with plantings in other areas of the property to improve the environmental outcomes. If the property exceeds the minimum percentage cover then any clearing can be undertaken so long as the land owner exercises due diligence to ensure that there will be a balance between environmental, social and economic benefits.

**Part 6 Division 2, Subdivision 1 – Rural Infrastructure, 27 – Obtaining construction timber, (3) (a)**

This section concludes with the sentence '*....or is likely to comprise habitat of such a threatened species,*'.

This effectively excludes the collection of construction timber from large parts, if not all, of the State due to the widespread nature of lists of threatened species that may or may not be either present or even likely to be present. The information available on the Office of Environment and Heritage website on the habitat requirements of threatened species is vague and limited .

We recommend that this part of the sentence is deleted and replaced with management provisions similar to the Private Native Forestry Property Vegetation Plans where the landholder must undertake due diligence and look for signs of the presence of threatened species in the area prior to undertaking harvesting of timber.

**Part 6 Division 5 – Other Activities, 42 – Dwellings.**

Section (1) and (2) effectively mean it is impossible to clear for the purposes of erecting a dwelling, especially a family home.

We recommend that clearing for dwellings is a routine agricultural management activity and hence Section (1) is deleted and Section (2) has the words 'not' and 'if development consent is not required under the EPA Act' deleted.

**Part 8 Miscellaneous, 53 Natural resource management plans (1) (a), (b), (c)**

These plans effectively mean that regrowth can be redefined as protected regrowth on land that has previously been cleared as a RAMA or legally under a PVP or as excluded clearing. These plans are not subject to public scrutiny or input from CMAs and have no appeal process. This is a dishonest and stealthy approach to vegetation management control. It takes away the ability of land managers to manage regrowth for safety or any other purpose.

We recommend that Section 53 is completely removed.

**Councils – RAMAs**

Local government has been completely removed from accessing any RAMAs for land they manage. This will significantly increase the levels of red tape for a level of government that is already struggling to provide services to ratepayers. Vegetation management is an important component of the safe management of a lot of council infrastructure including roads.

We recommend that local government be reinstated in the Native Vegetation Regulations and that their use of RAMAs is expanded to make vegetation management easier and more streamlined.

**Native Vegetation Act and Regulations – Penalties**

We recommend that the Native Vegetation Regulations specifically list the order of enforcement that should be applied for any breach of the native Vegetation Act or Regulations. This should start with the use of non-statutory enforcement including letters to landholders requiring explanation of changes in detected vegetation changes and progress through a series of steps that has the option of concluding with prosecution only as a last resort in response to repeated non-compliance or lack of engagement with the Office of Environment and Heritage.

The Native Vegetation Regulations should include a wider range of statutory penalties that can be applied to allow more options for penalising a breach prior to resorting to prosecution which is an expensive, stressful and often unnecessary penalty.

Thank-you again for the opportunity to comment on the draft Native Vegetation Regulations. We are confident you will treat the process of public submissions with respect and restore our belief in the ability of the Liberal National Government to make meaningful changes to laws that are having significant negative impacts on the ability of the State's farmers and other land managers to undertake the management of native vegetation within the framework of safe, sustainable and productive agriculture.

Yours sincerely,

Tom and Rachel Rummery.