

24 October 2011

Ms Vicki Middleton
Assistant Secretary
Regulatory Reform Branch
Department of Sustainability, Environment, Water,
Population and Communities
GPO Box 787
Canberra ACT 2601

Via email: EPBC.reform@environment.gov.au

Dear Vicki

**RE: AUSTRALIAN GOVERNMENT CONSULTATION ON EPBC ACT OFFSETS,
EPBC ACT COST RECOVERY, BIODIVERSITY POLICY AND NATIONAL
CENTRE FOR COOPERATION ON ENVIRONMENT AND DEVELOPMENT**

The National Farmers' Federation (NFF) is pleased to provide a submission covering the above consultations currently sought by the Department.

Should you wish any clarification on matters raised, please do not hesitate to contact [REDACTED]
[REDACTED] at the NFF Office on [REDACTED]

Yours sincerely



MATT LINNEGAR
CHIEF EXECUTIVE OFFICER

National Farmers' Federation

Submission to the

EPBC Act Offsets Policy and Cost Recovery,

Biodiversity Policy and National Centre

21 October 2011



National Farmers' FEDERATION

Member Organisations



CORPORATE
AGRICULTURAL
GROUP



*The Pastoralists'
Association of
West Darling*

WOOLPRODUCERS
AUSTRALIA

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1. The National Farmers' Federation

The National Farmers' Federation (NFF) is the peak national body representing farmers and, more broadly, agriculture across Australia. It is one of Australia's foremost and respected lobbying and advocacy organisations.

Since its inception in 1979, the NFF has earned a formidable reputation as a leader in the identification, development and achievement of policy outcomes - championing issues affecting farmers and dedicated to the advancement of agriculture.

The NFF is dedicated to proactively generating greater understanding and better-informed awareness of farming's modern role, contribution and value to the entire community.

One of the keys to the NFF's success has been its commitment to presenting innovative and forward-looking solutions to the issues affecting agriculture, striving to meet current and emerging challenges, and advancing Australia's vital agricultural production base.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

The 2009 re-structure of the NFF has enabled a broader cross section of the agricultural sector, including the breadth and the length of the supply chain, to become members through an associate member category.

Each of the state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

2. Introduction

The NFF welcomes the opportunity to make a submission on proposals by the Australian Government to finalise an EPBC Act offsets policy, introduce EPBC Act cost recovery, a new Biodiversity policy and the proposed National Centre for Cooperation on Environment and Development.

NFF supports reform of the Australian Government's environmental legislation and policies. Such reform must serve to deliver a better business case for farmers and other industries undertaking development. Fundamental to this is the reduction in red tape as well as mechanisms that streamline environmental legislation and regulation (particularly across jurisdictions) to reduce duplication and confusion.

To this end, the NFF's high-level principles align with those of the Federal Minister. However, NFF notes that streamlining of environmental law must be facilitated to become operational at the earliest possible time. Furthermore, this must be extended beyond to include offsets and the range of environmental matters that provide a complex background to doing business.

Importantly, there are broader issues around land use change and land use management that need to be considered not only in the light of these policies but future policy. No Australian government considers and implements policy at the total landscape scale. This includes looking at aspirations regarding mosaic landscapes, conservation estates and the pressures from changing land use to determine how our landscapes can be managed to deliver co-use of those landscapes for multiple outcomes.

As an example, there is significant pressure to place more land in the National Reserve System estate as the cornerstone of biodiversity protection. However, around 40% of Australia is under conservation management for biodiversity but much of this is not managed well, so is discounted in terms of biodiversity outcomes. Converting more land from agriculture to conservation will fail to enhance biodiversity outcomes. However, managing our landscape for multiple uses and benefits may deliver much better outcomes in terms of biodiversity, agriculture and feeding the world, mining, on-shore petroleum, urban and peri-urban, forestry and so on. NFF encourages the Australian Government to start this broader debate to ameliorate current land use change conflict and avoid future conflicts.

In terms of the new policies the Australian Government is seeking comment on, broadly the NFF supports the biodiversity and offsets policies (with some suggestions to improve these). However, the NFF rejects any notion to include agriculture in the proposed cost recovery arrangements, as this will only lead to perverse outcomes. There are a number of cost recovery principles that need to be considered, that have not been covered or are inadequately considered in the proposal. Moreover, the NFF supports independent oversight of any cost recovery proposals – by either the Productivity Commission or the Australian Competition and Consumer Commission (ACCC).

3. EPBC Act Amendments

NFF supports the Australian Government's proposal to amend the EPBC Act in 2012. While this does not form part of the requested submissions, NFF would like to note and support that such amendments be subject to scrutiny by allowing access to the draft exposure Bill before the final Bill comes before the parliament.

4. National Centre for Cooperation on Environment and Development

NFF notes that peak stakeholders largely did not support this concept at the Ministerial Roundtable on 8 February 2011. Nevertheless, the NFF supports a National Centre in principle. However, NFF has concerns including how such a centre might operate, how it will be appropriately funded (noting that the Australian Government will provide secretariat funding), what is the expectation on those organisations involved in terms of funding, and how will the Centre's "advice" be used by the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC).

NFF expresses its interest in being involved subject to further clarification of the above matters.

5. Biodiversity Policy

The NFF supports the establishment of an Australian Government Biodiversity Policy. However, it is currently unclear where this policy sits relative to other environmental policies, frameworks and so on. For example, is the proposed Biodiversity Policy a superior or inferior policy to the Biodiversity Strategy, and how this policy will deliver a more streamlined environmental system with reduced red tape?

Moreover, the Biodiversity Policy is silent on implementation and in particular, how the Australian Government will monitor and evaluate against the policy, and how the Australian Government will fund implementation, monitoring and evaluation.

Principles - General Comments

The NFF generally supports the principles contained in the Biodiversity Policy and the current approach by the Australian Government to take a proactive approach to the environment than the reactive approach indicative of recent decades. Significantly, this ought to lead to reduced costs over time. Moreover, all environmental efforts must be subject to a cost benefit analysis – this is likely to support the proposed approach to prevent biodiversity decline before it happens.

A major concern is how the Australian Government intends to fund the protection of environmental values. Importantly, the adequate funding and management of the entire conservation estate is long overdue. In particular, one of the most common concerns of farmers is the good neighbour issue of Governments failing to address invasive species (animals and plants), management of fire and border fencing, and diseases.

It is now clear that land managed for conservation outcomes covers around 40% of the Australian continent. Yet there continues to be increasing pressure to put more land into the National Reserve System as the "premium" environmental assets. While these are important, the remainder of the conservation estate can no longer be ignored.

The NFF notes that insufficient funding and an intensively bureaucratic process hinder even adequate management. This must be addressed to ensure delivery of improved environmental outcomes at the national level. A solution may be to pay adjoining farmers to manage these lands for environmental outcomes – and there is every incentive for a farmer to deliver a better management regime.

A perverse outcome for the above is that there is increased pressure to convert agricultural land to the conservation estate. Such policy outcomes must now be overlaid with Australia's role in assisting to feed a world with a population of 9 billion in a few short decades.

Like the agreement of COAG to reform the regulatory approach to environmental protection, the Australian Government must also seek to establish a more streamlined approach to biodiversity outcomes across all jurisdictions. This will necessarily include the conservation estate, management as well as regulation.

NFF is also supportive of market-based approaches to conservation rather than regulatory. While the latter has a role, it should not be the sole focus for delivering environmental outcomes, particularly when a significant amount of land is held privately by farmers and Indigenous peoples. To this end, NFF welcomes any measures to deliver outcomes on voluntary basis such as participation by farmers in the Environmental Stewardship Program.

In terms of information and knowledge, NFF supports the recent proposals by the Australian Government to invest in this through the Bureau of Meteorology and Australian Bureau of Statistics. However, NFF recognises that there is a time imperative – this information is needed now – as well as how the Australian Government will be able to collate existing information held by a significant number of organisations.

What was required several decades ago was a baseline against which to measure the significant investments by Governments in natural resource management. Unfortunately, this has been a failure and it appears that we still are unable to measure success. Importantly, the Australian community is unable to measure trends in improvement and how today's investment can be isolated from the impact of continuing legacy effects¹.

6. Cost Recovery

NFF notes the proposal to introduce cost recovery for EPBC Act referrals, approvals and monitoring of approvals. It should be noted that the Australian Government has failed to adequately fund environmental protection over time, or perhaps even underestimated the cost. Add to this increasing pressure from environmental groups to list and protect species (sometimes because this has failed at a state/territory level). Today's financial costs should have been expected.

NFF rejects this proposal and seeks that agriculture is excluded, as this will only deliver serious perverse outcomes for the environment and farmers. At a simple project cost of \$7,750 for a referral and a \$10,000 for an approval, this cost recovery proposal will lead to farmers deliberately not referring and expose them to increasing risk of compliance.

Furthermore, NFF notes that the driver for the increased workload is primarily the minerals and petroleum industries (26.4%), residential development (14.5%), transport (13.4%), water and waste (11.9%) and energy sector (10%). Agriculture including forestry comprises of 0.7% and is not a driver that justifies cost recovery.

As an alternative, if the agriculture sector is not excluded, its costs ought to be considered a Community Service Obligation (CSO) or subsidy, effectively paid for by the Australian Government.

¹ 2006 State of Environment Report summary, p. 13.

NFF also rejects proposals to recover costs for Strategic Assessment particularly as this assessment is driven by the Australian Government as a “better” approach to landscape scale management and as a preference to a significant number of applications. In other words, Strategic Assessments are designed to reduce the range of environmental impact assessments (referrals, assessments, approvals, post-approval monitoring and auditing). To charge for a better approach to managing the Australian Government’s environmental law responsibilities is a perverse outcome.

General Comments

The development of a cost recovery process must consider a range of matters. There are a number of cost recovery pricing principles that could be drawn from a number of sectors, but the rural water sector will be used in this instance.

While NFF seeks the exclusion of agriculture from cost recovery, nevertheless any cost recovery policy implemented by the Australian Government must consider a range of pricing principles including:

- Efficient prices – and stakeholders do not currently consider that the activities of DSEWPC are currently efficient or effective, e.g. requests for additional information are known to be used as a “stop the clock” activity. Yet this proposal seeks to require project proponents to pay for this inefficiency. This principle must be assessed from the perspective of the commercial sector not Government.
- Relevant and appropriate costs – whether the costs that a Department is seeking to recover are in fact relevant and appropriate costs to be considered (in terms of quantum and nature) and closely associated with the costs of the activity undertaken.
- Duplication – is there duplication in the activities being undertaken.
- Charges exclude activities undertaken for the Government (such as policy development, and Ministerial or Parliamentary services)
- Community Service Obligation – whether Government ought to pay costs on behalf of the community as a contribution; CSOs must be transparent and well targeted.
- Cost recovery pathway – whether the costs ought to be capped in terms of increases over time.
- Cross subsidisation – must be avoided.
- Monopoly service providers – cost recovery should reflect that DSEWPC is a monopoly service provider.
- Avoid over recovery.

There is currently no justification that the implementation of cost recovery will lead to an improved level of service for the project proponent. In fact, stakeholders have indicated to the Minister (Roundtable, 8 February 2011) that such cost recovery implemented by state governments had not resulted in better service.

Moreover, NFF supports that there is independent regulatory oversight of any such proposals for cost recovery. This would increase transparency and provide some confidence that the cost recovery is warranted and appropriate – internal establishment of these costs is rejected, particularly as the paper is based on cost “estimations”. At a Federal level, this must be either the Productivity Commission or the ACCC.

A “bankable” approval

NFF rejects any notion that costs should be recovered because a project approval results and is viewed by the Australian Government as a “bankable” approval. This should not form any consideration in whether costs ought to be considered. NFF considers this proposal offensive, particularly when the project proponent is required to manage this, as one of many, risks to the business. In other words, this is about managing risk. If a project proponent is unsure and does not wish to face the risk of litigation, there is a referral.

7. Offsets

The NFF generally supports the use of offsets – with farmers being required to have offsets for approvals at a state jurisdictional level. In saying this, there is concern for the confusion of a separate requirement for offsets by different jurisdictions. Moreover, NFF will be supportive of measures by the Australian Government that would see some alignment across governments on offsets.

More broadly, NFF notes that direct offsets may be constrained by the availability of suitable areas of land for protection. This is a concern for agriculture and this will lead to possible perverse outcomes where land for agriculture is targeted for decommissioning and replanting leading to land use change from agriculture to conservation. Importantly, the multiple uses of one piece of land must be acknowledged and supported.

While NFF notes that offsets are largely designed to deliver a better environmental outcome for an approved project, the role of offsets ought to be constrained to where there are substantial and enduring residual impacts after the application of avoidance and mitigation measures.

Discussion Paper Introduction

NFF questions whether the conservation land management by farmers is a “business opportunity”. This reference should be removed from the proposed policy.

NFF supports the proposal for the development of a set of national standards for offsets generally. However, this discussion should also extend to the development of a broader offsets arrangements that enable project proponents to look at one “offset” that covers the requirements of all Governments not multiple offsets for the one project.

Types of Offsets

NFF supports a flexible approach to the use of direct and indirect offsets. Importantly, the inclusion of actions that improve the matter of NES or reduce threats such as invasive species, disease and fire ought to be considered direct offsets (rather than indirect). Moreover, the Minister is aware of and made a priority the issue of threat management. Therefore, the NFF position would support the Minister’s priority to deliver improved environmental outcomes by

managing these issues better. It is also consistent with the conservation outcomes listed discussed on pp. 10-11.

To all intents and purposes, the agriculture sector is most likely to use only direct offsets, due to limited resources that will allow the landholder to provide funding for indirect offsets (such as Indigenous employment or funding of research and development). This observation is made in the light of previous comments that include management actions to improve environmental outcomes as being a direct offset.

Suitable Offsets

Note the NFF comments above regarding improved management of existing and future conservation areas.

In regards to Figure 3, unless this is scientifically documented, NFF suggests its removal or at least labelling as a diagrammatic representation rather than factual.

Offset Assessment Guide

NFF supports the initiative of the Australian Government to improve the transparency of decision making regarding offsets. As such, the development of the Assessment Guide is an important step in providing quantitative information in the development of their project.

As NFF understands it, the proponent project accrues “impact points” against which “offset points” are offset to determine the effectiveness of the direct and indirect offsets.

NFF does not support an unmoving 75% of offsets must be derived from direct offsets. NFF would support a more flexible approach based on the nature of the project, the availability of direct and indirect offsets and whether the offset delivers improved environmental outcomes for the protected matter.

NFF would also like the opportunity to road test the Guide against a range of agricultural projects to ascertain its appropriateness for agriculture. The Guide must also be subject to scientific peer review. These will provide some assurances as to the veracity of this tool.

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Offset Delivery Options

NFF supports the use of market-based mechanisms for delivering a range of environmental policies. Therefore, the use of markets for offsets is supported.

8. Conclusion

The NFF is broadly supportive of the proposed new policy arrangements for biodiversity, offsets and a national centre for cooperation. However, the NFF rejects any proposal for cost recovery for referral, approval and post-approval monitoring. Therefore, NFF seeks that agriculture (and other industries with few referrals and approvals such as aquaculture) is excluded.

NFF Contact

[REDACTED]

NRM Manager

Ph: [REDACTED]

Fax: [REDACTED]

Email: [REDACTED]