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Introduction

I welcome the opportunity to make the following submission to the the *Independent Review of the interaction between Agriculture and the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act).*

I am a director of Jam Land Pty Ltd, which has been under investigation for an alleged breach of the *EPBC Act, specifically relating to the* Natural Temperate Grassland of the South Eastern Highlands (NTG-SEH). At all times we have co-operated with the DEE, and provided all requested site visits and information.

While I do not propose to cover the detail of our case, it has been a stark illustration of the lack of compatibility of the legislation with agriculture.

Summary

The key conclusions I have drawn from my interactions with the DEE over the last 18 months, and are illustrated in this submission, are:

1. There has been no attempt to minimize the impact of the regulation on agriculture, or even to understand what that impact is.
2. There has been no genuine attempt to communicate the listing and its implications to the community, even after being requested to do so.
3. The complexity of the assessment methodology, unreasonable scale of 0.1 ha, and high proportion of agricultural land requiring a detailed and costly assessment, are both unnecessary and unworkable.
4. The lack of provision to effectively control our perennial grass weeds until they reach an unmanageable threshold is irresponsible, and threatens our remaining high conservation grasslands.

If unchanged, the regulatory framework will be counterproductive to achieving good conservation outcomes for this ecological community. It will also continue to drive a wedge of distrust between regulators and agricultural producers.

Key aspects of our experience with the DEE over alleged EPBC breach at Corrowong

"Best practice has been made an alleged illegal activity, without bothering to let the community know about the change."

1. ***The work was done with a very high level of duty of care and environmental responsibility***.

   The alleged breach involved spraying a paddock as part of an ongoing program of pasture improvement program and weed control on the property.

A Landcare project had been conducted in the area over the previous eighteen months, with two erosion gullies fenced off to exclude livestock and allow revegetation.
An independent agronomist was employed to assess whether spraying this paddock was consistent with NSW native vegetation legislation. A comprehensive assessment was done on 20th October 2016, and it was determined that the area to be sprayed was less native than non- native, and it was therefore possible to proceed. The desire to sow the paddock was largely driven by the encroachment of african lovegrass and serrated tussock from the neighbouring property, as well as thistle and other weeds, and the presence of these species was noted on the assessment. In fact the agronomist's recommendation was to sow the area in question to improved pasture to halt the weed invasion, and protect the higher conservation area upslope.
It was also noted that areas of the paddock further up the slope had a higher percentage of native plants, so this area was not sprayed, and is to be retained in its native state, and largely managed for conservation.
The unsprayed area (approximately 130 ha) was much greater than the sprayed area (30 ha).
Jam Land was very upfront that all parties involved were completely unaware of the EPBC listing, so an assessment for the Federal Act had not been undertaken.
The key message of the Jam Land case is that a process that would have been considered best practice in terms of natural resource management, has now become an alleged illegal activity.

2. ***Jam Land ignorance of the EPBC listing reflected the situation throughout the agricultural community***

On notification of the alleged breach, I questioned agronomists, LLS staff, LLS board members, and other agricultural producers, all of whom shared our ignorance of the listing. A media search conducted by the local ABC reporter over the period of listing could find no media reports or coverage of the issue.
While I understand ignorance is no defence, I would argue the DEE has a moral and ethical obligation to inform the impacted community of the regulation. Even more importantly, if the legislation is to be effective in protecting the ecological community, it needs to be promoted.
Despite being criticised for lack of awareness of the regulation, the DEE has made no attempt to amend this situation, and has refused to participate at producer native vegetation awareness days, despite requests from the LLS to do so.

3. ***Offsets required under EPBC Act prohibitive to agriculture***

Jam Land offered the 131 ha unsprayed area as an offset for the 28.5 ha alleged breach, given this area was being fenced off and managed for conservation regardless. The DEE response is that this is area insufficient, and an additional 63 ha would be required. This would be a total of a 194 ha offset area, 25% of the total property area of 800 ha.
The DEE also stated that the 194 ha offset area was "particularly generous, and would not normally be accepted in an assessment process".
While large offset areas may be workable in high value land use changes such as mining or urban development, they are completely prohibitive in agriculture, and in effect will preclude any activity in regulated areas.

4. ***Duplication with NSW Native Vegetation Legislation Expensive cumbersome and unnecessary***

Jam Land was reported to both the Federal DEE, and the NSW Government OEH. While the state based investigation was subsequently dropped, we had two investigations running concurrently for the single alleged offence, meaning a duplication of property inspections, requests for information etc
There is also a duplication of assessment and authorisation required for farmers.
Given both levels of government have the same objective of protecting high conservation value grasslands, it seems absurd that the process cannot be streamlined, and at least the authorisation/assessment process be handled by a single consent body.

5. ***Compliance based only on third party reports***

The question was asked of the DEE as to why Jam Land was being investigated when they had driven past at least ten paddocks on their drive down from Canberra that had undergone the same process.
The DEE response was that their investigations were initiated solely by third party reports.
It is very bad legislation that casts such a wide net, potentially makes us all law breakers, and then is highly discretional in how the legislation is implemented.
The system is a great opportunity for vexatious neighbours, but is not in the interests of good conservation outcomes.

Interaction of the EPBC Act with Agriculture on the Monaro

Whilst the investigation at Corrowong is of concern to the Jam Land directors, of much greater concern to the entire agricultural community are the wider implications of the April 2016 listing.

Key concerns are:

1. ***The assessment process detailed in the Conservation Advice is likely to capture a high proportion of agricultural land on the Monaro***.

   The key threshold in the assessment methodology is that native perennials outweigh exotic perennials ie all annuals are excluded from the Federal analysis. Given the majority of exotics are annual species (sub clover, annual grasses, thistles etc), a large proportion of Monaro agricultural land (well over 50%) would be captured under the Federal legislation, at least to the point where a complex and expensive botanical assessment would be required.
   While the DEE refutes the area of land likely to be captured, they have produced no evidence of testing of their thresholds across the agricultural landscape to support their view. I think it is unlikely this work was ever done, and **that regulation has been introduced with no understanding about how this would impact the agricultural community.**
   The large area impacted by the Federal Act is not consistent with a listing that is purported to be a critically endangered ecosystem. Material forwarded by the Department states that the endangered ecosystem is "occurring in highly fragmented patches, with most less than 10 hectares in size." If this statement is correct, why is a blanket being thrown over such wide areas of farmland?
   Most importantly, many low conservation areas will be unnecessarily captured by the thresholds. Paddocks that are heavily invaded by annual grasses and weeds, or previously sown paddocks where *poa* or *stipa* still dominate sown species, will have more native than exotic perennials, and so require detailed assessment.

2. ***The threshold under the Federal Act extends to 0.1 hectares***.

   While a paddock as a whole may not breach thresholds, if any 0.1 ha portion of the paddock fulfils the criteria, then the landholder would be in breach. The level of detail required for a paddock assessment at this scale is totally impractical. An average 40 ha paddock would require 400 x 0.1 ha assessments.

3. ***The assessment process is incompatible with management of the Monaro's highly invasive perennial grass weeds.***

   African love grass and serrated tussock represent **the** major threat on the Monaro to both productive agriculture, and to native grassland.

The Conservation Advice limits weed control activities in regulated grasslands to the practice of spot spraying or targeted mechanical control until the weed infestation shifts pasture composition to greater than 50% perennial exotic.
This is despite good evidence that these weeds are uncontrollable other than by broadacre control once they exceed a density of 10% to 15%.
This situation is well understood by the agricultural community, and has led to widespread contempt for native vegetation legislation framework which makes it impossible to achieve good weed control outcomes, and therefore protect both agricultural productivity and higher conservation areas on the farm.

Any native vegetation legislation will be rejected by the agricultural community unless this issue is addressed.

What can be done?

Whilst the regulation has greatly widened the rift between producers and regulators, there is still a large amount of community goodwill toward identification, preservation, and enhancement of high conservation value grassland areas.

The question is how regulation can be changed to achieve this objective, while minimising impact on agricultural outcomes.

The answer looks straightforward.

1. The assessment criteria must be simplified and adjusted to target as narrowly as possible the higher conservation value grasslands. This methodology must be tested, to understand the area that will be captured by the criteria, and how this relates to the extent of the area that is seeking to be protected.
2. The minimal area threshold must be lifted to a scale that is compatible with broad acre agriculture. This area is likely to be different to that required for higher intensity land use.
3. The regulation must be compatible with best practice weed control. In giving producers back the tools they need to combat invasive weeds, the compliance regime for weed management should be tightened to protect both agricultural and conservation outcomes.
4. The revised regulation needs to be effectively communicated to the community. This education process must include clear objectives of the regulation, and cover identification and recommended management regimes for high conservation grasslands.