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Dear Dr Craik

An independent review of interactions between the *Environment Protection and Biodiversity Conservation Act 1999* and the agriculture sector.

INTRODUCTION

"More laws less justice" Cicero 106-43 BC. "No man can serve two masters" Matthew 6:24

I would like to thank you for the opportunity to contribute to your independent review of interactions between the *Environment Protection and Biodiversity Conservation Act 1999* and the agriculture sector. The above quotes are over 2000 years old but little has changed. Political ideologies are allowed to prevail over common sense that would call for one authority to produce simple to follow balanced guidelines and procedures for farmers. My comments are confined to my experience in the wheatbelt region of Western Australia.

Most environmental regulations have a significant impact on the sustainability and competitiveness of farm businesses. Regulations that unnecessarily target economic activity significantly reduce innovation, investment initiatives and export income. The removal of "green" and "red" tape would increase the competitiveness, productivity, employment opportunities, and farm profitability. The outcome would also see a better allocation of resources and greater use of existing infrastructure. Consequently, the whole Australian community would benefit by an increase in export earnings and improving living standards.

EXECUTIVE SUMMARY

1. Most farmers would approve of;
 - The Australian Government's recognition that the sustainable development of a productive and internationally competitive agriculture and food production sector is vital to our economy and regional communities
 - The Government's commitment to reducing red and green tape to support agricultural growth and development.
 - The Commonwealth Department of the Environment and Energy (DoEE) for identifying and detailing the 23 Conservation Management Zones in Australia.
2. However most farmers also understand the reality that unless the Governments are prepared to fund feral free conservation sanctuaries, similar to Mt Gibson, Yookamurra, Scotia and Pillinga then there will be no understanding of Australia's unique biodiversity and landscapes for future generations.
3. The most contentious issue faced by farmers are the Government native vegetation laws which are a complicated and contentious web of productivity sapping regulations that:
 - Impede productivity improvements by limiting farmers' capacity to respond to changing circumstances.
 - Place considerable costs on farm businesses, including the cost of conserving species and ecosystems that may exist on their property for the benefit the wider community.

- Involve complex and costly processes, including the need to obtain and pay for detailed specialist consultants' advice to confirm that endangered species may not exist on the property.
- Require approval from several levels of government and different departments.
- Is administered in a bureaucratic and inflexible fashion by regulators who are unwilling to tolerate any environmental harm, even for potentially large social or economic benefits.
- Is so rigid that it contributes to landholders' distrust of government, and limits their voluntary participation in environmental programs.
- Are legislated to appease a minority group, politicians and their city orientated constituents who fail to calculate the financial, economic and social impact being imposed on rural and the wider Australian community.

RECOMMENDATIONS

1. Commonwealth Government legislation should be vested with the responsibility for all Biosecurity and Biodiversity Policy to ensure legislation is uniform and consistent in its application and specifies compliance with Commonwealth Constitution Section 51 (xxxi).
2. Commonwealth Government legislation should provide a national system for the recognition and protection of Biodiversity and Biosecurity for its co-existence with agricultural land management systems.
3. Commonwealth Government legislation should simplify the clearing of native vegetation procedures to generate more income and jobs for the Australian community. Legislation similar to Attachment 2 "Principles for Clearing Native Vegetation" and Attachment 3 "Process for Assessing Land Clearing Applications" should be executed.
4. The Commonwealth Government should raise funds for biodiversity conservation and protection with a percentage levy on all Australian taxpayers. The cost of biodiversity conservation and protection should be transparent and accountable.
5. The State Government should raise funds for biodiversity conservation and protection of all State owned land, parks and reserves through a levy similar to that paid for Fire and Emergency Services by all property owners in the State.
6. The Commonwealth Government funds at least one (Five to Ten Thousand hectare Conservation Sanctuary) in each of the 23 Conservation Management Zones in Australia over the next 10 years.
7. The Commonwealth Government provides funding for research to develop viruses or chemicals to eradicate all non-indigenous flora and fauna.
8. Commonwealth Government Biosecurity and Biodiversity Legislation should have precedence over current State Environmental Policy that restricts income growth, productivity and employment opportunities in the agriculture sector.
9. Commonwealth Government Biosecurity and Biodiversity Legislation should have precedence over current State Environmental if it fails to acknowledge or negotiate compensation for private property owners that are restricted from implementing current farming practices. Attachment 4 details "The Costs Incurred by Farmers with Native Vegetation on Their Property". These are irrecoverable costs that must be paid each and every year by farmers.
10. The cost recovery model is flawed as it treats a small farming business in the same manner as large mining and residential companies which have considerable potential financial gain from applying for native vegetation clearing. In many cases the costly flora and fauna studies, are to deter applications as the studies have already been conducted on State reserve close to the application area. Farmers are principally seeking productivity increases on privately owned property for sustainability as the percentage gain in profitability is low.

DISCUSSION

For the past 30 years my family and I have been grain farmers (total area of land about 2000ha) in [REDACTED] Western Australia. However my experience in the WA wheatbelt extends to over 50 years. During this period, through my participation in rural organisations, I have been fortunate to have met many farming families. While the opinions I have expressed in this submission are mine, I am sure that the views and sentiments stated would resonate favourably with most of these farmers.

It is noted that the Commonwealth Department of the Environment and Energy (DoEE) has identified and detailed 23 Conservation Management Zones in Australia. These zones are specific geographic areas, classified according to their ecological and threat characteristics to assist in long-term conservation planning. Specifically, the Australian Government is now in a position to better design, deliver and report on Natural Resource Management (NRM) investment.

DoEE now needs to establish in each of the 23 Conservation Management Zones at least one, 5 to 10 hectare conservation area. These appropriately fenced areas need to be cleared of non-indigenous flora and fauna and re-populated with flora and fauna representative of that zone. The conservation sanctuaries will ensure that Australian biodiversity will not be lost for future generations. Development of these conservation areas would also allow economic development, be it in residential and mining or agriculture sectors, to safely proceed in the knowledge that the conservation areas are protecting any biodiversity that may be lost. Unless the Government is prepared to fund conservation sanctuaries, which are free of non-indigenous fauna and flora, there will be no understanding of Australia's unique biodiversity and landscapes into the future.

It is doubtful that the current Government environmental legislation, which permits on going residential and industrial development, but restricts farming enterprises from clearing native vegetation, will guarantee the survival of biodiversity into the future. Small isolated areas of native vegetation in agricultural area are continually being exposed to biosecurity threats from non-indigenous fauna and flora, grazing, chemical drift used in food production and at times the ravages of bush fires. Unfortunately, areas of native vegetation also are the home of the three most destructive feral animals, the rabbits, cats and foxes. While farmers spend considerable resources containing these pests there is a continuous re-population of these animals from Government owned parks and reserves, as well as from residential and industrial areas as they expand into rural zones.

The continuous pursuit of GDP growth by Governments' has steered native vegetation clearing, for residential and mining developments. The clearing for residential and mining developments is currently far greater than that conducted in the agricultural sector. These residential and mining development businesses are financially well resourced and can afford to employ well qualified consultants to produce and present their land clearing applications for approval. Often clearing approvals are for properties that are not held as free hold title in the company's name. Thus, most residential and mining developments are conditional on environmental approval being obtained. In comparison farmers own the property with no alternatives if approvals are denied. In addition residential and mining development companies have strong lobby groups that use the media to influence the Government and community with the estimated loss in income and jobs if clearing approvals are denied. This is a vital vote influencing strategy on politicians at election time.

In comparison most individual farmers, lack the financial resources, time and knowledge to prepare a successful application that requires environmental approval. For most farmers these implications are such and likelihood of success so low that applications to clear native vegetation are not considered. Consequently, the continued loss of agriculture productivity, income, jobs and investment is endured. The irony is that most farmers become disinterested in biodiversity and as a result there are no winners.

There is a need to aggregate the total cost of the loss of productivity, production and income in meeting environment regulations by the Agricultural sector. I am sure the cost would be staggering. However, without the resources and ability to quantify the loss of productivity, export income, investment and jobs few politicians care enough to reduce the "Green and Red" tape that is restricting agriculture growth. The exception is the Murray River Basin Plan where most politicians are acutely aware of the balance needed between food production and environmental considerations for community survival. If the same depth of study and political will was extended to other agricultural areas, a more equitable outcome would result for farmers' and rural communities with positive GDP benefits for all of Australia.

All rural and regional communities in Western Australia and no doubt in many parts of Australia are adversely affected by current State Environmental Legislation. Ironically in Western Australia the State owns 92% of the land but closely scrutinizes the freehold 8%. If the State diligently observed the necessary biosecurity controls for non-indigenous fauna and flora in State parks, reserves and range land the biodiversity survival rate would significantly improve.

It would therefore be in the best interest for Australian Agriculture that the Federal and State Governments adopt a uniform policy position with respect to the clearing of native vegetation. Enclosed at Attachment 2 "Principles for Clearing Native Vegetation" and Attachment 3 "Process for Assessing Land Clearing Applications" are practical suggestions that would assist farmers in a better understanding of their responsibilities.

The key messages that need to be reiterated and understood by legislators are:

- Private properties that are designated and zoned for agriculture are farms not national parks. To target remnant vegetation care to farming families who are endeavouring to make a living without appropriate financial compensation is unjust and totally un-Australian. Farms need to be innovative, productive and profitable to be sustainable into the future.
- Farmers know that their land is the critical source of equity for their business, hopefully to pass on to the next generation or possibly their retirement superannuation on sale of the farm. Consequently, farmers will work to protect and maintain their land to produce a profitable and sustainable future.
- If the Government considers a farmer's land may contain rare or endangered flora or fauna then the Government should be responsible for funding independent studies to ascertain the status of native vegetation. The Cost Recovery Implementation Statement (CRIS) is flawed. CRIS may be appropriate for residential and mining developments that in their business cases include the ability to pass on these environmental approval costs to the consumer. Passing on environmental approval costs for farmers is difficult. Farmers are "Price Takers" with no control over world export commodity market prices. It would have been enlightening to see a worked example of the cost for a 20 ha clearing approval for a farmer in CRIS.
- If the Government decides to restrict farmers the freedom of action to work their land in their family's best interests or to classify privately owned areas as an Environmentally Sensitive Areas (ESA) then the Government must be prepared to pay fair and just compensation.
- The continuous loss of lives and infrastructure through fire is preventable. Common sense and experience dictate "the lower the fuel load the lower the fire risk". Costs suffered by individuals and rural communities from bush fire are much more devastating than the financial cost often expressed. The reduction of fuel loads, removal of dead fall and the construction of adequate fire breaks are decisions for the owners of the land. For example the designated 20 metres of clear ground around farm infrastructure is totally inadequate in an ember attack from wooded areas with a heavy fuel load. Current legislation prevents adequate fire prevention steps because there may be a loss of biodiversity. Native vegetation needs to have prescribed burns to ensure lives and properties are not put at risk. It is interesting to note that prior to European settlement "cultural burning of the land" was a feature of Aboriginal practices for over 60,000 years without damaging the biodiversity.
- Rural areas that are collocated or close to major towns with growing populations have the potential to be developed for residential and life style subdivisions. Consequently these areas have rapidly increasing land values. However most agricultural farm values are directly related to the arable area available to farm and based on yield per ha, costs of production per ha, cost of shipping transport and commodity prices. Unfortunately commodity prices are currently stable or even falling in real terms. Consequently, productivity increases are essential for farm sustainability and profitability.
- Productivity increases reflect the economies of scale and time taken to complete sowing, spraying, or harvesting operations in the most cost effective manner. Modern farming practices (stubble retention, minimum till, contours to combat salinity, wind and water erosion are far more effective than small pockets of retained native vegetation. Distressingly, retained native vegetation on arable farm land usually provides a suitable habitat for feral animals and weeds that detract from protecting biodiversity.
- Current State Environmental Legislation with respect to native vegetation is out dated and contributing to a long term "Lose / Lose / Lose" situation. (There is a loss of biodiversity, agriculture production and community income.) Commonwealth Environmental Legislation that rectifies, simplifies and supersedes current State Environmental Legislation is essential. A sole authority for Environmental Legislation or a "one stop" shop will ensure all aspects of biodiversity and biosecurity matters can be addressed uniformly and consistently.

- Government Environmental Legislation for the protection and promotion of biodiversity and biosecurity control must also recognise the costs if any being imposed on farmers. Freehold agricultural land that is not permitted to be cleared for farming purposes needs to be financially compensated via the Commonwealth Constitution Section 51 (xxxix). (*Commonwealth Constitution Section 51 (xxxix) requires any property taken by the Federal Government to be on just terms, when existing private property rights are breached for public benefit, and that the cost be met by the public rather than the individual.*)

CONCLUSION:

The Productivity Commission states; "The challenge for governments when developing environmental regulatory frameworks and policies is to achieve a balance between the benefits of agricultural production and the potential environmental costs, as well as to ensure that the frameworks and policies have clear and measurable objectives." Currently, there are no clear and measurable objectives to be achieved and more importantly no funding sources to establish conservation sanctuaries for the benefit for all Australians.

The question of compensation is not addressed by the State, even though the Environmental Protection Authority in WA stated "The EPA is aware that matters of equity arise in relation to land clearing decisions" and "how best to address these arising inequities is an issue to be addressed by the State". To accept a report that fails to address the issue of compensation is natural justice denied. The State has conveniently forgotten to honour this commitment and is pursuing the easiest, cheapest option by having farmers pick up the cost of biodiversity. Unsurprisingly, the current environmental legislation is also structured so as not imposed restrictions on any town freehold residential land.

All legislation that is intended to protect the environment will fail unless all members of the community are aware of the need to financially contribute to the funding of biodiversity and biosecurity control. Secure sources of funding for biodiversity and biosecurity initiatives need to be identified by the Commonwealth and State and should be like the Medicare or Fire and Emergency levies a tax that is paid by all Australians.

Environmental policies basically need to ensure equitable treatment to all citizens. Regulations that impede fairness, and restrict a fair outcome for farmers should be rescinded. Where there is a perceived community benefit at the expense of an individual the community must be prepared to bear this cost not the individual, with legislation similar to the Commonwealth Constitution Section 51 (xxxix).

Yours sincerely




 Chamarette
BEcon MSc (Mgt)

Attachments:

1. Key Questions
2. Principles for Clearing Native Vegetation
3. Process for Assessing Land Clearing Applications
4. Costs Incurred by Farmers with Native Vegetation on Their Property

ATTACHMENT 1
KEY QUESTIONS

■ Chamarette

Submission to:

An independent review of interactions between the EPBC Act and the agriculture sector.

Dated 10 June 2018

The answers to the key questions are detailed below.

1. Have you interacted with the EPBC Act in the past? Please be as specific as possible, including if you have previously referred actions, noting that submissions will be made public unless confidentiality is specifically requested.
Answer: Hearsay and local farmer gossip / experience indicates that even if the State Department of Regulation (DER) approves a clearing application there may still be a requirement to ensure that the application did not breach the EPBC Act.
2. Do you feel that you have an adequate understanding of your obligations under the EPBC Act?
Answer: DER approvals appear only to be granted to Land Developers and Mining Companies. Farmers do not have the time, financial and research resources to meet the DER requirements under current constraints. The situation of understanding your obligations under the EPBC Act is unlikely ever to occur.
3. Where have you sought advice on your obligations under the EPBC Act in the past (e.g. from DoEE, a State Government, a local government, a consultant, your neighbour etc.)? How would you assess the quality and usefulness of the advice you received?
Answer: No
4. Ideally, how would you like to receive information about the EPBC Act and your obligations under it?
Answer: One document that clear details the States or Commonwealth responsibilities with respect to the Environment on freehold private property that is zoned for agriculture. It is imperative to detail the one set environmental principles in this document. The document should also specify the Appeal and Compensation process that may arise from the impingement of property rights. It is essential the Government that controls the funding to pay for the Biodiversity and Biosecurity (flora and fauna) research and the compensation for loss of property rights should be the Government that provides the information of the farmers' obligations under the EPBC Act.
5. What has been the time or cost involved in ensuring your compliance with the EPBC Act in the past? Please be as specific as possible.
Answer: Not Applicable
6. Are you aware of the threatened species and ecological communities that may be present on your property? What measures, if any, do you undertake to manage your impact on these species and communities?
Answer: No
7. Have you ever gained any direct financial benefits from managing the threatened species and ecological communities present on your property (e.g. through EPBC Act offsets or other government grants)?
Answer: No
8. Have you ever been deterred from proceeding with an agricultural development due to your understanding of the requirements of the EPBC Act? Have you ever withdrawn or let lapse a referral under the EPBC Act? If so, why?
Answer: No.
9. How do you think the Australian Government can improve achievement of its environmental protection and biodiversity conservation objectives through its interactions with the agriculture sector?
Answer: Yes (See Recommendations in the main submission)
10. Is there anything else you would like to raise in relation to the interaction between the EPBC Act and the agriculture sector?
Answer: Yes (See Executive Summary in the main submission)

ATTACHMENT 2
PRINCIPLES FOR CLEARING NATIVE VEGETATION

■ Chamarette

Submission to:

An independent review of interactions between the EPBC Act and the agriculture sector.

Dated 10 June 2018

PRINCIPLES FOR CLEARING NATIVE VEGETATION

Applications to clear native vegetation in Western Australia are assessed by the Department of Environmental Regulation (DER). Schedule 5 of the Environmental Protection Act details 10 reasons why native vegetation should not be cleared. Each and every one of the 10 reasons must be met. If the application is approved the owner may also be required to revegetate current cleared arable land over double the size of the application to be "Bush for Ever". The suggestion below would simplify the matter.

Native vegetation should not be cleared if greater than 5 hectares and

1. Comprise a significant habitat for flora or fauna indigenous to Australia and is it necessary for the maintenance of a threatened ecological community? or
2. Growing in or in association with an environment associated with a watercourse or wetland? or
3. Likely to cause appreciable land degradation; or
4. Likely to cause deterioration in the quality of surface or underground water; or
5. Likely to cause, or exacerbate, the incidence or intensity of flooding.

ATTACHMENT 3:
PROCESS FOR ASSESSING LAND CLEARING APPLICATIONS

The Chamarette

Submission to:

An independent review of interactions between the EPBC Act and the agriculture sector.

Dated 10 June 2018

PROCESS FOR ASSESSING LAND CLEARING APPLICATIONS

1. Is Land to be Cleared Less than 5Ha? If Yes, then no Application required.
2. Is Land to be Cleared Greater Than 5Ha? If Yes, then go to question 3.
3. Is it Private Property? If Yes, then go to question 4.
4. Is Land Zoned Rural Agriculture? If Yes, then go to question 5.
5. Does the land being cleared of vegetation;
 - a) Comprise a significant habitat for flora or fauna indigenous to Australia and is it necessary for the maintenance of a threatened ecological community? or
 - b) Growing in or in association with an environment associated with a watercourse or wetland? or
 - c) Likely to cause appreciable land degradation? or
 - d) Likely to cause deterioration in the quality of surface or underground water? or
 - e) Likely to cause, or exacerbate, the incidence or intensity of flooding?
6. If the land owner answers No to questions 5a to 5e then DoEE will appoint an independent consultants to confirm the vegetation being cleared does not contravene the specified criteria 5a to 5e.
7. DoEE will forward a copy of Consultants Report to Land owner with DoEE Notice of Approval or Rejection of the Clearing Application. (All costs associated with the Consultancy are paid by DoEE)
8. If DoEE Rejects the Clearing Application the Owner can;
 - a) Appeal if Specific grounds have not been adequately addressed in the report or
 - b) Enter into negotiations with DoEE for the leasing or acquisition of the land rejected for clearing using Commonwealth Constitution Section 51 (xxxi).
(Commonwealth Constitution Section 51 (xxxi) requires any property taken by the Federal Government to be on just terms, when existing private property rights are breached for public benefit, and that the cost be met by the public rather than the individual.)

ATTACHMENT 4

COSTS INCURRED BY FARMERS WITH NATIVE VEGETATION ON THEIR PROPERTY

The Chamarette

Submission to:

An independent review of interactions between the EPBC Act and the agriculture sector.

Dated 10 June 2018

COSTS INCURRED BY FARMERS WITH NATIVE VEGETATION ON THEIR PROPERTY

Farmers with native vegetation on arable land are suffering eight financial impacts;

1. Loss of farm asset value,
2. Loss of farm equity value or borrowing capacity,
3. Loss of farm profitability each and every year into the future,
4. Loss of investment opportunities when interest rates are at record lows,
5. Loss of productivity,
6. Loss economies of scale
7. Additional maintenance costs. (Feral pest control and fence repairs)
8. No discount or reduction in the Property Valuation or Shire Rates for remanent vegetation retained on the property.

Notes

- The 2013 BankWest study of Wheatbelt farms details the value of arable land between \$650 to over \$2000 per ha depending whether the farm is in a low or high rainfall area. Assuming the average farm has 100 ha of arable land that could be cleared the asset value would be increased by \$65,000 to over \$200,000 dollars.
 - The BankWest study also calculates profit in an average season, is about \$200 to \$300 dollars per ha. This \$200 to \$300 dollars per ha is a loss impacting on the farmer sustainability each and every year.
 - The financial cost of Environmental Legislation on farmers and the Australian community (jobs and investment) on private property needs to be calculated and reported in Departmental Annual Reports to Parliament.
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