



SUBMISSION TO THE NSW GOVERNMENT NATIVE VEGETATION REGULATION REVIEW

August 2012

**NSW Farmers' Association
Level 25, 66 Goulburn Street
Sydney NSW 2000**

Brianna Casey
Environment Policy Director
Ph: (02) 8251 1806
Fax: (02) 8251 1750
Email: caseyb@nswfarmers.org.au

Charles Thomas
Land Use Policy Manager
Ph: (02) 8251 1856
Fax: (02) 8251 1750
Email: thomasc@nswfarmers.org.au

Executive Summary

As custodians of approximately 72% of the land mass of NSW, farmers take their role as custodians of the land seriously. NSW Farmers continues to take pride in the role our industry plays in sustainably producing food and fibre whilst providing ecosystem services. However, current native vegetation rules represent one of the biggest impediments to the sustainable production of food and fibre in NSW. Farmers are responsible land managers who do not need heavy-handed regulation and penalties in order to do the right thing.

Whilst the NSW Government is to be congratulated for its commitment to delivering more balanced, practical, streamlined and effective native vegetation regulations, there is unfortunately a long way to go before these outcomes can be successfully delivered. It is clear that in order to deliver these positive outcomes, the *Native Vegetation Act 2003* itself must be amended.

The current Act is the product of an ideological debate about tree clearing, as opposed to the active management of our natural resources. Urgent legislative change is required to refocus the native vegetation framework on achieving environmental outcomes while minimising the cost to the NSW economy and the pressure on farming communities.

As outlined in this submission, NSW Farmers' members have rejected fundamental aspects of the Act, including the way development proposals are assessed and determined. The consultation drafts released as part of the Review fail to address these concerns and fall short of delivering outcomes that would build landholder confidence in the process.

NSW Farmers is calling for changes to the *Native Vegetation Act 2003* which:

1. change the definition of broadscale clearing and remove references to groundcover;
2. abolish Property Vegetation Plans and implement regional plans which set boundaries for environmental management - rather than case by case approvals; and
3. balance protection of the environment against the social and economic benefits of productive agriculture.

In addition, NSW Farmers is calling for amendments to the proposed Code of Practice for Clearing Invasive Native Species; Code of Practice for Thinning; and Regulatory Impact Statement.

Without a clear commitment to *urgently* amending the *Native Vegetation Act 2003*, NSW Farmers cannot support the proposed reforms.

Recommendations

RECOMMENDATION 1

That the NSW Government work with NSW Farmers to identify the necessary amendments to the Native Vegetation Act 2003 to deliver improved social, economic and environmental outcomes.

RECOMMENDATION 2

That the Native Vegetation Act 2003 and Threatened Species Conservation Act 1995 be amended to reflect a balanced triple bottom line approach, assessed at local plan level by amending the 'improve or maintain' test such that the net benefit is tested across the social, economic, soil, water, salinity and biodiversity factors.

RECOMMENDATION 3

That the Native Vegetation Act 2003 be amended to modify the definition of 'broadscale land clearing' to distinguish broadscale clearing from small-scale clearing and removal of single plants.

RECOMMENDATION 4

That regional landscape plans be developed and implemented as an alternative to the current prescriptive property-by-property plans attached to the title of private land in perpetuity.

RECOMMENDATION 5

That the penalties for clearing offences be reduced, and that current prosecutions be suspended until such time as a more workable native vegetation framework is in place.

RECOMMENDATION 6

That the proposed restrictions placed on the broad definition of Routine Agricultural Management Activities be removed.

RECOMMENDATION 7

That the Environmental Outcomes Assessment Methodology be abandoned.

RECOMMENDATION 8

That the NSW Government seek endorsement at the Council of Australian Governments level of a stewardship program to reward farmers for their conservation activities for the public good.

RECOMMENDATION 9

That the categories of 'low risk' clearing currently proposed for streamlined assessment be allowable under self-assessed codes of practice.

RECOMMENDATION 10

That the Code of Practice for Clearing Invasive Native Species be amended to provide a practical reduction in red tape and deliver improved triple bottom line outcomes by:

- *removing restrictions on clearing types;*
- *removing the requirement to minimise soil disturbance;*
- *removing the classification as protected regrowth*
- *removing limitations on clearing methods;*
- *removing the clause stating that clearing is only permitted for re-establishing native vegetation; and*
- *inserting a new provision to allow for crop/pasture rotation.*

RECOMMENDATION 11

That the Code of Practice for Thinning be amended to provide a practical reduction in red tape and deliver improved triple bottom line outcomes by:

- *removing restrictions on clearing trees with a DBHOB>20cm;*
- *removing the requirement to allow only 80% of thickened vegetation to be thinned;*
- *removing the restrictions on clearing methods;*
- *removing the limitation on the maximum area of thinning; and*
- *removing the requirement to conserve future regrowth.*

RECOMMENDATION 12

That all references to grasslands be removed from native vegetation policies and statutes.

RECOMMENDATION 13

That the Regulatory Impact Statement be recast following adoption of the amendments proposed by NSW Farmers, with a clear comparison between the existing and proposed Regulations.

TABLE OF CONTENTS

Executive Summary.....	2
Recommendations	3
1. Introduction.....	6
2. The cost of flawed native vegetation policy.....	8
2.1 Environmental	8
2.1.1 Prohibition on sustainable farming practices	9
2.1.2 Prohibition on active land management.....	11
2.2 Economic	12
2.3 Social	14
2.4 NSW Farmers survey	17
3. Outstanding issues.....	19
3.1 The ‘improve or maintain’ test.....	19
3.2 ‘Broadscale’ land clearing.....	20
3.3 Regional landscape planning	20
3.4 Penalties	21
3.5 Routine Agricultural Management Activities	21
3.6 The Environmental Outcomes Assessment Methodology	21
3.7 Stewardship rewards	23
4. Proposed changes to subordinate instruments.....	24
4.1 Streamlined assessments	25
4.2 Code of practice for clearing invasive native species.....	26
Table 1: Recommended Changes to Code of Practice for Clearing INS	27
4.3 Code of practice for thinning.....	28
Table 2: Recommended Changes to Code of Practice for Thinning.....	29
4.4 Grasslands discussion paper	30
5. Regulatory Impact Statement.....	31
Attachment 1: Key issues unresolved by current proposals	32
Attachment 2: Summary of Requirement Amendments to Current Proposals.....	34

1. Introduction

NSW Farmers welcomes the opportunity to provide input to the NSW Government's Native Vegetation Regulation Review (the Review). NSW Farmers is Australia's largest state farming body, representing the majority of commercial farm businesses in NSW, ranging from broadacre, meat, dairy, wool and grain producers, to more specialised producers in the horticulture, egg, pork, oyster and goat industries.

There are more than 43 500 farm businesses in NSW contributing more than \$8.3 billion to the NSW economy per annum, representing some 3.4% of the NSW economy.^{1,2} Given that every dollar from on-farm production has a multiplier earning effect across agribusiness pre- and post-farm gate of 1:5, the true value of agriculture to the state, and particularly rural and regional economies, is even higher.³

As custodians of approximately 72% of the land mass of NSW, farmers take their role as land managers seriously.⁴ This requires active management of the landscape, recognising that farmers exist in a dynamic operating environment. As part of their active management role, farm businesses in NSW already invest more than 3 million person days per year managing their weed, pest, land and soil problems – the highest level of investment per farm business nationally.⁵

These efforts are the result of what the NSW Natural Resources Commission has described as a “quiet revolution taking place in rural Australia”, whereby farmers are “actively seeking to restore our damaged rivers and landscapes and create a new model of sustainability”.⁶ Unfortunately, there is well founded concern that ‘locking up’ parcels of land under heavy-handed native vegetation laws has undermined farmers’ stewardship efforts to the detriment of the environment, their businesses and their local communities.

Demand for food is set to increase by 70% by 2050 as the global population rises to around 9.1 billion people.⁷ Already, the Asia-Pacific region is home to nearly two thirds of the world's hungry people.⁸ This makes farmers in NSW well placed to improve the livelihoods of some of our closest neighbours by investing in new infrastructure and technology to improve our productivity and therefore our output of food and fibre.

¹ Australian Bureau of Statistics (2011) *Agricultural commodities, National and State 2010-11*, Cat no. 7121.0

² NSW Parliamentary Library Research Service (2012) *Agriculture in NSW (July 2012) Statistical Indicators 4/12* p.i

³ Australian Bankers Association, 2011, *Proposed Plan for Murray Darling Basin submission*

⁴ Australian Bureau of Statistics (2011) *Agricultural commodities, National and State 2010-11*, Cat no. 7121.0

⁵ Australian Bureau of Statistics (2008) *Natural Resource Management on Australian Farms*

⁶ *Cause and Effect of Native Vegetation law in NSW: The essence and spirit of the Native Vegetation Act 2003*, Williams 2006, NRC

⁷ United Nations (2009) *How to Feed the World in 2050*

http://www.fao.org/fileadmin/templates/wsfs/docs/expert_paper/How_to_Feed_the_World_in_2050.pdf

⁸ Food and Agriculture Organisation of the United Nations (2010) *Global Hunger Declining, But Still Unacceptably High*
<http://www.fao.org/docrep/012/al390e/al390e00.pdf>

The average Australian farmer grows enough food to feed 600 people every year, 450 of whom live outside Australia.⁹ Australian farmers produce approximately 93 per cent of Australia's daily domestic food supply, and export 60 per cent (in volume) of total agricultural production.¹⁰ Many farmers believe that native vegetation laws represent the biggest threat to our proud contribution to global food security.

While we congratulate the NSW Government for not delaying this already late review of the instruments underpinning the *Native Vegetation Act 2003* (the Act), our members hold serious reservations about the limited scope of the review.

NSW Farmers submits that the NSW Government should be immediately launching a comprehensive analysis as to whether these laws meet the policy objectives of a Coalition government, and the legislative amendments that would help deliver on these objectives.

Simply tinkering around the edges of a fundamentally flawed legislative regime will not be accepted.

As outlined in this submission, NSW Farmers' members have rejected fundamental aspects of the Act, including the way development proposals are assessed and determined. The consultation drafts released as part of the Review fail to address these concerns and fall short of delivering outcomes that would build landholder confidence in the process. Farmers are paying the price for the rigid, politically-driven prescription introduced by the former Government and are calling on the Government to deliver a new approach – one based on functioning ecosystems and desired outcomes rather than bureaucratic expediency.

NSW Farmers continues to take pride in the role our industry plays in providing ecosystem services; however we believe the current Act is the product of an ideological debate about tree clearing, as opposed to management of our natural resources. We believe legislative change is needed to refocus the native vegetation framework on achieving environmental outcomes while minimising the cost to the NSW economy and the pressure on farming communities.

The amendments proposed by NSW Farmers are consistent with the objectives of *NSW 2021: A Plan to Make NSW Number One*¹¹, particularly the goal to drive economic growth in regional NSW. By allowing the sensible development of agricultural land; adopting regional plans based on triple bottom line outcomes; facilitating land use change in appropriate areas; and improving the service delivery culture of CMAs, the NSW 2021 goals around restoring accountability to government can also be achieved. The plan makes it clear that “regional NSW will be supported to play a key role in our future economic growth” and that the NSW Government “is pursuing ‘whole of state’

⁹ Australian Farm Institute (2009) *Australia's Response to World Food Security Concerns*
<http://www.nff.org.au/get/2107.pdf>

¹⁰ Prime Minister's Science, Engineering and Innovation Council (2010) *Australia and Food Security in a Changing World*
<http://www.innovation.gov.au/Science/PMSEIC/Documents/AustraliaandFoodSecurityinaChangingWorld.pdf>

¹¹ NSW Government (2012) *NSW 2021: A Plan to Make NSW Number One* <http://2021.nsw.gov.au/>

development with support for high performance and high potential growth industries”.¹² NSW Farmers submits that agriculture is clearly one of those industries. As highlighted by the National Farmers’ Federation, “The growth in the farm sector had increased steadily over the 30 year period from 1974-75 to 2003-04 at an average rate of 2.8 percent, consistently out-performing other sectors”.¹³ Agricultural productivity has slowed to 1 percent per annum more recently, which highlights an area of potential, assuming barriers to productivity growth – including rigid native vegetation restrictions – are removed.

The remainder of this submission outlines the changes NSW Farmers is seeking and the rationale for those changes. [Attachment 1](#) summarises the key issues unresolved by current proposals.

2. The cost of flawed native vegetation policy

Almost continuously since 1995, NSW has been engaged in the expensive and divisive process of developing, consulting about and prosecuting native vegetation controls on private land. Various restructured environmental and natural resource agencies have taken different approaches, sometimes ‘flip flopping’ on an annual basis, and often inconsistencies occur across the state due to varied interpretations of the Act. Simultaneously, the Department of Planning, and local governments have been developing and applying supervening clearing controls (e.g. wildlife corridor zones and other ordinances that override Act exemptions). In short, there has been no agreement within the bureaucracy about how to implement fundamental aspects of biodiversity policy on farm land.

The failure of government to provide a clear and balanced direction has lead to 17 years of crippling uncertainty for agriculture and the communities it supports. Since the introduction of the *State Environmental Planning Policy No 46 – Protection and Management of Native Vegetation* (SEPP 46) without notice in 1995, NSW Farmers has been actively seeking a better outcome for farmers and rural communities while recognising the need for appropriate environmental standards.

2.1 Environmental

Numerous independent reports since the introduction of land clearing laws in NSW have pointed to the unforeseen environmental impacts of prescriptive regulation. In its 2003 inquiry into native vegetation laws, the Productivity Commission identified the following adverse environmental impacts as a result of native vegetation laws:

¹² *ibid*

¹³ National Farmers’ Federation (2012) NFF Farm Facts: 2012 <http://www.nff.org.au/farm-facts.html>

- premature clearing of regrowth and more intensive rotation of paddocks, contributing to soil degradation;
- woodland thickening has promoted soil erosion and biodiversity loss in some cases;
- innovations in farming practices (such as water saving centre-pivot irrigation) which improve farm productivity and environmental sustainability can be prevented by the effective prohibition on the removal of paddock trees;
- prevention of effective weed and pest management;
- incentives to voluntarily conserve or re-establish native vegetation are diminished because of fear of future native vegetation restrictions;
- strict enforcement and penalty provisions have created an adversarial climate between landholders and government and eroded landholder goodwill.¹⁴

NSW Farmers submits that almost a decade later, these adverse environmental impacts remain.

2.1.1 Prohibition on sustainable farming practices

Over recent decades, Australian farmers have spent a great deal of time and money developing innovative ways to produce food and fibre more sustainably. This revolution has been made possible by new machinery which can sow directly through crop residue to reduce cultivation, and crop rotations using varieties like lupins, peas and canola to reduce add nitrogen to the soil and break the pest cycle. More recently, farmers have turned to satellite technology and precision agriculture to maximise efficiency and sustainability. Using Global Positioning Systems (GPS), farmers can manage their production systems to the centimetre – enabling adoption of controlled traffic farming. Controlled traffic farming means that all machinery utilises the same wheel tracks in the paddock - reducing spray waste, fertiliser use, fuel use and soil compaction.

In addition to better land management practices, farmers in NSW have led the way in water use efficiency, with adoption of innovations such as centre pivot irrigation contributing to a dramatic decrease in agricultural water consumption (6 795 GL to 4 134 GL from 2000-01 to 2004-05).¹⁵ With further cuts to water availability slated as part of federal water reforms, farmers will be further incentivised to adopt water saving technologies to maintain food and fibre production. However, the current native vegetation laws are preventing some land managers from introducing these new technologies, as highlighted in Case Study 1 below.

¹⁴ *Impacts of Native Vegetation and Biodiversity Regulations*, Productivity Commission 2003, pXXVII

¹⁵ *Australia's Environment Issues and Trends, Special Issue: Water*, ABS 2007

Case Study 1. – The Cedars, Guerie

“The Cedars” is a highly productive 260 hectare property on the Macquarie River outside Guerie, NSW, of which 75 hectares is currently irrigated to produce seed canola, sweet corn, lucerne, cereals and cattle.

The property managers have sought to expand their business by installing an additional 32 hectare centre pivot, which could produce an additional 2,000 tonnes of sweet corn for human consumption.

Centre pivot irrigation can use as little as 65% of the water used by traditional furrow methods.¹⁵ To carry out this development requires the removal of 19-20 established trees, which requires approval from the Catchment Management Authority (CMA).

The CMA has advised that the application for a property vegetation plan will take up to 18 months to process due to current backlogs. The managers are willing to create offset areas and have sought quotes for 1 500 native tubestock plants. However, they are reluctant to begin planting until the CMA has provided a clear indication of the required offset ratios and approval for removing the scattered trees.

NSW Farmers believes projects like this, which demonstrate a clear environmental, social and economic benefit should be promoted rather than stifled.



The Act creates barriers to these improvements in farm sustainability by creating an effective prohibition on the removal of isolated trees and clumps in cropping paddocks. As noted by the Productivity Commission, measures to improve environmental sustainability can be prevented if paddock trees cannot be removed or if the planting offsets imposed as a condition of their removal are prohibitively costly.¹⁶ This is echoed by the Australian Bureau of Agricultural and Resource Economics (ABARE), which found that isolated paddock trees can limit the efficiency of crop management, leading to foregone production in unplanted areas, reduced yields, chemical waste and weed infestations.¹⁷ The same ABARE study found that isolated paddock trees also prevent the efficient use of cost saving GPS technologies, with “the impact of this... likely to increase over time as the trend toward larger farms continues”.¹⁸

Under current restrictions, NSW Farmers members have reported being asked for offset ratios in excess of 30:1. This amounts to an effective prohibition on development and fails to take a long term view of environmental outcomes. A more practical assessment would consider the environmental value of single trees in areas that will not be conserved long term due to conflicting land use, and balance this against the

¹⁶ supra, at pXXVII

¹⁷ Commonwealth of Australia (2006) *Native Vegetation Management on Broadacre Farms in New South Wales: impacts on productivity and returns*

¹⁸ ibid

environmental benefits of longer term offsets as well as the environmental and economic benefits of more sustainable and productive agriculture.

2.1.2 Prohibition on active land management

Many farmers have reported a resurgence in woody vegetation in productive landscapes due to above average rainfall in recent years. Many members are concerned about the impact this has on their productive capacity. Although the Act makes a distinction between pre- and post-1990 regrowth, even ‘unprotected’ regrowth can be made difficult to remove due to restrictions on disturbing groundcover. Additionally, many farmers choose to err on the side of caution when it comes to treating regrowth because of the heavy penalties they can incur if they cannot produce evidence to substantiate the regrowth date. The net result of this situation is a great deal of productive country is lost to regrowth. This includes a great deal of grazing land which might be thickened out of production due to lost groundcover, which can have flow on effects for soil structure and erosion.

In addition to the invasion of woody vegetation, native vegetation laws are having a serious impact on the efficacy of weed management programmes across the state. One example of this is the spread of *Eragrostis curvula* (African Love Grass, see Figure 1) in the Cooma-Monaro region. African Love Grass is an introduced noxious weed native to South Africa, introduced to stabilise roadworks. If not treated early it competes aggressively with pasture species and will establish a monoculture which is very hard to eradicate.



Figure 1. – African Love Grass

Under current laws, groundcover is protected where >50% of the surface area is covered by native species. Many effective treatment methods for weed eradication, such as spraying or rotational cropping, have some temporary impact on surrounding native pastures. The effect of this is that farmers are required to wait until >50% of an area is infested with African Love Grass before they can effectively treat the problem. This delayed treatment undermines landholders’ ability to coordinate control efforts and comes at a high cost to the environment and agricultural productivity.



Figure 2 – A serrated tussock monoculture
(Source: NSW Department of Primary Industries)

This is also the case for serrated tussock, a perennial, highly-invasive, drought-resistant and tussock-forming grass, which seeds prolifically and is difficult – and costly – to control. Serrated tussock can “infest agricultural land ranging from highly arable and fertile areas through to steep and non-arable areas with low fertility”, colonising both native and introduced pastures.¹⁹ Of

¹⁹ NSW Department of Primary Industries (2012) *Prime Fact: Serrated tussock – identification and control*
http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0017/362411/Serrated-tussock-identification-and-control-web.pdf

particular concern is its impact on native pastures, as many native species are susceptible to the most commonly used selective herbicides for serrated tussock control. Serrated tussock also has serious economic and productivity consequences, as infestations can dramatically reduce carrying capacities, “proportionally to the level of infestation i.e. a 50% infestation level of serrated tussock reduces carrying capacity by 50%”.²⁰ The NSW Department of Primary Industries stresses to land managers the importance of actively managing weed infestations, advising that “Control of serrated tussock within a farming system is on-going and often at great cost to producers, with production from infested country substantially reduced and land values lowered”.²¹ Given the requirement of the current laws that groundcover be protected where >50% of the surface area is covered by native species, the consequences for properties infested by serrated tussock can be dire.

Weeds present a massive and increasing cost to agriculture and the natural environment, costing NSW more than \$1.2 billion in lost production and associated costs every year.²² A massive 20% of the flora of all regions of the state are weeds, with 190 of the approximately 1400 weed species across NSW listed under the *Noxious Weeds Act 1993*.²³ The most recent Australian Bureau of Statistics survey of natural resource management on Australian farms²⁴ found that 90.9% of surveyed NSW agricultural businesses reported weed related activities, spending \$475 million per year (collectively) on weed control activities. This equates to approximately \$11 000 per agricultural business per annum – more than farmers spend on pests and land and soil problems combined, and more than is spent on these activities by farmers than in any other state.

Weeds are not only enormously damaging to agriculture, but also damage the natural environment, waterways, coastal areas and urban areas and pose a significant threat to biodiversity, with 419 threatened species, populations and ecological communities in NSW threatened by weeds.²⁵ NSW Farmers submits that groundcover requirements under the current legislation is actively contributing to this problem.

2.2 Economic

While a great deal of modelling has been done at a federal level to try to estimate the significant impact native vegetation laws have had on regional economies, NSW Farmers is not aware of any authoritative work done to produce a NSW-wide estimation. NSW Farmers sees this as a serious failing of successive NSW Governments and symptomatic of the environmentally skewed nature of the legislative regime to date.

²⁰ *ibid*

²¹ *ibid*

²² NSW Parliamentary Library Research Service (2012) *Noxious Weeds Briefing Paper No 02/2012*

²³ *ibid*

²⁴ Australian Bureau of Statistics (2008) *Natural Resource Management on Australian Farms 2006-07*

²⁵ NSW Parliamentary Library Research Service (2012) *Noxious Weeds Briefing Paper No 02/2012*

Whilst socio-economic concerns were listed as the second of seven thematic areas highlighted in the *Review of the Native Vegetation Act 2003*²⁶, the review found that:

“because the NV Act allows certain clearing without the need for approval and has been supported by incentive and structural adjustment programs, then the social and economic interests of the state have been considered”.²⁷

It is unclear in the report what research or analysis this unlikely finding is based on. This was raised at the public hearing held in Wagga Wagga 8 April 2010 for the *Senate Inquiry into Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Matters*. The NSW Government witness giving evidence on behalf of the NSW Department of Climate Change and Water, Mr Tom Grosskopf, was questioned as to how the Department analysed the social and economic impacts as part of the review. Mr Grosskopf stated that “There is no specific report on the social and economic impacts”. Senator John Williams, a member of the Senate Standing Committees on Finance and Public Administration, put to Mr Grosskopf that:

“So the department has done a report on the review of the 2003 Native Vegetation Act and it says that the social and economic impacts have been taken into account but there is nothing in writing. Is that what you are saying?”

Mr Grosskopf confirmed “That is correct”.²⁸

The same *Review of the Native Vegetation Act 2003* also found that:

“Incorporating future social and economic provisions would require a substantial rewrite of the Act and at this stage in the implementation of the Act, legislative amendment in this area is not proposed”.²⁹

This suggests that the implementation of the Act is not actually delivering on its first objective, which is “to provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State”.

NSW Farmers can only conclude that a comprehensive socio-economic analysis of the Act has never been conducted. As a consequence, it remains unacceptably unclear what the opportunity costs of the current native vegetation laws are. This is enormously concerning given advice from the Australian Bureau of Agricultural and Resource Economics that

“Ensuring that native vegetation management policies are economically efficient and deliver environmental outcomes at least cost to the community

²⁶NSW Department of Environment, Climate Change and Water NSW (2009) *Report on the Review of the Native Vegetation Act 2003* <http://www.environment.nsw.gov.au/resources/nativeveg/09751NVActReview.pdf>

²⁷ Ibid, p10

²⁸Commonwealth of Australia (2010) *Official Committee Hansard – Senate Finance and Public Administration References Committee* http://aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=@Hansard/S12906.pdf

²⁹NSW Department of Environment, Climate Change and Water NSW (2009) *Report on the Review of the Native Vegetation Act 2003* <http://www.environment.nsw.gov.au/resources/nativeveg/09751NVActReview.pdf>

requires an understanding of the cost that these policies are imposing on agricultural landholders”.³⁰

NSW Farmers submits that these costs are not currently known, and as such, questions whether native vegetation laws in NSW are in fact economically efficient or deliver environmental outcomes at least cost to the community.

In 2005, in the largest study of its kind, the Australian Bureau of Agricultural and Resource Economics made an attempt to measure these opportunity costs, noting that “Regulations that prevent the clearing of vegetation on private agricultural land can impose large opportunity costs; that is, the cost of forgoing a profitable activity”.³¹ As part of the study, ABARE conducted face-to-face surveys with 386 broadacre farmers across a 400 000km² region of central and western NSW in an attempt to quantify the extent to which native vegetation is having an impact on farm productivity and returns. The study highlighted that “Native vegetation regulations can impose opportunity costs on the farm sector that take the form of lost annual income, which has consequential effects on land values because farmers are unable to clear and crop as they would wish” (p2), and found that “The opportunity cost of preventing this development in order to conserve native vegetation for environmental services was estimated to be as much as \$1.1 billion across the study region in net present value terms” (p2), with the median cost of foregone crop development across the survey region being approximately \$156 000 per farm (p16). These costs are staggering, and appear at odds with the finding of the socio-economic aspects of the *Review of the Native Vegetation Act*.

Perhaps the most telling finding of the ABARE study is that a “broad based regulatory approach to managing native vegetation may fail to differentiate between sites where conserving native vegetation generates net benefit versus net costs (p22). NSW Farmers submits that the current policy instruments lack the flexibility to deliver a balanced triple bottom line outcome.

2.3 Social

As mentioned above, it appears that a comprehensive analysis of the social costs and benefits of the Act has never been conducted. The 2010 *Senate Inquiry into Native Vegetation laws, Greenhouse Gas Abatement and Climate Change Measures* did however consider the impact on families, citing evidence of “the impact of financial hardship and uncertainty leading to considerable personal distress in farming communities”, and the impacts on both older farmers and younger generations.³² The Committee found that:

“in restricting farming activity, the regulations erode what landholders believe are their property rights, and that they are being forced to meet a significant

³⁰ Commonwealth of Australia (2006) *Native Vegetation Management on Broadacre Farms in New South Wales: impacts on productivity and returns*

³¹ *ibid*

³² Commonwealth of Australia (2010) *Finance and Public Administration References Committee: Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures* pp.53,54

portion of the cost of public conservation initiatives whilst deriving few, if any, benefits from such action”.³³

This begs the question as to how the NSW Government (and indeed all jurisdictions) will address these challenges.

A detailed study on two market-based instruments operating in Western NSW provides an insight into the interactions between ecological and social resilience in rural areas. The study found that:

“Keeping families living and working on rural properties... not only maintains and improves the social fabric of these remote communities, but also contributes to the economic viability of the local economies. Maintenance of the rate paying base, and contribution to the regional economy through purchase of products and services add to the economic stability of the region.”³⁴

The current penalties for native vegetation offences have serious consequences, not only from an economic perspective, but also a social perspective. Under the current regime, landholders can face fines of up to \$1.32 million plus two years in prison for illegal land clearing. Whilst recent improvements have been made in terms of the approach taken by officials investigating alleged breaches, the first contact made by the Office of Environment and Heritage compliance staff investigating possible breaches was previously written correspondence threatening landholders with fines of more than \$1 million. The consequent stress that this places on the landholders, and their family, is considerable. As outlined in Case Study 2 below, families who are being investigated and/or where legal action proceeds, are placed under enormous pressure, not only in terms of the legal costs, but also the stress placed on the family unit, with proceedings dragging over months and years.

³³ *ibid*

³⁴ Compton, E, Shepherd, R and Moss J (2010) *Ecological and social resilience in Western NSW: Insight from seven years of enterprise based conservation*

Case Study 2. – Legal Proceedings

A NSW Farmers member* is currently being prosecuted for alleged illegal land clearing. The member runs a highly productive grazing property. The property has been farmed since 1850, with two generations of the current property managers sustainably managing the property for the last four decades.

Considerable time has been invested by the property managers in working with the NSW Soil Conservation Service to develop strategies to best preserve the natural resources on the property. On the basis of this advice, as well as two generations of detailed working knowledge of the property, and one of the property managers having formal qualifications in natural resource management, 36% of the property has been voluntarily set aside as a conservation reserve, leaving approximately 3 200 acres in production. They have not sought any recognition of their conservation and wildlife preservation activities, despite the immeasurable triple bottom line outcomes delivered to the community of doing so.

The land managers undertook some selective clearing to meet their occupational health and safety requirements to provide a safe work environment, particularly in respect of safe mustering of livestock where visibility and manoeuvrability are of paramount importance. The land managers had identified regrowth timber as having a large impact on the safe mustering, partly because of the increased amount of time that was required to complete mustering activities.

The land managers' first priority to reduce the risks associated with mustering was to remove mustering from the conservation areas by managing these areas differently from the agricultural areas that had previously been identified by the Soil Conservation Service. By not fertilising, leaving live and dead timber in place, leaving rocks etc, the land managers effectively removed 36% of the roughest country from livestock production and hence removed the risk of mustering totally from this area. These areas are totally managed for conservation.

The land managers' second priority was to improve the visibility and manoeuvrability on the agricultural country by clearing the small trees and shrubs. The managers undertook this three ways, firstly by partially clearing mustering routes to a distance of 30 metres wide beside tracks and fencelines where they could safely move stock in areas where they commonly need to be moved (eg across paddocks and towards gateways). Secondly they cleared around dams and gateways to provide sufficient room to safely gather the livestock into a mob and hold them calmly before moving them. Thirdly they partially cleared the remaining areas to improve the general visibility and manoeuvrability. These clearing activities have led to the prosecution. The land manager has pleaded guilty to going beyond the minimum extent necessary, as he now considers that he could have left a further ten trees per ha in some areas beyond the estimated (by the OEH ecologist) eight to ten that have been left.

The land managers believed this clearing was permitted under the RAMA (Section 11 (1) (i) of the NV Act) that specifies 'any activity reasonably considered necessary to reduce or remove the imminent risk of serious personal injury or damage to property'. RAMAs do not require the approval of the CMA for clearing.

As responsible land managers, they are aware that indiscriminate clearing causes environmental harm, and as such sought to minimise harm by identifying the size of regrowth on their property by measuring trees of known age and concentrating on only clearing regrowth where possible, as these trees were not old enough to have developed hollows. They did not clear trees with hollows or riparian zones or in an area identified as Box Gum Grassy Woodland.

.../

Case Study 2. – Legal Proceedings (cont'd)

The carrying capacity of the property as a whole has not increased but the conservation areas are now managed separately from the grazing country.

This strategy to reduce the risks of mustering on the property has been very successful both from a safety point of view (with individual musters taking a lot less time and being completed with less stress) and also from an environmental point of view (where the conservation areas no longer have any stock pressure and the land managers have regenerated significant areas of grassy woodland where there was shrubby regrowth forest.

Since the Office of Environment (OEH) first rang the land managers about a change in vegetation in May 2010, the land managers have cooperated with them and continue to do so.

The property managers have spent tens of thousands of dollars on legal fees to date, fighting the prospect of a \$500 000 fine. With four school-aged children, this is obviously placing a great deal of pressure on the family. Despite pleading guilty, the land managers are now facing an eight-day sentencing hearing later this year. The process has been extremely stressful, expensive and unnecessary, as the land managers are happy to negotiate with OEH if they can show them a better way to manage the land and the business of grazing.

NSW Farmers submits that these flawed laws are accompanied by penalties which bear no relationship to the nature of alleged land clearing offences. In this instance, this means that despite being model land managers and food producers, these land managers are currently before the courts and threatened with full prosecution under the *Native Vegetation Act 2003*, which could see them lose the family farm, and the community lose the widespread benefits of the thousands of acres of land voluntarily set aside by the family for conservation purposes.

** Property name and personal details withheld as the matter is currently before the courts.*

2.4 NSW Farmers survey

In the absence of detailed triple bottom line analysis of the current native vegetation laws, NSW Farmers invited members to respond to a brief survey about the impacts of native vegetation laws on their farm business, and the day-to-day conservation activities they undertake on their farms. At the time of writing, 90 responses had been received. Key findings included:

- The most commonly used conservation farming techniques by survey respondents were rotational grazing (78%), minimum or reduced tillage (63%), crop and pasture rotation (48%), integrated pest management (41%), and no-tillage (37%). It should be noted that survey respondents came from a range of commodities, and hence not all techniques were applicable to all respondents.
- The most commonly reported stewardship activities included the above conservation activities, in addition to managing weeds (93%), managing pests (92%), preventing erosion (81%) and monitoring groundcover in paddocks (77%).
- When asked to think about the sustainability of their farm environments, survey respondents reported that:

- Environmental sustainability plays a role in their business decision-making (93%)
- They would characterise Invasive Native Species as an environmental threat (89%)
- They value having areas of native vegetation on their property (87%)
- They have noticed an increase in biodiversity on their farm over the time they have managed it (80%)
- They value the presence of native wildlife on their farm (79%)
- Native vegetation plays an important role on their farm (72%)
- Of the survey respondents who had ever applied for a property vegetation plan (PVP) from a Catchment Management Authority (CMA), 67% were not satisfied with the provisions of their PVP.
- The most common types of clearing that survey respondents would like to perform that are currently being prevented by native vegetation laws included clearing INS (76%), thinning for grazing (65%), and controlling weeds in native pastures (49%).
- The most common issues reported by survey respondents that are contributed to by native vegetation restrictions included feral pests (80%), regrowth incursions (74%), weed incursions (70%), logs, stumps or paddock trees that could be characterised as a Workplace Health and Safety hazard (66%).
- When asked about their sentiment towards their CMA:
 - 27% reported that they trust having CMA staff on their property (compared to 62% who reported that they trust having Livestock Health and Pest Authority on their property);
 - 9% reported that they believe the CMA has better expertise than them about managing their natural resources;
 - 59% reported that CMA staff are helpful but they are constrained by native vegetation rules;
 - 3.7% found the process of applying for a PVP is straightforward; and
 - 2.4% believe that public servants who enforce native vegetation laws treat farmers with respect.

While survey results are still being received, and the above summary of key findings can be considered preliminary in nature, some clear findings are emerging. It is clear that land managers have embraced conservation farming techniques and environmental sustainability is a motivating factor in business decision-making. It is clear that current native vegetation laws are preventing farmers from undertaking important land management activities, including critically important weed and pest animal management activities. What should be of particular concern to the NSW Government is survey respondents' sentiments towards their local CMA and public servants who enforce native vegetation laws. Whether perception or reality, there is a clear and urgent need for trust to be rebuilt.

3. Outstanding issues

NSW Farmers is committed to working with the NSW Government to deliver a native vegetation framework capable of delivering improved social, economic and environmental outcomes. However, it must be recognised that this requires amendment to the principal Act – the Native Vegetation Act 2003. Whilst there has been suggestions that improvements to the status quo can be made via amendments to the proposed Regulations, they will be stifled by the long-standing flaws of the Act itself.

RECOMMENDATION 1

That the NSW Government work with NSW Farmers to identify the necessary amendments to the Native Vegetation Act 2003 to deliver improved social, economic and environmental outcomes.

3.1 The ‘improve or maintain’ test

The requirement that any clearing approved must either improve or maintain environmental values is stipulated in ss14 and 29 of the *Native Vegetation Act 2003*. The regulations then stipulate what proposals will be considered to ‘maintain or improve environmental values’. While outside the Regulation Review, NSW Farmers submits that the Act must be amended to reflect a truly balanced triple bottom line approach, assessed at the local plan level.

NSW Farmers also believes that the best triple bottom line outcomes cannot be achieved through a process which requires that each value within the assessment be improved or maintained. NSW Farmers submits that a sensible policy outcome would be to test the net benefit across the social, economic, soil, water, salinity and biodiversity factors.

Amendments are also required to the *Threatened Species Conservation Act 1995* given the definition of ‘overcleared vegetation and landscapes’ in the improve or maintain test within the Environmental Outcomes Assessment Methodology.

RECOMMENDATION 2

That the Native Vegetation Act 2003 and Threatened Species Conservation Act 1995 be amended to reflect a balanced triple bottom line approach, assessed at local plan level by amending the ‘improve or maintain’ test such that the net benefit is tested across the social, economic, soil, water, salinity and biodiversity factors.

3.2 'Broadscale' land clearing

The current definition of 'broadscale clearing' is misleading and impractical. A threshold must be established to distinguish broadscale clearing from small scale clearing and removal of single plants. This is a fundamental flaw rooted in the Act. However, as an interim measure, this could be partially addressed through the Regulation – for example by stipulating that "clearing 10% or less of the native vegetation on a contiguous land holding" is classified as a Routine Agricultural Management Activity.

Under an amended Act, NSW Farmers would expect a threshold to be set for self-assessment without a formal approval process. Of course, this would be at the discretion of local landscape plans.

RECOMMENDATION 3

That the Native Vegetation Act 2003 be amended to modify the definition of 'broadscale land clearing' to distinguish broadscale clearing from small-scale clearing and removal of single plants.

3.3 Regional landscape planning

NSW Farmers members have firmly rejected the notion of prescriptive property-by-property plans which unnecessarily restrict their ability to farm, and attach to the title of private land in perpetuity. A strong theme that has arisen in consultation with members is that broadscale land clearing of high value habitat is a thing of the past. Members are keen to be involved in regional planning based on a mosaic approach, and thinning to a benchmark which allows clumps and corridors as well as scattered trees across the landscape.

Members want to work with CMAs on a local basis, building on the quality environmental, social and economic work seen in the Catchment Action Plans, to develop a set of easily understood parameters within which farmers can manage vegetation. This would be underpinned by legislation which would set a broad offence for environmental harm for those found guilty of operating outside the local landscape plan.

This would need to be accompanied by a redefinition of the role of CMAs – to focus on educating and assisting landholders with improving environmental practices with an emphasis on how these can be tied in with benefits to farm productivity.

RECOMMENDATION 4

That regional landscape plans be developed and implemented as an alternative to the current prescriptive property-by-property plans attached to the title of private land in perpetuity.

3.4 Penalties

As outlined in Section 2.3 above, penalties associated with clearing offences must change. NSW Farmers submits that fines in excess of \$1 million, in addition to jail time and remediation order, are not proportionate to the offence.

In addition to lowering the fines, NSW Farmers recommends that current prosecutions be suspended until such time as a more workable native vegetation framework is in place, noting the NSW Liberals and Nationals' well-documented, strong concerns about the framework introduced by the former Government.

RECOMMENDATION 5

That the penalties for clearing offences be reduced, and that current prosecutions be suspended until such time as a more workable native vegetation framework is in place.

3.5 Routine Agricultural Management Activities

NSW Farmers believes that the restrictions the Regulation places on the broad definition of Routine Agricultural Management Activities (RAMAs) contained in the Act are unnecessary and outside the intent of the Act. The restrictions placed on distances required to ensure the safety of farm infrastructure in many cases defeat their intended purpose. Farmers need to have the flexibility to effectively protect farm infrastructure from native vegetation as defined by the Act and without the restriction of the Regulation.

RECOMMENDATION 6

That the proposed restrictions placed on the broad definition of Routine Agricultural Management Activities be removed.

3.6 The Environmental Outcomes Assessment Methodology

NSW Farmers remains opposed to the concept of the EOAM. Farmers fundamentally reject the lack of transparency associated with the EOAM rules and the way they are applied. Properly trained staff who are capable of helping farmers manage their environmental assets exist in most Catchment Management Authorities (CMAs). NSW Farmers would like to see CMAs able to develop mutually agreeable solutions tailored to suit individual farms.

The proposed offset ratios associated with the EOAM must also be urgently amended. Not only are they unreasonable from a practical perspective, as they often go beyond what is required to 'maintain' environmental outcomes, but they are also grossly inequitable, with proponents seeking to clear vegetation for other land uses, such as mining, often facing different offsets to farmers.

As an example, the report on Vegetation of the ‘Willeroi’ Offset Area prepared for Whitehaven Coal suggests that “*The overall offset ratio of native vegetation is 4:1 between ‘Willeroi’ (offset area of 1,616ha, excluding the 44ha of exotic grassland and Tarrawonga (397 ha of native vegetation to be cleared)*”.³⁵ This is but one example of offset ratios that generally fall below 10:1 for mining projects.

This contrasts greatly with examples provided by members who have been asked to comply with offset ratios in excess of 30:1 – in perpetuity – via their proposed Property Vegetation Plans. Figure 3 provides an example of one such example of an offset request made of a member, with the red hatching representing proposed clearing and the yellow representing proposed offset area. It should be noted that this proposed PVP was rejected by the member, and that the map below is not for public dissemination.

Image not for public
dissemination

³⁵ Bower, C.C. (2011) *Vegetation of the ‘Willeroi’ Offset Area*
<http://www.whitehavencoal.com.au/operations/documents/AppendixF-FloraAssessment-Part2.pdf>

NSW Farmers is also seeking clarification as to other details, such as how 'conservation farming' will be defined, what is meant by 'a vegetation type under 30% cleared in a CMA', and why clumps in cultivation has been restricted to the Central and Western CMAs.

NSW Farmers believes that such small-scale clearing (which wouldn't ordinarily be defined as broadscale clearing) should be able to be undertaken following a self-assessment by landholders, with the option to involve CMAs if they are unsure about their compliance. To do this, there would need to be a common sense offset ratio determined that could be implemented by farmers.

Renaming the Soil and Land Capability Chapter to 'Land Degradation' indicates a presumption that development proposals will automatically lead to land degradation. NSW Farmers sought the current title over the proposed one when the EOAM was introduced on the basis that this is an assumption which is offensive to farmers and soil scientists who are taking genuine steps to improve soil capability through management of native vegetation.

RECOMMENDATION 7

That the Environmental Outcomes Assessment Methodology be abandoned.

3.7 Stewardship rewards

NSW Farmers is proud of the environmental record of the agricultural industry. As custodians of a vast majority of the NSW land mass, stewardship will always be an important part of the farming business model. To help farmers improve environmental practices and better quantify the industry's successes, NSW Farmers is keen to progress the establishment of a Native Vegetation Code of Practice, which would sit above the mandatory basic standards set by local landscape plans, as an aspirational land management target that leading producers can work to. This should be linked with funding to encourage code compliance and assist participants with management activities. Strong facilitation and extension would need to be provided through the CMA network to assist and encourage landholders to participate.

Farmers in NSW bear a multi-million dollar opportunity cost each year in the interest of conserving environmental assets for the people of NSW. The fundamental injustice of this, in addition to uncertainty about the future direction of native vegetation laws, fosters a distrust of CMAs and the broader conservation agenda. Despite this farmers are fundamentally interested in conservation of biodiversity and willing to continue to play an active role in managing their landscapes to promote that objective. To create a clear break from the current system which pits land managers against government, it would be a sound policy decision to facilitate payments through CMAs to farmers who

bear the burden of native vegetation restrictions. This could be progressed nationally via a clear commitment at the Council of Australian Governments level.

RECOMMENDATION 8

That the NSW Government seek endorsement at the Council of Australian Governments level of a stewardship program to reward farmers for their conservation activities for the public good.

4. Proposed changes to subordinate instruments

Before detailing the outcomes NSW Farmers is seeking, it is useful to reflect on the Parliamentary debate that took place when the Native Vegetation Bill was introduced in 2003. The debate appeared rushed, fraught with last-minute amendments, and driven by political expediency from the then Government. As rightly pointed out by multiple Members of Parliament and Members of the Legislative Council, the overarching legislation was always going to be problematic for farmers. As the Hon Duncan Gay MLC pointed out during the 4 December 2003 debate:

*“The fact is that the legislation is so wrong that many are saying they would prefer to continue under the much-maligned Native Vegetation Conservation Act – and that is not an idle comment. This is no way to make legislation governing a fundamental element of rural and regional life in commerce”.*³⁶

This was echoed by the Hon Jenny Gardiner MLC, who labelled the legislation “an absolute disgrace”, and the Hon Melinda Pavey MLC who labelled it “yet another bill that will hurt the bush”.³⁷ The Hon Rick Colless MLC noted that “the problems and inconsistencies with the bill are obvious from the moment one first reads the objects in part 1 of the bill”.³⁸

NSW Farmers submits that these comments and assessments were accurate at the time and remain so. The *Native Vegetation Act 2003* must be amended. NSW Farmers believes that whilst some incremental change can be achieved through the Regulation Review, there remains a clear need to correct the 16 years of dysfunctional native vegetation policy which has left many farmers disengaged from the objective of biodiversity conservation. NSW Farmers is seeking fundamental changes to the Act which will repeal Property Vegetation Plans as the primary approval mechanism and realign the Act with its objectives of limiting broadscale land clearing unless it is in the social, economic and environmental interests of the local area.

NSW Farmers members have rejected the prescriptive case-by-case assessment underpinned by property vegetation plans. NSW Farmers is seeking a return to regional

³⁶ Hansard (4 December 2003) Legislative Council

http://www.parliament.nsw.gov.au/Prod/parlament/hanstrans.nsf/V3ByKey/LC20031204?open&refNavID=HA3_1

³⁷ *ibid*

³⁸ *ibid*

plans which will set parameters to prevent environmental damage and enable CMAs to work with – rather than against – farmers, to achieve common objectives. This will require amendment of the principal Act.

NSW Farmers members have rejected the current proposals as a continuation of the existing, flawed regime, albeit acknowledging that they will now know the same outcome faster than before. NSW Farmers cannot support minor regulatory changes without a clear indication that amendments to the *Native Vegetation Act 2003* will also be made.

In summary, NSW Farmers is seeking:

- Legislation which limits broad scale land clearing;
- Legislation which balances conservation of biodiversity against the social and economic benefits of productive land use;
- A best practice environmental stewardship code with incentives and support for participating landholders;
- Local landscape planning by landholders and CMAs to define parameters for environmental management;
- CMAs that can advise farmers on best practice natural resource management on a proactive and informal basis;
- CMAs that actively promote remediation of invasive native scrub;
- Strong emphasis on self assessment for development within the parameters of the landscape plan, with support from CMAs;
- Penalties that are commensurate with the repairable nature of most offences;
- A move away from PVPs and other instruments which affect the title of private land;
- The removal of native grasses from native vegetation laws;
- Recognition of private native forestry as an ordinary agricultural use; and
- Approvals that are supported by a cost effective, speedy and independent appeal process.

[Attachment 2](#) summarises the key recommendations proposed in the remaining sections of the submission.

4.1 Streamlined assessments

The key criticism of the proposed streamlined assessments is that they will deliver the same outcomes as existing assessment processes, only faster. The assessment process is known to be flawed because it does not assess the economic impact of scattered trees, and imposes unreasonable offset ratios.

The proposed streamlined assessment will not address the long-standing problem of farmers being forced to seek a drawn-out approval and sign a binding 15-year agreement to remove a single tree. This nonsensical requirement is the reason that officials from

the Office of Environment can successfully argue that there has never been an application to clear a single tree. There is clearly no advantage to doing so.

To address these issues, NSW Farmers argues that the categories of “low risk” clearing currently proposed for streamlined assessment should be allowable under self-assessed codes of practice.

As with the codes discussed below, these must be flexible enough to enable practical management techniques. It is critical that farmers be allowed to move to rotational cropping under self assessment as this is the most effective and economic means to restore groundcover and manage regrowth.

RECOMMENDATION 9

That the categories of ‘low risk’ clearing currently proposed for streamlined assessment be allowable under self-assessed codes of practice.

4.2 Code of practice for clearing invasive native species

NSW Farmers commends the NSW Government for moving towards a code of practice approach for clearing invasive native species (INS). Member feedback, reinforced by our recent survey results (see above) indicate that the most common type of clearing that land managers would like to perform that is currently being prevented by native vegetation laws is INS, stated by a massive 79% of survey respondents.

It is now widely recognised that being prevented from appropriately managing INS can lead to adverse environmental outcomes. A recent University of New England (UNE) study found that “Patches under shrub, in INS, produce more runoff”; that “management that maintains groundcover at $\geq 70\%$ minimises runoff and sediment production”; and that “Direct drilling, pasture cropping and rotational grazing encourages high groundcover, reducing runoff and sediment production”³⁹. More recent research conducted by UNE in the Nyngan district found that “INS soil is harder, has less carbon, less microbial biomass, less grass and herbage, and is more acidic”.⁴⁰

NSW Farmers had hoped that in recognition of the environmental benefits of managing INS, the Code of Practice for Clearing INS (INS Code) would allow land managers to determine the most effective and economically feasible methods by which to treat it, both in the short and long term, noting that “When INS control work is carried out, appropriate planning and budgeting is required to manage the regrowth that will occur after the initial on-ground works have been completed”.⁴¹ Unfortunately, as noted below, the current draft Code does not allow this flexibility, by limiting treatment to

³⁹ University of New England, *INS and Soil Erosion*

⁴⁰ Tighe, M and Smith, R (2012) University of New England *INS Project Wrap-up: Soil Function Research*

⁴¹ Australian Government and NSW Farmers Association (2009) *Strategic Management of Invasive Native Species in Central and Western New South Wales (NSW)*

grubbing or chemical application. It should be recognised that chemical spot treatment, while cost effective in areas of low density INS, is not effective in higher density infestations, as “it is not possible to sow pasture efficiently due to the density of the standing trees [and] it can be difficult to manoeuvre equipment to apply poison”.⁴² Furthermore, “Finding labour for poisoning is an issue because it is repetitive, physically tiring and labour intensive work”.⁴³

The current requirement that land cleared under an INS approval be returned to native pastures is not based in reason. The Act requires that environmental outcomes be improved or maintained. By removing INS this outcome will have been satisfied and effort should be put into ensuring the land, which is likely to continue to be at risk of encroachment, is kept free from INS. Rotational cropping and a mixture of native and introduced pastures are likely to meet this objective far more effectively than unmanaged native pastures – where the only prevention would be to increase stocking rates.

NSW Farmers submits that the restrictions in the INS Code mean that, in practice, land managers will rarely meet the criteria for self assessment. NSW Farmers submits that the amendments summarised in Table 1 are required in order to deliver a more meaningful and effective code of practice.

Table 1: Recommended Changes to Code of Practice for Clearing INS

Section/s of Existing Code	Recommendation	Rationale
Part 1	Remove the paragraph which states that clearing is only permitted for the purpose of re-establishment of native vegetation and insert a new provision to allow for rotational cropping	This would allow treatment expenses to be recouped and prevent re-incursion of INS.
Parts 5 and 6	Remove restrictions on clearing types	
Part 8	Remove requirement to minimise soil disturbance	Current provisions are subjective. Farmers have an economic interest in maintaining topsoil/native seed base
Part 9	Remove the classification as protected regrowth	Protecting future regrowth in the cleared area is an unjustifiable restriction which will enable woody vegetation to reclaim productive agricultural land
Part 10	Remove limitations on clearing methods	This part prohibits through remediation of an area affected by INS (thereby guaranteeing re-establishment), resulting in higher clearing and ongoing management costs

⁴² *ibid*

⁴³ *ibid*

RECOMMENDATION 10

That the Code of Practice for Clearing Invasive Native Species be amended to provide a practical reduction in red tape and deliver improved triple bottom line outcomes by:

- * removing restrictions on clearing types;*
- * removing the requirement to minimise soil disturbance;*
- * removing the classification as protected regrowth*
- * removing limitations on clearing methods;*
- * removing the clause stating that clearing is only permitted for re-establishing native vegetation; and*
- * inserting a new provision to allow for crop/pasture rotation.*

4.3 Code of practice for thinning

Again, while NSW Farmers is generally supportive of a code of practice approach, the Code of Practice for Thinning (Thinning Code) demonstrates the difficulty of implementing a prescriptive approach for some forms of clearing such as thinning.

NSW Farmers submits that, if given broader scope to selectively thin to a set extent, land managers would rationally choose to remove low-DBHOB (diameter at breast height over bark) vegetation on the basis of cost and retaining established shade and shelter trees.

Land managers seeking to conduct thinning activities described in the Thinning Code are simply seeking to maximise groundcover which in many cases (particularly in drier climates) will prevent land degradation – an act which should not be characterised as “broad scale land clearing”.

Rather than taking a prescriptive approach, NSW Farmers believes the Thinning Code should refer back to the regional plans based on a mosaic approach and thinning to a benchmark which allows clumps and corridors as well as scattered trees across the landscape.

Additionally, the amendments summarised in Table 2 are required to make the Thinning Code workable.

Table 2: Recommended Changes to Code of Practice for Thinning

Section/s of Existing Code	Recommendation	Rationale
Part 3.3 (b); Part 5.1	Remove the restrictions on clearing trees with a DBHOB >20cm	Many species will grow beyond this limit in a short period of time (particularly given recent wet conditions) and may exceed the limit before they can be thinned again under the limitations in the Code
Part 5	Remove point 2	Allowing only 80% of thickened vegetation to be thinned is obviously aimed at reafforesting productive grazing country, which over time will reduce the economic viability of land managers' businesses. Thinning to improve groundcover can result in positive biodiversity outcomes and should not be unduly restricted.
Part 5	Remove point 4	These restrictions on clearing methods will make the cost of development prohibitive. In addition, methods such as chemical treatment and ringbarking, which leave dead vegetation in place, present work health and safety risks.
Part 5	Remove point 8	The limitation on the maximum area of thinning is firstly far below what would be practically necessary on a commercial scale farm enterprise. Secondly, hiring contractors every two years to conduct thinning piece-by-piece would lead to dramatically increased costs. It also unfairly disadvantages larger landholders, who will be prohibited from thinning a larger proportion of their properties.
Part 7	Remove the entire section	As raised above (regarding the INS Code), the requirement to conserve future regrowth goes beyond the existing requirements of the Native Vegetation Act and will lead to revegetation of productive agricultural land.

RECOMMENDATION 11

That the Code of Practice for Thinning be amended to provide a practical reduction in red tape and deliver improved triple bottom line outcomes by:

- * removing restrictions on clearing trees with a DBHOB > 20cm;*
- * removing the requirement to allow only 80% of thickened vegetation to be thinned;*
- * removing the restrictions on clearing methods;*
- * removing the limitation on the maximum area of thinning; and*
- * removing the requirement to conserve future regrowth.*

4.4 Grasslands discussion paper

As raised in previous sections of this submission, NSW Farmers submits that grasslands should not be subject to native vegetation laws. Under the current regime, areas of native grass are protected until a weed becomes the dominant species. This prevents early action or prevention and increases the cost to production and the environment (see Section 2.1.2 above). Groundcover is known to re-establish quickly following rotational cropping and land managers have an economic incentive to encourage re-establishment as a feed base. NSW Farmers is not aware of native vegetation laws in any other jurisdiction including grasslands, and has the unanimous support of members in seeking to have it removed from all native vegetation policies and statutes.

The current protections for native pasture prohibit management of invasive, and even noxious species. A prime example of this is the areas of the state affected by African Lovegrass. Land managers seeking to control this threatening species are unable to do so until it has reached a critical mass of 51%. This is a perverse outcome for the environment and productivity.

The grasslands requirements are not only an issue from a weeds perspective, but also a pest animal perspective. Under the current laws, landholders seeking to remove a rabbit harbour such as dead logs, would require a property vegetation plan because it is virtually impossible to remove dead trees without disturbing existing native vegetation.

Landholders are also prevented from removing loose surface rocks for areas dominated by native vegetation. The process involves lightly scarifying the area, then raking with a rock windrow and then picking the stones up using a rock picker. This significantly improves the productivity of the area by enabling landholder to sow crops and/or pastures. Under current laws, landholders require a PVP because it does cause short-term damage to the existing native vegetation.

RECOMMENDATION 12

That all references to grasslands be removed from native vegetation policies and statutes.

5. Regulatory Impact Statement

Given the concerns and recommended solutions outlined by NSW Farmers in the previous sections of this submission, NSW Farmers recommends that the *Regulatory Impact Statement for the Proposed Native Vegetation Regulation 2012* be recast.

The existing Regulatory Impact Statement considers three options, namely:

- Option 1 (Base case);
- Option 2 (Instate the proposed Native Vegetation Regulation 2012); and
- Option 3 (Remake the Native Vegetation Regulation 2005).

It is stated in the Regulatory Impact Statement that

“The relative costs and benefits of each option have been assessed against the Base Case of no regulation (Option 1). The costs and benefits of the options depend on their relative ability to achieve the objects of the Act”.⁴⁴

As such, the benefits reported in the RIS, including the reported \$19.96 million net present value of option 2⁴⁵, are those compared to a ‘do nothing’ approach, rather than a comparison of the recommended option relative to the status quo. NSW Farmers submits that assessing the current proposals against the existing regulations would provide a far clearer picture as to the costs and benefits associated with amending the status quo, and as such, how effective the current proposals would be in terms of delivering the

The RIS does make some comparisons to the existing Regulation, based on the assumption that the proposed Regulation delivers “more streamlined assessment processes and establishment of new exemptions for routine agricultural management activities”, and that the proposed Regulation delivers “increased flexibility for landholders to manage invasive native plant species and thin native vegetation” as a key benefit.⁴⁶ As outlined above, NSW Farmers does not believe that the proposed Regulation is sufficiently flexible in terms of INS and thinning, and as such, the comparison could be imbalanced.

RECOMMENDATION 13

That the Regulatory Impact Statement be recast following adoption of the amendments proposed by NSW Farmers, with a clear comparison between the existing and proposed Regulations.

====//=====

⁴⁴ Arche Consulting Pty Ltd (2012) *Proposed Native Vegetation Regulation 2012 – Regulatory Impact Statement*

⁴⁵ *ibid*

⁴⁶ *ibid*

Attachment 1: Key issues unresolved by current proposals

Issue	Impact	Solution
<i>Spread of weeds in native pasture</i>	Areas of native grass are protected until a weed becomes the dominant species. This prevents early action or prevention and increases the cost to production and the environment. Groundcover is known to re-establish quickly following rotational cropping and farmers have an economic incentive to encourage re-establishment as a feed base. <i>Example</i> - graziers on the Monaro are unable to control incursions of African Love Grass in their pasture through spraying or rotational cropping.	Remove restrictions on clearing groundcover from the <i>Native Vegetation Act 2003</i>.
<i>Incursions of Invasive Native Species</i>	Given the right circumstances, some native species are prone to dominating the landscape, causing environmental damage by choking out biodiversity and damaging soil structure which leads to erosion. This is prevalent in low rainfall areas of the state. <i>Example</i> – INS is a problem throughout the state, but particularly prevalent in places like Hermidale, Cobar and Nyngan. Office of Environment and Heritage recognises the impacts of INS on species diversity, soil erosion, productivity, predation and water quality.	OEH proposals restrict clearing methods and levels, as well as land use post-remediation. These will make it uneconomic to prevent INS from damaging the environment and farm productivity. The INS Code of Practice must be broadened to allow any clearing method without approval, changed land use and thorough remediation.
<i>Prohibition on development</i>	Offset ratios and the tests for assessment within the <i>Native Vegetation Act</i> in effect prohibit the development of areas which could be turned into productive agricultural areas and simultaneously increase biodiversity, carbon sequestration and landscape health. <i>Example</i> - a number of properties, for instance Kevin Mitchell's property at Nyngan (the subject of a study by UNE), have demonstrated that introducing productive agriculture to a landscape can have environmental benefits. This type of development is illegal under current laws and proposals.	Amend the <i>Native Vegetation Act</i> to introduce regional landscape plans which allow sustainable development but provide rules to protect the environment – taking into account the overall impact on the landscape. This would require removal of the 'improve or maintain' test from the <i>Native Vegetation Act</i> and the introduction of a test that assesses the social, economic and environmental outcomes of a development proposal.

<i>Inability to remove scattered paddock trees and small clumps</i>	Current assessment rules and offset ratios make it difficult for farmers to remove scattered paddock trees and small clumps. Paddock trees and small clumps can have serious impacts on farm productivity and can prevent adoption of conservation farming techniques such as tram lining. <i>Example</i> – this issue is prevalent right across the wheat belt where farmers are adopting conservation farming and moving to larger machinery to remain internationally competitive. NSW Farmers is currently collecting data to quantify the cost of individual trees.	While the current proposal offers a ‘streamlined assessment’ for clearing paddock trees, this is likely to just speed up the assessment but deliver the same outcome. We need to amend the definition of ‘broadscale land clearing’ within the <i>Native Vegetation Act</i> – which currently captures a single native plant.
<i>Impractical offset ratios for clearing proposals</i>	Current offset ratios require the resumption of substantially more productive land than what is intended for clearing. This provides a disincentive to improve farm productivity or makes basic development proposals unfeasible. <i>Example</i> – members north of Tamworth currently under investigation for clearing offences are being asked to remediate at a ratio of 30-to-1, which would put them out of business. On the other side of their boundary fence a mining proposal is going ahead in the same vegetation at an offset rate of 5-to-1.	Withdraw the prescriptive ‘<i>Environmental Outcomes Assessment Methodology</i>’ and train CMA staff to seek reasonable offsets.

Attachment 2: Summary of Requirement Amendments to Current Proposals

Overall comments

- Fundamental aspects of the *Native Vegetation Act 2003* create an impediment to food and fibre production and lead to adverse environmental outcomes.
- NSW Farmers members have rejected the prescriptive case-by-case assessment underpinned by property vegetation plans. We are seeking a return to regional plans which will set parameters to prevent environmental damage and enable CMAs to work with farmers, rather than against them, to achieve objectives. This requires amendment of the principal Act.
- NSW Farmers members have rejected the current proposals as a continuation of the existing, flawed regime. NSW Farmers cannot support minor regulatory changes without a clear indication that amendments to the *Native Vegetation Act* will also be made.

Streamlined PVP assessments

- Streamlined assessments will deliver the same outcomes as existing assessment processes – these are known to be flawed because they do not assess the economic impact of scattered trees, and impose unreasonable offset ratios.
- This will not address the issue with farmers having to seek a drawn-out approval and sign a binding 15 year agreement to remove a single tree.
- To address these issues, the categories of low risk clearing currently proposed for streamlined assessment should be allowable under self-assessed codes of practice.
- As with the codes discussed below, these must be flexible enough to enable practical management techniques. It is critical that farmers can move to rotational cropping under self assessment as this is the most effective and economic means to restore groundcover and manage regrowth.

Code of Practice for the Management of Invasive Native Species

- The code of practice approach is seen by NSW Farmers as a step in the right direction – unfortunately the restrictions in the INS Code mean that in practice farmers will rarely meet the criteria for self assessment.
- The following aspects of the CoP must be amended for it to provide a practical reduction in red tape:
 - remove restrictions on clearing types (found in parts 5 and 6);
 - remove requirement to minimise soil disturbance (part 8) – current provisions are subjective, besides which farmers have an economic interest in maintaining topsoil and the native seed base;
 - remove the classification as protected regrowth (part 9) – protecting future regrowth in the cleared area is an unjustifiable restriction which will enable woody vegetation to reclaim productive agricultural land;
 - remove limitations on clearing methods (part 10) – this part prohibits thorough remediation of an area affected by INS (guaranteeing reestablishment), and higher clearing and ongoing management costs;
 - remove the paragraph in part 1 which states that clearing is only permitted for the purpose of re-establishing native vegetation and insert a new provision to allow for rotational cropping to recoup treatment expenses and prevent reincursion of INS.

Code of Practice for Thinning

- Again, while NSW Farmers is generally supportive of a code of practice approach, the Thinning CoP demonstrates the difficulty of implementing a prescriptive approach for some forms of clearing such as thinning.
- If given broader scope to selectively thin to a set extent, farmers would rationally choose to remove low-DBHOB (diameter at breast height over bark) vegetation on the basis of cost and retaining established shade and shelter trees.
- Farmers seeking to conduct thinning activities described in the code are simply seeking to maximise groundcover which in many cases (particularly in drier climates) will prevent land degradation – an act which should not be characterised as broad scale land clearing.
- Rather than taking a prescriptive approach, the code should include a straightforward rule of thumb such as *‘thinning should not reduce total foliage cover of the thinned area by more than 70%’*.
- Additionally, the following amendments are required to make the code workable:
 - the restrictions on clearing trees with a DBHOB >20cm should be removed (see part 3.3(b) and part 5.1). Particularly in the recent wet conditions, many species will grow beyond this limit in a short period of time and may exceed the limit before they can be thinned again under the limitations of this code;
 - remove point 2 in part 5 – allowing only 80% of thickened vegetation to be thinned is obviously aimed at reforestation of productive grazing country which over time will reduce the economic viability of our members’ businesses. Thinning to improve groundcover can result in positive biodiversity outcomes and should not be unduly restricted;
 - remove point 4 in part 5 – as discussed above, these restrictions on clearing methods will make the cost of development prohibitive. Also, methods such as chemical treatment and ringbarking which leave dead vegetation in place present workplace health and safety risks;
 - remove point 8 in part 5 – the limitation on the maximum area of thinning is firstly, far below what would be practically necessary on a commercial scale farm enterprise. Secondly, hiring contractors every two years to conduct thinning piece-by-piece would lead to dramatically increased costs. It also unfairly disadvantages larger landholders, who will be prohibited from thinning a larger proportion of their property;
 - remove part 7 – as raised in our comments on the INS Code, the requirement to conserve future regrowth goes beyond the usual requirements of the *Native Vegetation Act* and will lead to revegetation of productive agricultural land.