Native Vegetation Permitted Clearing Regulations Review

Environmental Farmers Network (EFN) comments on the DELWP Consultation Paper (April 2016)

EFN represents farmers in Southeast Australia interested in sustainable farming in a social, environmental and economic sense. We represent mostly commercial farmers very concerned about the impact of climate change on farms, people and landscapes, loss of farm biodiversity and the impact of peri-urban development on farming. We strongly encourage State and Federal Governments to develop market mechanisms that reward landholders providing ecosystem services such as retention and protection of biodiversity on farms.

We offer the following comments on the current native vegetation permitted clearing regulations review.

The native vegetation regulations have been dysfunctional for quite a while. The original Native Vegetation Framework of 2002 was OK for some of the time that it was in place, but after a while people realised that the cost of complying with the regulations was, in most cases much more expensive than the cost of breaking them. Also, although the cost of compliance was high, policing of off-sets to clearing was practically non-existent. So an alternative to breaking the regulations was to go through the process, but never quite off-set what was cleared. Another way to avoid jumping through the hoops (without breaking the regulations) was to take a close look at the exemptions to see whether they can be creatively used to carry out the clearing. Some responsible people, who are not willing to break or bend the rules and who just cannot be bothered with the effort of complying have not cleared and possibly compromised their business, or safety, by not doing so.

The current version of the regulations (called the permitted clearing regulations) has addressed some of the problems above. It has tried to make the process of clearing easier. This has been done in an attempt to allow clearing to take place (legally), but to have off-sets in place before clearing occurs. These changes have their merits, but have been marred by quite a few issues, which are discussed and mostly addressed in the current review. The current version is still onerous enough to make creative use of the exemptions and illegal clearing a very attractive option for people who need to clear native vegetation. Follow up of offsets has improved, but penalising illegal clearing has not, and is unlikely to be improved after this review.

Net loss
In the Framework the over-riding objective was net-gain for native vegetation; the current version is no-net-loss and now the review proposal is to leave it as no-net-loss. Neither net-gain nor no-net-loss has come anywhere near achieving their goals. Significant net loss is what we have always had. Creative accounting can fool some people to believe otherwise. Within all these regulations gain comes from off-sets, while losses occur from: legal clearing; clearing under the exemptions; and, illegal clearing. In addition, with continuous grazing, losses occur with death of older vegetation and lack of recruitment. In figure 2 of the review the only losses accounted for were legal clearing, while offsets were conveniently (and temporarily) drafted off to be accounted for by something else. Elsewhere in the document exemptions resume their place as part of the native clearing regulations. Illegal clearing is also ignored, but it is a function of these regulations: if the regulations are working well, illegal clearing should be minimal, if not, illegal clearing becomes a big issue. It is a big issue. As
neither illegal clearing nor exemptions are measured there is no way of knowing how massive the net loss associated with native regulations is. The current protocol is to ignore both and pretend that we have no-net-loss. We really should be aiming for net-gain – given our rate of decline over the last century.

**Offsets**

The concept that offsets should be secured prior to clearing is a good one. However the current practice of harvesting old conservation covenants and re-badging them as offsets is not providing offsets. While the concept of paying people to manage their conservation areas is a good one, these covenants were put in place to permanently secure high quality native vegetation and add to the habitat of the state and planet. They were not set up as a licence for others to obliterate valuable native vegetation elsewhere. If covenants are to be used as offsets they should be established for that purpose and within a couple of years of the clearing occurring.

This review has so far taken what was regarded as a dysfunctional system and overhauled all its various components. If all of these new improved components are put back the way they were, then very little will have been achieved. The system will still be dysfunctional.

**Needs**

In order for it to have any chance of working, the following needs to happen:

1. For a proponent (someone who wants to clear native vegetation) to be able to clear, the pathway needs to be obvious and straight-forward. Avoid, minimise and offset are laudable goals, but if they are in place then further bureaucratic hurdles need to be reduced. **Deterrence should be for those people who break the rules, not those who are trying to comply.**
2. The various pathways for assessment need streamlining. They need to include exemptions and illegal clearing: exemptions should be included in the low-risk pathway and illegal clearing on its own. Any clearing done which is not registered with the responsible authority should be categorised as illegal clearing.
3. Clearing done under exemptions and illegal clearing both need to be quantified. That process would be simplified by treating offsets as part of the low-risk pathway, forcing proponents to register their activities.
4. The process of third party offsets is good, but requires further development and the offsets they require need to be tangible, not just rebadging existing native vegetation. There is no need to make the cost of offsets onerous, but it should be where the bulk of the money spent on compliance with regulations should go. **Deterrence should be for those people who break the rules, not those who are trying to comply.**
5. There needs to be regular surveys of native vegetation missing from the landscape and this survey lined up against any clearing and exemptions which have been registered. Any clearing which is not registered should automatically be deemed to be illegal. Prosecutions of illegal clearing should follow. **This MUST BE WHERE DETERRENCE SITS, not the imposition of excessive red-tape for people wanting to play by the rules.** The problem is that successful prosecutions for illegal clearance of native vegetation are about as rare as hen’s teeth. Most land managers know this and so play the umpire. The list of reasons why this part of the regulations is so weak is long:
   - There is a two year statute of limitations (associated with all planning regulations apparently). This makes detection and successful prosecution by aerial photos and other remote sensing techniques
Prosecutions must be brought by local government, which uses the planning regulations which are overseen by the planning dept. and the expertise and ability to identify regulation breaches lies with DELWP. This lack of alignment makes successful prosecution almost impossible;

- The state regulations are complicated by parallel (but not identical) sets of regulations administered by federal government and local government.
- Everyone knows the tricks and can easily clear within the significant legal grey areas around exemptions.

**Further comment**

The loss of native vegetation on private land is a major concern. Robust areas of native vegetation on farmlands (and other private lands) is an important aspect of productivity, resilience and sustainability. The EFN concern is that the situation is worsening.

Some native vegetation stocks are finite and cannot be replaced with very old trees or fine, diverse groundcover. Growing replacements, or improving vegetation elsewhere, is not compensation. It is only the middle sized range of trees and shrubs and the simple ground cover habitats that we can increase abundance with low intensity intervention.

Some native vegetation stocks are also at a level that they are on the threshold of being lost. These need special consideration in light of their scarcity.

Earth-working machinery is becoming cheaper, more powerful, and easier to use. A farmer’s cost of removing trees and shrubs is very low, the incentives to clear remain strong, and we are coming to accept it is as normal to see scraped, machined landscapes. Other factors are also at play including, prolonged dry spells (climate change), new investment in farming (ownership change) and enterprise changes related to financial returns and climate change. Some examples include:

- large dairy farmers consolidating properties and clearing vegetation as they wish when setting up their farm tracks and fences for their new operations;
- changing enterprises from grazing to cropping with associated paddock tree and windbreak removal; and
- trend to large corporate farms (which may increase or decrease native vegetation).

Clearly, the current incentives to clear native vegetation are greater than the incentives (or regulations) to retain it. The policy goals do not reflect the magnitude and complexity of the problems associated with vegetation loss. The framing of the NV regulations should recognise the explicit and implicit rewards we set up that contribute to the damage (eg cheap fuel with no carbon tax) and the longer time frames we should be considering when weighing up economic benefit.

Hence, in reviewing methods needed to bolster our stocks of native vegetation, these adverse economic and cultural factors must be recognised and dealt with. Making destruction profitable is silly. Further, as we continue to discuss regulation, regulation which has not met goals set for it, the thing we desire to protect is dwindling. With each month passing, we need stronger and stronger regulation to protect the remainder, we do not need it just to make the rules work a bit better. We are getting close to the state of "too little, too late".

We need champions who can show the value of native vegetation to the state of Victoria and its economic and social future. We need the community to think collectively, and not follow selfish short term economic goals. We need government to build a better vision for the landscapes of
Victoria and the long term economic and social value of a proper representation of native vegetation.

We need to revisit the “duty of care” accreditation process and have native vegetation retention as one of the values in “clean and green” certification. We need to increase our focus on new entrants to the land management areas, or where current owners are considering land use change, being those situations where irreversible decisions are often made before consequence in reasonably understood.

Perhaps the Victorian Government could promote native vegetation values by providing rate rebates via local government for a range of native vegetation values (eg habitat trees, cultural heritage preservation, native vegetation protection and enhancement, VVP grassland protection). Or perhaps a large bonus on top of Council rates for every paddock that has old indigenous trees, and a fee for every paddock that is bare but should have trees. It would have to be revenue neutral for the Council, but its value to the greater state would justify it.

**Summary**

To make legal regulation work:

- Make it easier to comply with.
- Keep track of what is being lost.
- Make sure that the offsets are on-going tangible improvements to native vegetation, not just re-badging of existing reserves.
- Hammer anyone who breaks the rules.
- Publicise the hammering, so that it acts as a deterrent to those weighing up the option of whether to abide by the rules or break them.

These things almost certainly cannot happen if native vegetation retention remains a regulation under the planning laws. It needs to have its own legislation to meet its goals. We all know that, and because this will not happen this time, after this review the native regulations will still be dysfunctional. They will still be incapable of meeting the current goal of no-net-loss.

We need a new approach. Fine tuning a failed approach is unlikely to be successful. If the retention of native vegetation is seen as important then perhaps we do need to go back to the drawing board. Regulations brought in under the planning system in 1989 were quite appropriate at that time to put a stopper on untrammelled clearing. But now the clearing is more subtle and diffuse. It can be argued the legal constraint needs to be smarter and more transparent.

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