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Independent Review of the EPBC Act
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SUBMISSION TO THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 INDEPENDENT REVIEW INTERIM REPORT

Australian Forest Growers (AFG) is the national association representing around 1200 private forest growers from 22 regional branches across Australia's forest growing regions. AFG welcomes the opportunity to make a submission to the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* Independent Review Interim Report. This submission provides comment on issues raised in the Interim Report that are of interest to private forest growers in Australia.

Since 1969, AFG has been advocating responsible establishment and management of plantations on agricultural land as a means to boost ecosystem services and landscape health outcomes. The growing of commercial plantations and active management of private native forests by our members complements existing productive agricultural land use practices. AFG advocates that the ideal farming enterprise is an integrated system, where livestock and trees are incorporated according to land use suitability. AFG recently published 'Recreating the Country – A blueprint for the design of sustainable landscapes'¹ which outlines means to creating new biologically diverse tree-covered areas which enhance landscape health and boost biodiversity through strategic plantings of trees.

Farm forestry and agroforestry have been a means to diversify on-farm income, whilst addressing land degradation issues. AFG advocates that it is a limitation of the EPBC Act that farm forestry and agroforestry are not rewarded for the positive role they play in enhancing the landscape through the creation of a biodiversity services market. Appropriately located tree plantings of sufficient scale would enhance biodiversity outcomes and improve water quality, and also provide an opportunity for regional enterprise development. The EPBC Act Interim Report has recognised that climate change is likely to have a major impact on biodiversity and planting trees can address this two-fold; forestry and the planting of trees sequesters carbon dioxide from the atmosphere, and strategically planted trees can provide habitat connectivity for local fauna.

AFG advocates that the current provisions under the EPBC Act require improved communication, engagement, consistency and certainty.

¹ S Murphy *Recreating the Country – A blueprint for the design of sustainable landscapes*. Australian Forest Growers, Canberra, 2009.

EPBC Act and overlap with State legislation

Within the operation of the EPBC Act generally, AFG notes that there is an ongoing difficulty for private landholders, particularly smaller farm foresters, in understanding the construct of their responsibilities to both state environment protection legislation and an overlaying EPBC Act. There is a complexity of various State/federal law interactions and a difficulty in governing jurisdictions providing unambiguous information as to the occurrence or otherwise of listed species and communities on a particular parcel of land. Consistent definitions of listed species and communities, tools to aid in their identification and advice on potential locations at the local scale, is a basic and fundamental requirement for any farmer or land manager if they are to effectively undertake biodiversity conservation measures on their private land. It is unclear what is being done to engage and assist private forest growers to cut through the red tape to aid in on-property decision-making in this area. Or if indeed there have been such initiatives, the fact private forest growers are largely unaware would be an issue in itself.

It is not plausible to simply legislate, regulate or “list” for desired environmental outcomes and for them to then miraculously be present or protected on the ground. Locking up and leaving a threatened species, important habitat or vegetation community is only part of the story. To successfully achieve conservation outcomes, private forest growers must know what they’re dealing with first. More generally, they are required to manage pests and weeds, control damaging fires and repair fences, for example. This can lead to conflict in meeting various inconsistent requirements.

AFG welcomes the fact that this review is examining the effectiveness of the biodiversity and wildlife conservation arrangements relating to the EPBC Act. To be effective and have lasting outcomes, ecological and biodiversity conservation on private land ultimately requires the land manager to act, be it proactive management for conservation or avoidance of harm. Private growers have often had a long relationship with their land and have a mature knowledge base. Private forest growers often manage their land according to land suitability and thus are ensuring their land management practices are sustainable. However private growers are still looking for Government recognition and innovation in conservation policy and legislative frameworks that truly recognises them for the public good environmental services they provide; whether it is 1) the opportunity foregone from not being able to develop an enterprise because of environmental values, or 2) the long term costs associated with managed ecological systems and biodiversity in a dynamic, and generally highly-modified rural landscapes. Good gains have been made over the decade or so of various Australian and State Government-funded Natural Resource Management, Landcare, Biodiversity and Conservation Reserves Programs, however these are generally in terms of one-off grants normally associated with some form of management agreement or binding covenant over the land in return. Such arrangements only suit some landholders.

There are also cases where private growers have actively managed their native forest for improved biodiversity outcomes and economic return only to have their practices ceased through legislation; the biodiversity has been boosted by the landholder and legislation states that management must be stopped because now the biodiversity is so strong in the forest area. The biodiversity was boosted because the landholder actively managed the land – ‘locking up’ the land will not necessarily maintain the biodiversity of the forest, often it decreases it.

Continuous improvement in legislation is one thing and should be encouraged, however regulatory uncertainty, is a disincentive for investment by private forest growers – be it

investment in business of forestry or in conservation initiatives. Duplication between jurisdictions and uncertainty over long term resource security to harvest, are the biggest concerns in this regard. To date the RFA process has been a significant step forward to provide resource security and certainty in an often heated and controversial area.

Regional Forest Agreement interaction with EPBC Act

AFG advocates that the balance of sectoral objectives continues to be met by the RFA framework.

A comprehensive approach was taken via the CAR process to meet competing aspirations for economic and social outcomes to operate in concert with environmental priorities. AFG only represents a stake in the RFA process in respect of Tasmania, in other jurisdictions private forestry was excluded from the negotiations and only variously referenced. In Tasmania both private native forestry and plantation establishment on private land are forestry activities under the RFA.

The agreement for the protection of environmental priorities was clearly resolved by the reservation process that resulted from the CAR process. It is the view of AFG that there is little demonstrable need to do any more than conduct the required statutory reviews, no change is required to the EPBC act in this paradigm.

This issue is not just of concern to native forest harvesting on public land, e.g. in State Forests. Any such changes if enacted would also serve to duplicate the regulatory burden on private forest growers, many of whom are smaller scale farm foresters, create uncertainty and stifle investment in private forestry generally.

AFG would also note that there is insufficient weight given to the protections already in place as a result of the CAR process when new or reviewed determinations are considered. The notion that the endangered species were adequately reserved on public land during this process ought to mean that there is no requirement to also burden private landholders with reservation requirements. Especially unless and until there is just compensation for increased imposts on private landholders to provide such environmental services in the public good.

New listings

A key concern of forest growers is the potential for the EPBC nominations system to be tied up in a stream of frivolous or politically motivated nominations. Amendments to the EPBC Act in 2006 went a long way to clarify the public nomination process in that now an annual list of priorities for assessment is published. There is confidence in this prioritisation process.

However there is still some uncertainty as to how potentially affected private forest growers can comment on any proposed listing, on what grounds such comments can be made and who does the assessments.

One stark and contemporary example is the proposed nomination or determination of fuel reduction burning as a key threatening process. Without seeking to agitate the process of the TSSC consideration there are a couple of concerns. A review of the make-up of the committee suggests there is no forestry or fire behaviour expertise within its membership. Further, it is not clear that such expertise will be sought in the consideration of the nomination for determination. More fundamentally though there does not seem to be an adequate consideration of potential perverse outcomes from the over-application of the precautionary

approach to this issue. If the committee take the view that on the balance of probabilities there is a need to act cautiously and declare fuel reduction burning as threatening process, what weight are they able to give to the increased likelihood of a megafire that will destroy the habitat that is proposed to be protected.

More generally we seek to ensure that there is appropriate expertise, input from all stakeholders and a more balanced process applied to listing reviews and new nominations.

Climate Change

Forestry is an important industry in addressing climate change in Australia as it is the only carbon positive industry. Trees in the landscape can address climate change two-fold: trees sequester carbon dioxide from the atmosphere and trees can be strategically placed to create wildlife corridors for local faunal species. AFG's members have been achieving these outcomes for the past forty years.

Under the EPBC Act - if protecting against climate change is to be incorporated - it is important that the effects of climate change on biodiversity is not valued higher than impacts on other values. The impact of climate change on economic and social values are important to landholders and these effects do not, and don't seem likely to have, separate legislation protecting them.

Currently, climate change is being addressed by the development of the CPRS and the Renewable Energy Target legislations. These are the appropriate legislative instruments for regulatory control in this paradigm. Thus the EPBC Act and its regulations should remain silent on climate change and not seek to intervene. Such intervention will only confuse an already complex regime and add to transaction and compliance costs for no demonstrable benefit.

Thank you for the opportunity to make a submission. Please do not hesitate to contact the undersigned on 6162 9000 should you wish to discuss any of the issues raised.

Yours sincerely,



Warwick Ragg
Chief Executive

ATTACHMENT A – AFG SUBMISSION TO THE INDEPENDENT REVIEW OF THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

18 December 2008

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SUBMISSION TO THE INDEPENDENT REVIEW OF THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

BACKGROUND

Australian Forest Growers appreciates the opportunity to make a submission to the Independent Review of the Commonwealth *Environment Protection and Biodiversity Conservation Act*. This submission provides comment on issues raised in the Review Discussion Paper that are of interest to private forest growers in Australia. Comments are focused on the scope, objects, assessment and approvals and biodiversity conservation provisions of the EPBC Act.

Australian Forest Growers (AFG) is the national association representing the private forest growing sector of the wood and paper industry.

AFG's membership includes small-scale farm plantation growers and private native forest managers. It also includes almost all of the companies operating forestry managed investment schemes (MIS), amongst other corporate growers. MIS companies have been responsible for the majority of Australia's plantation expansion over the last decade.

Since 1969, AFG has been advocating responsible establishment and management of plantations on agricultural land, which provide the multiple outcomes that the community increasingly demands. The growing of commercial plantations and active management of private native forests by our members has been delivering improved landscape health outcomes for decades, as well as complementing existing productive agricultural land use practices.

SCOPE & OBJECTS OF THE ACT

AFG considers that a single piece of national legislation covering matters of environmental significance is an important element of the legal framework. However, the environmental regulation of private forestry is mostly at a state level, and is already overly burdensome, particularly for small scale forest owners. Forest growers face significantly greater environmental obstacles when seeking to establish and harvest tree crops than other food and fibre crop growers. In addition to this issue of equity amongst primary industries, the key issue in achieving the objects of the Act is duplication and overlap with state legislation (discussed below).

AFG supports the objects of the Act, but considers that the Act itself does not reflect each object with equal weight. For example, the main emphasis is on biodiversity conservation and restriction of actions that will have a significant impact on matters of

national environmental significance. Despite objects relating to the need to promote environmentally sustainable industry, no provision of the Act establishes incentives or guidance for business to become more environmentally sustainable, or for rewarding those businesses who are performing well. For example, farm forestry is addressing salinity problems and restoring vegetation across the continent, yet the only likely interaction with this Act would be via restriction of harvesting if a threatened species was found living in trees established for commercial uses.

There are also no provisions for addressing the underlying causes of environmentally destructive practices, for example the consumer demand that drives industry development.

The result is a piece of legislation that is concerned with punishing wrong-doers and imposing regulation. It is not an innovative piece of legislation in this sense. Considering this is Australia's primary law for the ratification of several important international environmental agreements, this is disappointing.

This independent review is presented with a major opportunity to institute meaningful, positive reform that could transform how Australia approaches its obligations to protect the environment. AFG advocates an approach that views people as central to every ecosystem and addresses how society is organised as well as the symptoms of this.

OVERLAP WITH STATE LEGISLATION

The key issue in achieving the objects of the Act remains duplication and overlap with state legislation. Particular problems include duplication or inconsistent nomination and listing processes for threatened species and communities, and inconsistent definitions for threatened communities.

Definitions of the same sort of threatened vegetation community can differ at the state and federal levels, causing great uncertainty. How is a landowner to know and work their way through two sets of the same sort of regulation? AFG considers that mutual recognition between state and federal assessment processes is vital and delegation to State processes should be encouraged where practicable. For example the Tasmanian Forest Practices Authority would assess EPBC issues as well as relevant state legislation through the preparation of Forest Practices Plans.

Transparency, scientific rigour, socio-economic balance and timeliness in the process of assessing potential nominations would be vital characteristics of the successful operation of the Act. Positive amendments already made to the Act include the provision for an annual call for nominations and a review by the department, publication of a list of the nominations that would be pursued, and a time commitment for the assessment. These provisions are important because they ensure a transparent process for assessing applications, which is vital in order for stakeholders to have confidence in the process and outcome of any listings.

In addition, the Act needs to be amended to ensure there is a public right to appeal decisions made under the Act and an opportunity to make submissions to nomination processes.

BIODIVERSITY CONSERVATION PROVISIONS

Compared to other rural land uses, private forestry has potential to increase the biodiversity values considerably. Regulations that enforce a loss of resource to the forest owner, such as many threatened species protection requirements under this Act, impose a disincentive for plantation establishment.

It is a well known fact that regulations without financial incentives simply increase the costs of operation and make forestry business less competitive. The forest growing industry does not prosper in this environment.

EXTENSION SERVICES ESSENTIAL

Listing a species and putting a fence around the forest it inhabits does not guarantee its protection. Only active, responsible management of the particular environmental value by the landholder will secure it. Hence engagement with the community, extension and stewardship programs to encourage positive action by landowners is the only real way to success. This needs to apply both within and outside of reserves established specifically to protect those values.

AFG members are frustrated at the outdated approach to biodiversity conservation that is embodied in legislation in both state and national jurisdictions. The main method is still to separate areas as ‘no-go zones’ and designate areas where forestry is permitted. What happens when management of reserves is badly financed? And what happens to biodiversity outside of reserves? The contribution that responsible, active management of forests for biodiversity, water, fire protection and other values are all overlooked by this approach.

In some contexts, reservation is appropriate, but forest growers are the first to recognise and implement this. Common examples are the revegetation of riparian zones alongside creeks and rivers, and the maintenance of remnant native vegetation that provides endemic seed stock for forestry establishment on other parts of a property. Forest growers are often frustrated that their efforts to enhance the biodiversity values of their land – e.g. through plantation design, species selection and implementation of other research in this field – are not met with incentives or recognition. The result is an under-celebrated sector of the industry that is motivated by good will, the possibility of a financial return in a few decades’ time, and the occasional Landcare grant (until they were recently dismantled).

A constructive approach to protecting biodiversity in private forests would more fully promote objective (d)¹ of the Act: the facilitation of a cooperative approach to protecting the environment. This should include:

- The provision of extension services, with secure long term funding, that promote the objects of the Act to the farming and private forestry community;
- the establishment of a functioning market for environmental services that recognise and promote the contribution of private forestry,
- recognition that the utilisation of forests for multiple values is necessary.

¹ (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous people.

CREATE A MARKET FOR BIODIVERSITY CREDITS

If a landowner who owns forest also had the biodiversity value of his/her private forest valued as part of their capital, landowners would drive the restoration of landscapes *of their own volition and at no cost to the Government*. AFG considers that the continued establishment of plantations is of critical importance for the enhancement of biodiversity, and the establishment of a functioning market for biodiversity credits would achieve far greater biodiversity benefits than regulation on its own ever could.

The creation of a market for biodiversity credits would view the biodiversity value of a plantation as tradable and this would lead to greater investment in plantations. This outcome would be a very positive one from the perspective of AFG members.

A functioning biodiversity services market would need to include agreed and pragmatic mechanisms for measuring the biodiversity values on a property and forest owners would need to keep records that show the development of certain biodiversity values is additional to business as usual. For example, a person who alters a harvest regime so that strips are harvested and wildlife corridors are always in place would potentially achieve the same outcome for wildlife conservation that regulations are aimed at. This would be allocated biodiversity credits.

CREATE A LEGAL RIGHT TO HARVEST COMMERCIAL FORESTS

The right to harvest tree crops established for that purpose is a fundamental principle of biodiversity conservation. Forestry plantations often provide habitat for species that were not present on the property before the plantation was established. The Act should not provide a disincentive for establishment and commercial management of plantations.

Most plantations now being established are on previously cleared farm land where biodiversity values were low. The establishment of a plantation in this context is a biodiversity value in its own right. This may not necessarily be applicable where plantation establishment has involved clearing of native vegetation. It is important to note that if the creation of a market for biodiversity services follows a similar framework as emissions trading, it would likely be focused on promoting plantations on cleared land.

THE ACT SHOULD NOT APPLY TO SMALL-SCALE GROWERS

AFG believes that the exclusion of small scale forestry operators from compliance with the Act would send a strong message of support for the environmental achievements of this sector of the community, who is often at the forefront of implementing sustainable development principles and research findings towards this end.

Recent studies show that a 15% deep rooted vegetation cover on farms, through new plantings can increase agricultural production, whilst delivering a range of environmental services.² Evidence is mounting that shows the biodiversity benefits of private native forestry compared with unmanaged native forests.³ The Act needs to

² Borschmann, G., Salt, D. & Rooney, M. (2005) A Vision Splendid: Dreams, inspirations and experiences of Farm Forestry in Australian Agricultural Landscapes. Greening Australia Ltd, Canberra.

³ See for example:

Unwin G., Lord J. and Lyons A. 2008. Measuring the biodiversity values of a small-scale farm forestry enterprise in northern Tasmania. Ch. 21. In. Lefroy T., Bailey K., Unwin G. and Norton, T. (eds.)

support this science by allowing landholders to establish commercial forestry on up to 10% of properties, including private native forests, without having to comply with regulatory burdens.

Applying commercial forestry to a farm business would also complement other revegetation and remnant vegetation protection endeavours. One way of achieving this would be through a clause similar to the Regional Forest Agreement provision, relating specifically to the exclusion of smaller scale tree plantations from the EPBC Act.

CLIMATE CHANGE TRIGGER SHOULD NOT TAKE PRECEDENCE

If protecting against climate change is to be incorporated into the Act, it would be important that the effects of climate change on biodiversity is not valued higher than impacts on other values. The impact of climate change on economic and social values are important to landholders and these effects do not have separate legislation protecting them.

Yours sincerely



Warwick Ragg
Chief Executive

Prepared by Nicky Moffat

Biodiversity: Integrating Conservation and Production, Case studies from Australian farms, forests and fisheries, CSIRO Publ. / Tamar NRM. pp. 223-232.

Roberts, S., Field, J., McElhinny, C. and Brack, C. 2008. 'Doing nothing in dry regrowth forest is not an option' *Australian Forest Grower* v30 No.4 pp31-33.