



**NSW Farmers submission to the  
Independent Biodiversity Legislation Review Panel**

**September 2014**

**NSW Farmers' Association  
Level 6 35 Chandos Street  
St Leonards NSW 2065**

Ph: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]

**NSW Farmers' Association Background**

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

## Table of contents

|          |   |           |
|----------|---|-----------|
| <b>1</b> | <b>Context and overview</b>                               | <b>3</b>  |
| 1.1      | Native vegetation and related biodiversity legislation    | 3         |
| 1.2      | Research for the review                                   | 4         |
| 1.3      | Information contained in this submission                  | 4         |
| 1.4      | Terms of Reference vs Issues Paper                        | 5         |
| 1.5      | Timeframe   | 5         |
| 1.6      | Summary of submission                                     | 6         |
| <b>2</b> | <b>NSW Farmers' key recommendations</b>                   | <b>7</b>  |
| 2.1      | The Act must change                                       | 7         |
| 2.2      | NSW Farmers' recommendations- summary                     | 7         |
| 2.3      | Recommendations   | 8         |
| <b>3</b> | <b>Terms of reference – Overview</b>                      | <b>9</b>  |
| 3.1      | Facilitate the conservation of biological diversity       | 9         |
| 3.2      | Support sustainable development                           | 9         |
| 3.3      | Reduce red tape   | 10        |
| <b>4</b> | <b>Terms of reference – Scope</b>                         | <b>11</b> |
| 4.1      | Scope   | 11        |
| 4.2      | Funding arrangements                                      | 12        |
| <b>5</b> | <b>Terms of reference – Guiding Principles</b>            | <b>13</b> |
| <b>6</b> | <b>Current Legislative Arrangements</b>                   | <b>14</b> |
| 6.1      | Objectives of the current legislative arrangements        | 14        |
| 6.2      | Best practice in biodiversity conservation                | 15        |
| 6.3      | Social and economic impacts                               | 15        |
|          | 6.3.1 <i>Economic</i>                                     | 15        |
|          | 6.3.2 <i>Social</i>                                       | 16        |
| 6.4      | Environmental impacts and adaptability                    | 17        |
|          | 6.4.1 <i>Prohibition on sustainable farming practices</i> | 18        |
|          | 6.4.2 <i>Prohibition on active land management</i>        | 20        |
|          | 6.4.3 <i>Weed management</i>                              | 20        |
| 6.5      | New and emerging frameworks                               | 21        |
| <b>7</b> | <b>Evidence base for government intervention</b>          | <b>22</b> |
| <b>8</b> | <b>New legislative arrangements</b>                       | <b>24</b> |
| 8.1      | Conclusion  | 24        |

## **1. Context and overview**

### ***1.1 Native vegetation and related biodiversity legislation***

NSW Farmers welcomes the opportunity to comment on the biodiversity legislative framework. Given that the combined legislative instruments and policies have been created at different points in time and in isolation from each other, it is notable that this is the first time the combined impact of each element is finally being considered.

Agricultural landscapes are part and parcel of the wider environment and farmers are significant landholders and managers of the environment. However, as a consequence of the framework having evolved from consecutive pieces of legislation, it has taken on a sole environmental focus and not the desired triple bottom line approach encompassing economic, environmental and social outcomes. In contrast, the key drivers such as the International Conventions that are supposed to underpin many aspects of this framework, do. Furthermore we argue that the current framework has done little to recognise that the performance of the legislation and policies is reliant on human actions<sup>1</sup>. Farmers are not the landscapes adversaries, our management practices have evolved to be more efficient with less, to sustainably produce food and fibre in combination with providing ecosystem services.

A key case in point is the *Native Vegetation Act 2003* (“NV Act”) plank of the biodiversity framework. 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. A key aspect to the NSW Farmers’ policy position on native vegetation is that farmers are responsible land managers who do not need heavy handed regulation in order to do the right thing.

It is our submission that the current NV Act is the product of an ideological debate about tree clearing, as opposed to the active management of our natural resources. As it is currently implemented the social and economic impact on NSW communities is also being ignored. Our submission will refer to the work of the Productivity Commission that has found the NV Act to be a barrier to improvements in farm sustainability.

Consequently native vegetation reform has continued to be a key policy priority for the NSW Farmers Association. We maintain that urgent legislative change is required to refocus the native vegetation framework into something that farmers can work with and which does not jeopardise the future of environmental values and in turn a vibrant agricultural industry. In short what we need is a framework that recognises agriculture and within which, farmers can innovate.

---

<sup>1</sup> Anna Malawska, Christopher John Topping, Helle Ørsted Nielsen, “[Why do we need to integrate farmer decision making and wildlife models for policy evaluation?](#)”, Land Use Policy, Volume 38, May 2014, p737, pp 732-740.



To be clear, NSW Farmers do not advocate for broad scale destruction of the landscape. The Association has supported and continues to support an end to broad scale clearing which is not in the interests of rural communities and the environment that rural communities exist. This framework currently in place was intended to establish a triple bottom line framework (balanced social, economic and environmental outcomes), delivered by the advisory services at a local level and resulting in cost effective collaboration between farmers and government.

However, as outlined in this submission, these intentions were lost in the detail of implementation. NSW Farmers' members reject fundamental aspects of the NV Act. As it currently stands, the policy framework is focused on micro-management of individual plants and properties, with decision making taking place via is by 'black-box' software, whose settings controlled by the Office of Environment and Heritage (OEH). This approach has failed both procedurally as well as substantively. Formerly CMAs and now LLSs have stilted decision making power and consequently have been unable to consolidate their intended advisory services role in natural resource management.

## **1.2 Research for the review**

As part of the Independent Biodiversity Legislation Review, NSW Farmers is in receipt of funds by the OEH to commission research for the purposes of the review. We therefore request that this submission be read in conjunction with the findings of the research, which at the time of writing, is underway. We expect the research to be completed before the Panel is due to present final recommendations to the Minister.

## **1.3 Information contained in this submission**

Native vegetation has been a top priority reform area for the NSW Farmers Association. Our members have endured to varying degrees the negative effects of conservation legislation since the introduction of the *State Environmental Planning Policy No 46 – Protection and Management of Native Vegetation* in 1995. NSW Farmers has over the years gathered specific information to respond to various inquiries and reviews. This submission will draw on previous submissions to Government and in particular a submission to proposed reforms contemplated in May 2011 and a submission in response to the NSW Government's native vegetation regulation review in August 2012.

NSW Farmers' staff work in close collaboration with our membership and elected representatives in presenting to Government and independent reviewers the specificities of how this legislation is not working for farmers or the landscape that supports farms. We have a Conservation and Resource Management Committee with vast experience in natural resource management on-farm and at a regional level. In addition, we have formed a Native Vegetation Working Group to work closely on specific native vegetation issues. This group is made up of individuals



from our CRM Committee as well as a number of elected representatives or members with demonstrated knowledge and experience in the issues.

More generally, NSW Farmers' policy is formed at a grassroots level and is formally debated at specific intervals throughout the year, chiefly at an annual conference held in July each year. Each region delegates representatives to attend the conference. As well as this we frequently take member calls on native vegetation issues, we invite feedback from members on relevant progressions through our weekly newsletter and provide member updates. We also formally survey our members on significant issues in order to remain in touch with the general consensus on policy issues and to compile strong statistics and specific case studies to support our policy position.

#### **1.4 Terms of reference vs. the Issues Paper**

The Independent Biodiversity Legislation Review Panel *Issues Paper* of August 2014 (the 'Issues Paper') fails to recognise the key concern that the implementation of the NV Act is causing severe hardship on farmers. Regardless of who and what the beneficiaries of such an Act are, out of all of the many facets of NSW that this Act can touch on, farmers are the people whom the Act practically affects the most, and farmers have to carry out the requirements of this Act at their direct and indirect expense. For this reason alone, the review requires a strong focus on the impacts on farmers, farms and the landscape that supports farms.

NSW Farmers were initially encouraged with the release of the Terms of Reference for the review which more accurately depicted the current impetus for review and reform. However, NSW Farmers were astounded that after years of pushing for a review of this Act upon the release of the Issues Paper for the review, not one mention was made as to the workability or otherwise of this Act and related biodiversity legislation for the people who bear the brunt of the legislation. In summary, it is our view that the Issues Paper wrongly takes the view of seeking and assessing conservation systems and outcomes across NSW. When NSW Farmers approached the Panel with this, we were told that the Terms of Reference are to be read with the Issues Paper. For this reason this submission will specifically address the issues highlighted in the Terms of Reference.

#### **1.5 Timeframe**

Upon announcement of the review in June 2014, NSW Farmers publicly welcomed the relatively short time frame of 6 months, simply as a result of our members' past experiences of enduring lengthy drawn out, and indeed costly, reviews resulting in quite little if any change. For example, NSW Farmers submits that land owners in NSW are still yet to see any substantial changes on the ground as a result of the Joe Lane review. The costs of the review are not known to NSW Farmers but it can be assumed that the costs have outweighed the benefits as there was so little given in that regard. As outlined above, the issues presented in the review at hand are significantly broader in scope and we are



hopeful that the review time frame is able to capture the depth of the issues in the time frame given.

### **1.6 Summary of submission**

This submission will firstly summarise the NSW Farmers policy on native vegetation reform, and secondly will address each term of reference. This submission will conclude with a pathway to reform. We welcome continued discussion on the issues presented herein, as native vegetation policy is a complex and nuanced debate and NSW Farmers are prepared to work hard and get it right. We are able to provide specific on-farm examples and contact with any number of affected landholders at the Panel's request. We embrace a fully informed review and we very much look forward to the Panel's findings.

## **2. NSW Farmers' key recommendations**

### **2.1 *The Act must change***

In 2011 a review of the native vegetation regulations was announced by the then Minister for the Environment, The Hon. Robyn Parker. Mr Joe Lane was subsequently appointed as the independent facilitator for the review. A final report containing forty recommendations was released in 2013. Government committed to implementing all forty recommendations. Although NSW Farmers provided input and were extensively consulted during the review phase, we maintained that whilst piecemeal change could be achieved through the review of the regulations, the systemic issue is to be found in the NV Act.

As a result of a number of the independent facilitators' recommendations contained in the report presented to Government, the OEH developed three 'self-assessable codes' for thinning, invasive native species and paddock trees respectively. NSW Farmers again provided substantial input during the development of these codes and we were disappointed to note that our feedback as to the workability and practicality of the Codes on farm was not taken on board, at all. Our farmers and elected representatives looked closely at these Codes genuinely wanting to find positives or opportunities for improvement, but the OEH drafting of these Codes gave very little in that regard. We surveyed the NSW Farmers membership and the feeling was reflected across the board. Many of our farmers believed that the Codes in fact created more red tape, the opposite of one of the guiding principles for the 'Joe Lane Review'.

At the time of writing it is almost one year since the development of those Codes and the current status of them is unknown to NSW Farmers. Whilst it has been a frustrating and in many ways a futile process, NSW Farmers submits that the Codes debacle has highlighted the fact that the root problem is in the Act itself, and that there is no point tinkering at the edges of a deep-seated issue, without addressing what exactly needs attention. We are more than hopeful in that the review at hand is the first opportunity in a long time to have these provisions scrutinised and the subordinate instruments will then at least have a chance of facilitating positive outcomes.

### **2.2 *NSW Farmers' recommendations – summary***

Key to our submission is abolishment of Property Vegetation Plans (PVPs) in favour of regional plans which could set boundaries for landscape environmental management, and overriding all of our recommendations is the balance of protection of the environment against the social and economic benefits of productive agriculture. There is also a clear need to identify, explore, refine and thereafter prioritise management actions which present both environmental and economic incentives, such as those referred to as active and adaptive management, below. We submit that it is an entirely common sense approach that these activities are widely adopted and encouraged.



We believe that farmers are well placed to assert that environmental and agricultural activities need not be mutually exclusive events and we push for Government and environmental groups to genuinely explore this notion.

The results of the alternative can be seen in the current framework in that it has clearly resulted in many farmers feeling disengaged from the objective of biodiversity conservation. NSW Farmers are 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 broad scale 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 PVPs and the Environmental Outcomes Assessment Methodology (EOAM) and as part of our research we aim to show that uptake of PVPs across the state cannot provide for a balanced approach to landscape management. NSW Farmers is seeking a return to regional plans which will set parameters to prevent environmental damage and enable LLSs to work with – rather than against – farmers, to achieve common objectives.

### **2.3 Recommendations**

In Summary, NSW Farmers are seeking:

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



### **3. Terms of reference - Overview**

The following section will speak to each element of the Terms of Reference<sup>2</sup> which are extracted in italics.

*This review aims to establish simpler, streamlined and more effective legislation that will:*

- *Facilitate the conservation of biological diversity*
- *Support sustainable development*
- *Reduce red tape*

#### **3.1 Facilitate the conservation of biological diversity**

NSW Farmers submits that optimal conservation of biodiversity is only achieved in collaboration with farmers. As the Productivity Commission has noted as part of its inquiry into native vegetation laws in Australia in 2004:

*A crucial thrust of the Commission's recommendations is that policies that fail to engage the cooperation of landholders will themselves ultimately fail. In addition, greater transparency about the cost-benefit trade-offs involved in providing desired environmental services would facilitate better policy choices.<sup>3</sup>*

As custodians of over 70% of the land mass of NSW, stewardship will always be an important part of the farming business model. Not only does the framework for managing biodiversity need to be tailored to suit the interests of those who must carry it out, if the framework carried incentives to do so, improvement across a number of considerations would be considerable.

#### **3.2 Support sustainable development**

Supporting sustainable development means allowing farmers to improve the long term sustainability of their land. The question to be prioritised is whether the landscape is functioning and has the ability to thrive. If farmers are unable to improve the long term sustainability of their land, conservation aspirations whatever they may be, are futile.

To help farmers improve environmental practices and better quantify the industry's successes, NSW Farmers is keen to progress the establishment of a code of practice which would sit above regional or local landscape plans (noted above) as a land management target that leading producers work to. This should be linked with funding to encourage compliance with such a code and assist participants with management activities. Strong facilitation and extension would need to be provided by the LLS to assist and encourage landholders to participate.

---

<sup>2</sup> NSW Government Environment and Heritage *Biodiversity legislation review terms of reference* available at <http://www.environment.nsw.gov.au/biodiversitylegislation/BLRevTerms.htm>

<sup>3</sup> *Impacts of Native Vegetation and Biodiversity Regulations*, Productivity Commission 2004, p XLVI

### **3.3 Reduce red tape**

Farmers in NSW bear a multi-million dollar opportunity cost each year (see **economics** - below) 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 government and any associated conservation or ecological outcomes. To the detriment of the above three outcomes, the current context is one of distrust, unwillingness, disconnect and confusion. To frame it broadly, it is the submission of NSW Farmers that current laws have led to perverse social, economic and environmental outcomes.

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 LLSs to farmers who bear the burden of native vegetation law.

Red tape in this context is embodied through the PVP and EOAM process, the significant back log in the processing of PVP applications found across a number of LLSs, and more, the state-wide legislation prohibiting sustainable development. Red tape is also found in proposals designed to 'reduce red tape' such as the proposed self-assessable codes for thinning, invasive species management and paddock trees. The red tape proposed to be involved for these activities (i.e. overly prescriptive codes as well as a notification requirement) which are often undertaken in the interests of the environment alone is a perverse outcome.

## **4. Terms of Reference- Scope**

*The independent Review Panel will consider the policy settings, programs and funding arrangements that support the management of biodiversity, threatened species and native vegetation in NSW.*

*The scope of the review will include the Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001 and Part 4 Divisions 11 through 13, Part 6A (insofar as it relates to native plants and animals), and Parts 7 through 9 of the National Parks and Wildlife Act 1974. It will include all associated regulations and policies.*

### **4.1 Scope**

The Act forming the focus of this submission is the *Native Vegetation Act 2003* ("NV Act"). The issue of "bio-certification" (see parts 7 Division 4 and parts 7AA of the *Threatened Species Conservation Act 1995* ("TSC Act")) is often raised as an argument against reform of the NV Act. NSW Farmers believes that this issue needs consideration as part of the reform process. The problem with the way the legislation works now is that farmers, by complying with the NV Act are deemed to be "bio-certified", however are still none the wiser in terms of how that occurred. In short, it is in all parties' best interests to assist farmers to be better informed as to ecological goals or practices which promote biodiversity. As carried through this entire submission, we see this best as working on a regional scale.

We would like to see a system whereby farmers know if threatened species are present on the land and can achieve conservation goals in collaboration with other parties within the region. The issue raised above, but without the certification, is analogous to current culpability under federal environmental law, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ("EPBC Act"). A farmer can seek and be given approval through the state based native vegetation scheme, and unbeknown to the farmer, can still be liable under the EPBC Act. This may be addressed with the proposal to move to the one-stop-shop currently the subject of debate at a Federal Parliament level. Reform of the NV Act should not expose farmers to potential prosecution under the TSC Act, and in any case the communication to landholders of their specific responsibilities under the TSC Act needs considerable improvement.

The current system that NSW Farmers as an Association can attest to is that determinations of certain species, listings, or activities are posted to the head office. The online source of information is not entirely clear, nor is the overall goal or approach to this listing. There appears to be no clear nor collaborative process for considerations of submissions. In short, farmers are very disconnected from the threatened species listings process, which is in and of itself an oddity given that they are managing the majority of the land that holds the flora and fauna. NSW Farmers recommends an improvement to the management of threatened species listings and determinations in terms of communication to landholders and a more collaborative approach as a part of the reform of the NV Act.



## 4.2 Funding arrangements

NSW Farmers looks forward to the panel's findings as to funding arrangements. It is submitted (using the example in relation to the Joe Lane review above) that it is not readily communicated to regional communities what the cost of implementation of native legislation is, and in turn, what outcomes have been achieved as a result of this spending. In mid 2014 the OEH issued a *NSW Report on Native Vegetation 2011-13*<sup>4</sup> however, no equivalent in terms of a socio-economic report, including costs of administration, are included. This is not to mention the fact that the report did not include re-established native vegetation or regrowth, but only depicted native vegetation *loss* in NSW. NSW Farmers find this particularly alarming when we observe the justification of the administration of this legislation in terms that are so specifically narrow. Not only are socio economic considerations absent in these reports, but positive environmental conditions are absent also.

NSW Farmers also observes funding arrangements in the millions of dollars towards conservation programs, and a reporting tool is not made available as to the outcomes of these programs. Whilst NSW Farmers are supportive of collaborative model to improving the landscape and the funding to do so, we must be aware of the cost trade-off and what the environmental outcomes are. In cases where conservation spending has failed, it is amazing to think where those millions of dollars could go if used in genuine consultation with actual land managers.

---

<sup>4</sup> NSW Government Office of Environment and Heritage *NSW Report on Native Vegetation 2011 – 2013* 2014 available at <http://www.environment.nsw.gov.au/vegetation/reports.htm>

## **5. Terms of reference - Guiding Principles**

*The panel will be guided by the broad goals and reform directions set out in NSW 2021 and by the principles set out in the 2012 Commission of Audit, which are:*

- *A focus on devolution to regional and local levels*
- *An increased focus on partnership and outsourcing*
- *Greater focus on transparency and evidence based decisions*
- *Fostering greater collaboration and coordination between government and the private and community sectors*
- *Budget restraint*

NSW Farmers submits that these principles are very much in line with what NSW Farmers are seeking in terms of native vegetation reform. As outlined throughout this submission, NSW Farmers firmly believe that the development of local or regional vegetation plans is the most appropriate means to identify biodiversity priorities, and that a state-wide application is significantly less likely to be able to cater to the varying landscape conditions and needs across the regions of NSW, nor contain the flexibility needed for improvement to farm sustainability.

NSW Farmers' independently commissioned research for this review is exploring whether this approach is preferable and how it may be achieved. Furthermore and to speak to the forth dot point above, we submit that this approach presents a dual benefit as the costs are minimised when red tape is reduced and the work is kept at a local level and in line with local priorities.

Underpinning the development of regional plans would need to be a threshold limit for land managers to incrementally develop their land. This limit would form a key part of the regional plan and would allow more modest development to occur within the confines of the regional plan, without government intervention or 'red tape'. It could be expressed as a certain percentage of the holding, or as percentage of the vegetation on the holding. Another expression could be in the form of a time and space based calculation. For example, X hectares per Y year/s, where X and Y are regionally agreed targets and tailored to suit the conditions of the landscape.

Across all of our policy priority areas, NSW Farmers advocates for a greater focus on transparency and evidence based decisions. From the regulation of mining and gas approvals on farm land to the intricacies of native vegetation management, we submit that triple bottom line considerations must be determined using the best possible evidence, and that these considerations are available to the public.

## **6. Terms of reference – Method – 1: Current legislative arrangements**

### **6.1 Objectives of the current legislation**

The panel will evaluate the current legislative framework. In doing so it will consider:

- The objectives of the current legislation and whether they remain valid

A key theme across the objectives of all of the *Threatened Species Conservation Act 1995*, the *Native Vegetation Act 2003*, the *Nature conservation Trust Act 2001* and the *National Parks and Wildlife Act 1974* is ecologically sustainable development (“ESD”). The incorporation of ESD clearly requires the effective integration of economic and environmental considerations in decision making processes<sup>5</sup>. In the case of the *Native Vegetation Act 2003* NSW Farmers submits that the objectives section is contradictory in and of itself. We further submit that this is one of the most fundamental flaws and impossibilities of the Act which has led to its widespread rejection amongst the farming community. The relevant provisions are extracted below:

#### **Native Vegetation Act 2003**

#### **3 Objects of Act**

The objects of this Act are:

- (a) 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**, and
- (b) to prevent broadscale clearing **unless it improves or maintains environmental outcomes**, and
- ...
- (e) to encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation, in accordance with the principles of **ecologically sustainable development** (emphasis added)

Paragraph (b) in fact counteracts the principles of both triple bottom line considerations found in the other objectives, and makes achieving the widely accepted definition across planning and environmental legislation of ecologically sustainable development, practically impossible. NSW Farmers recommends that the contradictory ‘improve or maintain’ test found in the objectives of the *Native Vegetation Act 2003* be removed and replaced with a test that is consistent to the principles of the legislation and principles enshrined across NSW planning and environmental policy.

---

<sup>5</sup> Protection of the Environment Administration Act 1991 (NSW) section 6 (2) see also Environmental Planning and Assessment Act 1979 (NSW) section 4 and Threatened Species Conservation Act 1995 (NSW) section 4.

## **6.2 Best practice in biodiversity conservation**

*The panel will evaluate the current legislative framework. In doing so it will consider:*

- *Whether the current policy framework reflects best practice in biodiversity conservation*

NSW Farmers submits that the implementation of the *Native Vegetation Act 2003* has prohibited the uptake of best practice in biodiversity conservation. There are a number of ways to view the term ‘biodiversity conservation’ and NSW Farmers believe that any way you interpret this must absolutely include consideration of the social conditions which will influence the practice. In short, biodiversity conservation, should not carry a passive implication. Biodiversity conservation requires active and adaptive management and that in turn, requires human effort and resources.

## **6.3 Social and economic impacts**

*The panel will evaluate the current legislative framework. In doing so it will consider:*

- *Approaches and experiences of other states and territories, and relevant jurisdictions overseas*
- *The social and economic impacts of the legislation including whether the current regulatory provisions balance environmental, social and economic factors in decision making (i.e. consideration of the triple bottom line).*

This term of reference forms a large focus area of the NSW Farmers research for this review. NSW Farmers submit that not only do the regulatory provisions contained in the *Native Vegetation Act 2003* not *balance* environmental, social and economic factors in decision making, that there is no consideration *at all* of social and economic factors. It is impossible to give weight or evaluate the balancing of social and economic factors if these values are not present or not known.

### **6.3.1 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 state-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.

It remains unacceptably unclear what the opportunity costs of the current native vegetation laws are. Questions on whether native vegetation laws in NSW are in fact economically efficient or deliver environmental outcomes at least cost to the community are priority questions. We fully support the inclusion of this term within the terms of reference and a consideration of the socio-economic analysis of, in

particular, the *Native Vegetation Act 2003* and by its nature the other Acts which have an impact on land managers, their businesses and rural communities.

In 2005, in the largest study of its kind, the Australian Bureau of Agricultural and Resource Economics (“ABARES”) made an attempt to measure 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*<sup>6</sup>. As part of the study, ABARE conducted face-to-face surveys with 386 broadacre farmers across a 400 000km<sup>2</sup> 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*<sup>7</sup> 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*<sup>8</sup>. The median cost of foregone crop development across the survey region was approximately \$156,000 per farm<sup>9</sup>.

Perhaps the most telling finding of the ABARES 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*<sup>10</sup>. As stated above, NSW Farmers believes the objectives of the Act are fundamentally at odds with seeking or considering balanced outcomes.

A study completed by the Productivity Commission – *estimates of potential impacts of broadscale clearing restrictions in Moree Plains and Murweh Shires* (using applicable NSW findings only) estimated that

*Prohibitions on broadscale clearing could reduce the present value of expected net returns (2003 dollars) to land, capital and management (over a 40-year period) in Moree Plains Shire (NSW) by \$27-\$84 million, depending on the productivity of newly-cleared land.*<sup>11</sup>

### 6.3.2 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

---

<sup>6</sup> Davidson, Alistair & Australian Bureau of Agricultural and Resource Economics & Davidson, Alistair & Lawson, Kenton & Kocic, Philip et al. 2006, *Native vegetation : management on broadacre farms in New South Wales : impacts on productivity and returns*, ABARE, Canberra, A.C.T.

<sup>7</sup> Ibid page 2.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid page 16.

<sup>10</sup> Ibid page 22.

<sup>11</sup> *Impacts of Native Vegetation and Biodiversity Regulations*, Productivity Commission 2004 p XXXII.



*impact of financial hardship and uncertainty leading to considerable personal distress in farming communities* and the impacts on both older farmers and younger generations.<sup>12</sup> 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 portion of the cost of public conservation initiatives whilst deriving few, if any, benefits from such action.*<sup>13</sup>

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 these 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.*<sup>14</sup>

Not only is it worth considering the pressure caused on individual family farms, in a wider societal context, one of the biggest social consequences of current biodiversity legislation and in particular the *Native Vegetation Act 2003* to the agricultural sector is the polarisation that has occurred. NSW Farmers submits that the administration of native vegetation law in NSW including the looming excessive penalties<sup>15</sup> contained in legislation has polarised the debate into landholder versus government.

#### **6.4 Environmental impacts and adaptability**

*The panel will evaluate the current legislative framework. In doing so it will consider:*

- *Any perverse environmental and regulatory outcomes*
- *Whether current provisions facilitate effective and proportionate compliance*
- *To what extent the current policy frameworks sufficiently encourage the abatement of environmental risks, protect and restore key ecosystem processes and prevent species extinctions*

NSW Farmers submits that the *Native Vegetation Act 2003* has caused perverse outcomes which touch on issues related to social conditions, economics and viability of rural and remote NSW, and indeed environmental outcomes. Below are a number of examples of the perverse environmental outcomes NSW Farmers submit are a direct result of the current legislative framework. It is worth considering also, the wider environmental impacts that cannot be specified through a specific farm case study. For example, farmers' reluctance to engage

---

<sup>12</sup> Commonwealth of Australia (2010) *Finance and Public Administration References Committee: Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures* pp 53, 54.

<sup>13</sup> Ibid.

<sup>14</sup> Compton, E, Shepherd, R and Moss J (2010) *Ecological and social resilience in Western NSW: Insight from seven years of enterprise based conservation*.

<sup>15</sup> The maximum penalty is 10,000 penalty units (currently \$1.1M) – *Native Vegetation Act 2003* section 12 and *Environmental Planning and Assessment Act* section 126 (1).

with advisory services or even in explicit conservation management for fear of locking up land which may be in the future better utilised in production.

Key to this aspect is adaptability of legislation to suit both the varying needs of the “bio-regions” as well as the current social or other needs of a region which may vary over time. Whilst the Act is clearly prohibitive in its ability to improve agricultural outcomes, flexibility to *improve* environmental outcomes is not something that the Native Vegetation Act known for either.

In an inquiry into native vegetation legislation in Australia, the Productivity Commission noted: *To the extent that effectiveness (of environmental goals) is monitored, it tends to be measured by changes in the estimated level of clearing of native vegetation – a somewhat more tractable but partial and imperfect proxy measure of environmental outcomes*<sup>16</sup>.

Numerous independent reports since the introduction of land clearing laws in NSW have pointed to the unforeseen environmental impacts of prescriptive regulation. In its 2004 inquiry into native vegetation laws, the Productivity Commission identified the following environmental impacts as a result of native vegetation laws:

- Premature clearing of re-growth 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.<sup>17</sup>

#### **6.4.1 Environmental impacts: 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 and peas and 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.

---

<sup>16</sup> *Impacts of Native Vegetation and Biodiversity Regulations*, Productivity Commission 2004 p XXVI.

<sup>17</sup> *Impacts of Native Vegetation and Biodiversity Regulations*, Productivity Commission 2004, p XXVII.



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. 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 because of:

- Approval by LLS for removal of paddock trees, even where offsets are available on-farm, is not forthcoming; or
- Approval for removal of paddock trees, even where offsets are immediately available on-farm is severely delayed.

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 of offsets imposed as a condition of their removal are prohibitively costly<sup>18</sup>.

This is echoed by the ABARES, 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<sup>19</sup>. The same ABARES study found that isolated paddock trees also prevent the efficient use of cost saving GPS technologies with the impact likely to increase over time as the trend toward larger farms continues<sup>20</sup>.

Under current restrictions NSW Farmers 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 environmental benefits of longer term offsets as well as the environmental and economic benefits of more sustainable and productive agriculture.

---

<sup>18</sup> *Impacts of Native Vegetation and Biodiversity Regulations*, Productivity Commission 2004, p XXVII.

<sup>19</sup> Commonwealth of Australia (2006) *Native Vegetation Management on Broadacre Farms in New South Wales: impacts on productivity and returns* ABARE eReport page 12 available at [http://data.daff.gov.au/brs/data/warehouse/pe\\_abarebrs99001222/pc13335.pdf](http://data.daff.gov.au/brs/data/warehouse/pe_abarebrs99001222/pc13335.pdf).

<sup>20</sup> *Ibid* page 7.

#### **6.4.2 Environmental impacts: prohibition on active land management**

Many farmers have reported 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 re-growth, even 'unprotected' re-growth 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 re-growth because of the heavy penalties they can incur if they cannot produce evidence to substantiate the re-growth date.

The net result of this situation is a great deal of productive country is lost to re-growth. 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.

#### **6.4.3 Environmental impacts: weed management**

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 African Love Grass in the Cooma-Monaro region. African Love Grass (*Eragrostis Curvula*) is an introduced noxious weed native to South Africa. If not treated early it competes aggressively with pasture species and will establish a monoculture which is very hard to eradicate.

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.

This is also the case for Serrated Tussock (*Nassella trichotoma*), 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<sup>21</sup>. Of 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.

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

---

<sup>21</sup> NSW Government Department of Primary Industries *Serrated Tussock- Weed of National Significance* accessed August 2014 available <http://www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds/profiles/serrated-tussock> .



ecological communities in NSW threatened by weeds<sup>22</sup>. NSW Farmers submits that groundcover requirements under the current legislation are actively contributing to this problem.

### **6.5 New and emerging frameworks**

*The panel will evaluate the current legislative framework. In doing so it will consider:*

- *To what extent the current policy frameworks sufficiently encourage the abatement of environmental risks, protect and restore key ecosystem processes and prevent species extinctions*
- *Whether current arrangements appropriately deal with new and emerging policy frameworks in NSW and national, including the planning reforms, the proposed NSW Biodiversity Offsets Policy, a NSW Biosecurity Act, local government reforms, regional service delivery models and associated strategic plans, and State-Commonwealth bilateral and strategic agreements.*

One of the key injustices of the *Native Vegetation Act 2003* as farmers see it, is that farmers are prohibited from farm development and proponents of state significant development and infrastructure, who are exempt from the Act, and so are able to be assessed in a scheme that works to enable development.

In the development of the new Biodiversity Offsets Policy for State Significant Development and State Significant Infrastructure, NSW Farmers staff were informed that the intention from Government was that farmers would be able to avail themselves of the options for offsets and hence development under the plan. We would support such a move and argue that there needs to be some availability to purchase offsets off farm where appropriate.

NSW Farmers does not see any inconsistency with the recommendations put forward in this submission and those contained in the proposed new Biodiversity Policy, the Government's acceptance of most of the Natural Resource Commission (NRC)'s review of weed management in NSW, nor strategic policies such as the proposed Upper Hunter Strategic Assessment, nor the NRC's specific report on the Brigalow and Nandewar State Conservation Areas.<sup>23</sup> In fact, we believe the native vegetation scheme requires amending in order to better reflect the move towards the principles outlined in these new and emerging policy frameworks.

---

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

<sup>23</sup> NSW Government Natural Resources Commission *Active and adaptive management of cypress forests in the Brigalow and Nandewar State Conservation Areas* 2014 available at <http://www.nrc.nsw.gov.au/Workwedo/ActiveAndAdaptiveManagementOfCypressForestsInTheBrigalowAndNandewarStateConservationAreas.aspx> .

## **7. Terms of Reference- Method- 2: Evidence base for government intervention**

*The panel will consider the evidence base for government intervention, including:*

- *The status, trends and pressures on native vegetation, biodiversity and ecological processes*
- *The relationship between healthy ecosystems (including water, land and biodiversity) and sustainable development*
- *Likely future environmental conditions given existing and emerging threats including climate change*

The evidence base for government intervention in the native vegetation management would seem arbitrary at best. Many of the laws that we currently have in place, not just in the NSW jurisdiction, but across the country, are a result of the Commonwealth committing to targets and protocols for vegetation protection, particularly under the Kyoto protocol. Commitments such as these have meant that landholders are bearing the cost of the public demand for environmental targets to be met, with no compensation for doing so. This issue lies at the heart of the discontent amongst farmers when it comes to these laws.

Sinden (2004) discusses this issue in depth and identifies that vegetation protection that imposes uncompensated losses may be an infringement of landholders rights and also raises questions of equity in the community. Sinden also argues that the economic rationale for vegetation protection should be the protection of vegetation of the public gains exceed the private losses, with the conclusion reached that the losses or opportunity costs of foregone production in north-western NSW are common, widespread and often large and identifies that the crux of the policy issue in this argument is a social equity one.<sup>24</sup>

These findings are consistent with member feedback within NSW Farmers where landholders feel disenfranchised of the opportunity to develop property, with no compensation. There is a feeling that the system as it currently stands rewards those that have undertaken large amounts of clearing prior to the introduction of the current rules as they have experienced the largest gains in land values. There is a large amount of evidence pointing to the need for a triple bottom line approach to native vegetation management in NSW. Furthermore, much of that evidence points to increased environmental outcomes being achieved through appropriate hands on management of the landscape, not in spite of it.

From the outset, it is important to acknowledge that the pre-European landscape was not “virgin” or untouched by any means and that regular management of vegetated areas was routinely undertaken by the country’s indigenous inhabitants. Many areas of the Brigalow and Nandewar, for instance, had low tree densities and were more characterised by open forests and tussock grassland. The Natural Resources Commission (“NRC”), in their recent review of the active and adaptive

---

<sup>24</sup> Sinden, J.A. *Do the Public Gains from Vegetation Protection in North-Western New South Wales exceed the Landholders loss of Land Value?* The Australian Rangeland Journal 26 (2) 2004, 204-224.

management techniques possible in these areas<sup>25</sup> developed a generalised model to depict the likely structure and composition of the woodlands in these areas whereby they identified certain practices such as fire, light grazing by native animals and climatic influences as being key drivers in this system.

The NRC also further cite several sources that point to the fact that prior to European settlement, fires in the grasslands and grassy woodlands of western NSW were frequent. It is thought that this was due to a combination of higher levels of native groundcover, unrestricted spread of lightning lit fires and the use of fire in the landscape by Aboriginal people. It is important to acknowledge and have a good understanding of the landscape as it existed before European settlement in the context of native vegetation and threatened species reform because it points to the need for ongoing management of the landscape, rather than a “lock it up and leave” approach that we are witnessing currently.

Another study that we draw the panels attention to is the water ponding work that was done at property called “Florida” in western NSW<sup>26</sup>. This study is a key example of active management of a natural landscape resulting in beneficial outcomes for the environment and the landholder in an area inundated by invasive native scrub problems. Briefly, the he implementation of waterspreading banks combined with the removal of the Invasive Native Scrub (INS) was concluded to have restored grasslands on the landscape, improved pasture biodiversity and increasing carrying capacity, therefore and ensuring farm viability. Works such as these are prevented from being carried out legally under the auspices of the current regime and it is NSW Farmers submission that this needs to changes as both a matter of urgency, and priority.

---

<sup>25</sup> Natural Resources Commission *Active and adaptive management in the Brigalow and Nandewar State Conservation Areas* Draft Report June 2014 pp45, 46.

<sup>26</sup> Central West CMA & Western CMA, 2008 *Waterspreading and restoring native grasslands on 'Florida'. Invasive Native Scrub Case Study: Waterspreading and INS management* Central West and Western Division Catchment Management Authorities, NSW.

## **8. Terms of Reference- Method- 3 : New legislative arrangements**

*The panel will propose new legislative arrangements for biodiversity conservation in NSW. It will consider*

- *An overall philosophy for biodiversity conservation in NSW and objectives to underpin a new legislative framework*
- *Ways to incorporate environmental, social and economic considerations (i.e. triple bottom line) into decision making frameworks*
- *Options to identify biodiversity priorities given proposed biodiversity conservation objectives*
- *Opportunities to improve regulatory efficiency, remove duplication and adopt proportionate, risk-based approaches to regulation and compliance*
- *The concept and practice of 'duty of care' in relation to native vegetation management in the context of land, water and biodiversity conservation objectives along with measures to promote cost sharing for biodiversity conservation and native vegetation management*
- *Measures to promote upfront clarity and transparency in environmental standards including options for self-regulation*
- *Options for effectively integration native vegetation management with the protection and maintenance of land and water resources and the conservation of biodiversity*
- *Removing barriers and providing incentives to voluntary private land conservation, and measures to reduce duplication, promote paid stewardship and foster greater collaboration and coordination between government and the community*
- *Appropriate frameworks to abate environmental risks, prevent species extinction and maintain ecological processes*
- *Governance arrangements, statutory concurrence and consultation requirements, and compliance and enforcement provisions.*

We look forward to the findings of the Panel's work according to these terms, and in particular identifying means that triple bottom line outcomes can be considered in planning decisions. In particular we support the proposal of new legislative arrangements that can create ways to incorporate more dynamic and modern decision making processes.

### **8.1 Conclusion: NSW Farmers recommendations for new legislative arrangements**

The research commissioned by NSW Farmers will support many of our proposals for reform in this area and we look forward to the opportunity to present those findings to government. To summarise NSW Farmers' vision and objectives in terms of reform of the legislative arrangements:

*Vision: Reforms that deliver an efficient, open system, based on excellent science, that improves outcomes for both the environment and for agricultural production.*

Objectives:

- *A framework for sustainable development of agricultural lands;*
- *Balanced consideration of social, economic and environmental outcomes;*
- *A delivery mechanism centred on strategic landscape planning;*





*Submission to the Independent Biodiversity Legislation Review Panel*

- *More efficient biodiversity planning that meshes with broader strategic planning processes;*
- *Seamless alignment of policy and jurisdictional responsibility across planning, environment, natural resource and local government instruments*
- *A customer service focus, supported by logical rules, honest definitions and clear information;*
- *Support by the environment movement for a model that will deliver better net environmental outcomes and a foundation for effective strategic biodiversity conservation on private land.*