



**Victorian
Farmers
Federation**

SUBMISSION

Renewing Victoria's public land legislation

14 May 2021

EXECUTIVE SUMMARY

The Victorian Farmers Federation is the peak body representing farmers in Victoria. Our members are the Crown's largest neighbour, partners in management, eyes on the ground and a source of knowledge that can help improve the management of Crown land in Victoria.

The major land use in Victoria is farming / green wedge with this category representing nearly 63% of zoned land. Crown land, in state forests, national parks and other reserves is the second main land use category in Victoria at nearly 35%. As Crown land and farming land is 98% of the state, it needs to be recognised that farmers and the Crown are neighbours and joint managers of biosecurity, weeds and safety in the landscape. In addition farmers often play a role in direct management of Crown land under lease and licenses.

The Catchment and Land Protection Act deliberately binds all owners of land, including the Crown. The Emergency Management Act establishes priorities across tenures. All owners play a crucial role in Biosecurity. However, in regards to many land management and safety obligations DELWP focus on the Land Act and Forest Act roles and duties. The modernisation process has failed to consider the opportunity to embrace the key duties and obligations of other statutes on the Crown and embed it into the principles guiding the management of Crown land in the state.

2020 has highlighted the importance of biosecurity response and the need to plan for a range of scenarios which may spread disease. Keeping a 19th century view of biosecurity risk in the 21st century risks Victoria, its economy and biodiversity being subject to a disease outbreak such as foot and mouth.

The VFF position in regards to the recent Crown Lands Bill – facilitating camping – is an insight into the many issues and challenges that must be embraced in modernising not only the legislation but the system which manages Victoria's Crown land estate.

OUR POSITION

This submission will respond to the paper and give examples of how the general objectives can be delivered in a more comprehensive way that not only 'updates' business as usual but looks at what best practice 'whole of government' public land management could be achieved. This would ensure greater compliance of public land management with a range of statutory obligations on the Crown which currently are not reflected in public land management legislation or practice.

At a minimum we believe that duties of the Crown regarding land management in emergency management, catchment and land protection and biosecurity statutes should be core objectives of the legislation and the management and reporting principles established in the Act.

For decades there has been an assumption that just being owned by the public will deliver a 'net gain' outcome. In reality the failure of the Crown to actively manage land, including fuel load, pest plants and animals, thinning regrowth and overly abundant wildlife is creating a net loss on Crown land, placing a higher burden on private land to make up for the short comings on Crown land. Management objectives and reporting should be set for each reserve and data collected to guide investment and reporting – including Biodiversity 2037, CALP Act, Biosecurity Act and State of Environment Reporting.

Land use planning tools have been used to achieve 'land management' outcomes on private land without the need for compensation, and with no co-ordination of effort – such as the landscape level Native Vegetation Precinct Plans proposed by the VFF to provide guidance in proactively creating 'gain' in the most effective

way to then streamline targeted removal to facilitate climate friendly production methods. The new Lands Act should require the Crown to manage issues to the same standard – or hopefully higher- than the expectations they place on private land holders.

The new act should also ensure that appropriate funds are applied to manage the duties of the Crown, including contribution to cross tenure management programs. Traditionally the Crown has not been a ‘good neighbour’ in regards to management of issues and threats to private land from public land, including failure to contribute to fencing costs.

The Crown often requires higher management standards on license holders than it applies to itself. This improved management should be recognised within the legislation and the processes to grant / renew licences. Licensees should not have to indemnify the Crown for losses stemming directly from Crown principles that fail to consider public safety and biosecurity.

Relying on what worked in the 1800s underpinned the preparation of the Land (Regulated Watercourse Land) Regulations. That does not give confidence that modern understanding of access, safety and biosecurity will be embodied in a new Act as it seems to be outside the focus of the current Crown land management system. In the era of ‘industrial manslaughter’ farmers should not bear the risk and the insurance for actions of others that they cannot control. After a season where there were thousands of unattended campfires on Crown land, farmers should be able to claim loss from the consequence of public land manager’s inability to enforce regulations that mandate minimum standards to protect life and property.

In the Gariwerd Landscape Management Plan – Parks Victoria also highlights these concerns. 18 months of stakeholder consultation for a plan that included farming land between reserves, failed to identify farmers / neighbours / owners of land covered by the plan as being a stakeholder. For these reasons there needs to be specific recognition of license holders and neighbours within the legislation, including how they will be consulted with and principles for negotiated cross tenure plans with recognition and resourcing of the Crown’s statutory duties.

VFF believes in the premise of the review being *“Victoria’s public land legislation needs renewing and modernising to bring it into the 21st century, and the government has committed to doing this... however, we are improving the framework through which public land can be managed effectively for the benefit of the whole community into the future”*. However VFF do not see any evidence of the management challenges highlighted in Land (Regulated Watercourse Land) Regulations or the Victorian Auditor-General’s Report Control of Invasive Plants and Animals in Victoria’s Parks being reflected in the principles guiding of the development of the new legislation.

DISCUSSION

A simplified legislative framework, with clear objectives for public land management and setting out public land management (decision making) principles (see Appendix A)

The basis of the legislative framework is seen as a problem as it is about streamlining “change of use” approvals rather than taking a first principles look at what ‘modern’ and ‘holistic’ management of land means in 2021.

2019 – 2020 highlighted two major flaws in the Land Act that have not been incorporated into the directions for the new Act. The emergency management, public safety, economy and environmental impacts stemming from unclear roles and consideration of risk by land managers in relation to emergency and what the social and economic implications of a modern biosecurity incident look like. Stopping the spread of Covid 19 is difficult with humans – but would have been near impossible if the spread of the disease was via animals.

Many diseases, such as foot and mouth or zoonotic diseases like influenza, are either spread by animals or formulate mutations through transference between species. Humans are able to respond to health warnings and protocols. Managed animals can be contained to minimise spread, however it would be more difficult to control spread of disease without human biosecurity protocols applying on crown land, and where wildlife can mix with managed livestock and spread disease further.

For the past three decades the Crown has been bound by many statutes relating to land management and public safety. Management systems have not been implemented to ensure public land managers understand their duties under other legislation. While there is no need to ‘duplicate’ these duties in the legislation they should be included as key deliverables under the Act and the system responsible for delivering it or we will continue to see perverse outcomes from single dimensional decisions made in complex environments where multiple factors must be considered in determining the best way forward and managing any potential risks for action.

The legislation must be clear in intent and the range of other ‘duties’ on the Crown and how they will be central to management decisions and actions.

DELWP can be siloed in its structure and operation. Management of public land in the public interest is not about prioritising one department or management area of that Department at the exclusion of other values.

Over the past 5 years VFF has been campaigning to get an understanding of all four elements of “property¹” in emergency management. Impacts on the economy and agriculture are often not considered – nor are they calculated in risk modelling. Both Forest Fire Management Victoria and CFA will refer to a ‘dwelling’ as “property” and as a representation of “life”. This has led to a hazard system and residual risk calculation that focuses on township protection and seemingly places a higher value on urban lives and property than on rural lives and the property of volunteer fire services who leave their property to defend others.

The new Act should be based on what are the key issues to be actively considered to have safe, biosecure, biodiverse public land with minimal off site impacts on property and communities.

¹ State Emergency Management Priorities

The State Emergency Management Priorities are:

- *Protection and preservation of life is paramount. This includes*
 - *Safety of emergency services personnel; and*
 - *Safety of community members including vulnerable community members and visitors/tourists located within the incident area*
- *Issuing of community information and community warnings detailing incident information that is timely, relevant and tailored to assist community members make informed decisions about their safety*
- *Protection of critical infrastructure and community assets that supports community resilience*
- *Protection of residential property as a place of primary residence*
- *Protection of assets supporting individual livelihoods and economic production that supports individual and community financial sustainability*
- *Protection of environmental and conservation assets that considers the cultural, biodiversity and social values of the environment.*

To be a modern land manager one needs to understand that many acts now bind the crown and should be considered carefully in active management of the Crown estate. In addition to conservation / biodiversity outcomes the CALP Act, Biosecurity Act, Emergency Management Act and the Strategic Emergency Management Priorities should be central to 'modern' management of Crown land.

These failures to understand the role and function of a modern land manager are highlighted in Appendix A. This must be rectified with clear discussion of how the Act will ensure the management by the Crown considers, acts on and monitors its key statutory duties including, biosecurity and pest plant and animal management (CALP) and Emergency Management beyond the limited lens of the Land and Forest legislation.

Appendix A recognises traditional owner rights, but fails to consider the rights of license holders or principles of equity and fairness in relation to cross tenure management of issues and the impacts on crown management of issues on the ability of neighbours to protect their property or effectively manage CALP issues.

In relation to 'sustainable use' Appendix A fails to recognise biosecurity and how to assess management actions in relation to reducing off site impacts on private land use. It also fails to 'modernise' management to active management of issues. The Yellowstone Model of lock up and leave and nature will restore the balance does not work in the Australian context of active management of the landscape by traditional owners and the dominance of weed and pest species in the landscape.

Appendix A needs to realise that other landholders in the landscape are directly impacted by what actions the Crown takes or fails to take in management of a range of issues and should be a specific stakeholder rather than part of the amorphous "community". It should be clear that management plans for specific reserves have clear reference to the role and consequence of that land and its management to the wider landscape.

Simple and clear public land categories and accompanying purposes, which will provide greater clarity about the purposes for which an area of public land should be managed and what activities can occur in those areas (see Appendix B)

The lack of practical knowledge on the management of a diverse range of issues is present in relation to 'management' categories. A key principle that should underpin all management is 'duty of care' – including to the neighbours of public land, and the safety of not only users of public land but the wider community. This is why it is essential that concepts of biosecurity, landholder duty, safety and managing risk are embedded in the objectives of the legislation so that these principles are embedded in management of public land and the duties and responsibilities of public land managers.

Appendix B has a range of shortcomings that need to be considered in progressing the new Act and management systems. Management of biosecurity, pest plants and animals, overly abundant wildlife and public safety must be core to the purpose of each category of Crown land.

A closer examination of the current 'reserves' and the issues to be managed needs to be made. This should be in the context of statutory obligations and use 'modern' statutory language to avoid confusion and misunderstanding. For example 'Historic' was replaced by the term 'heritage' in Victorian statutes in 1995 and should be reflected in the categories.

Some reference to "cultural" features should be made. 'Cultural heritage' has a universal meaning and understanding under international treaties Australia is a signatory to. In the past decade there has been increasing confusion about the use of the term cultural as interchangeable with indigenous.

Urban bias is often an unconscious bias within Government that undervalues rural land uses or the impact of management actions by rural communities. In simplifying categories of land and at the same time increasing the ability to change uses without public review it is essential that these categories are well thought through, including ensuring that decisions will be made in compliance with statutory obligations.

The categories as they stand do not seem to be underpinned by a strong understanding of the type of places in these categories and the issues to be managed. The following examples just highlight some potential flaws in considering classes of Land which may lead to loss of key values that they were gazetted to protect. This will impact on our members as community members, neighbours and management partners with intimate knowledge of what makes these places special and how to not only protect these places but enhance their condition and allowing productive use / minimisation of off-site impacts.

The categories must ensure all statutory duties and obligations are recognised and actively considered in management.

Heritage

Before 1995 and the gazettal of the Heritage Act, Victoria's key state statute for "heritage" was the *Historic Buildings Act*. Victorian statutes are consistent in applying the ICOMOS 'cultural heritage' terminology as utilised by UNESCO in considering Outstanding Universal Value for World Heritage Places – for cultural and mixed places.

The use of 'historic' or 'cultural and historic' places in relation to some land categories does not indicate and understanding of modern heritage practice or consistent application of statutory considerations. Further urban or 'metropolitan' parks are designated as being 'cultural and historic places' but 'regional parks' are not. Hepburn Regional Park has many places on the Victorian Heritage Register and many more on the Victorian Heritage Inventory (archaeology). Heritage management, especially of state significant places, is a core function of DELWP. This omission would not only cause confusion but could see management decisions made in breach of statutory duties. The concern for VFF is that if the Land Act cannot be clear and consistent in relation to the statutes it manages there will be even less likelihood of other agencies statutes applicable to land managers, such as biosecurity, being properly considered.

Water frontage, bed and bank reserve

The 'water frontage, bed and bank reserve' reinforces concerns in regard to how these categories will work in a practical sense. DELWP has just released draft regulations which will apply to certain categories of 'water frontage' land and not others. It is unclear how that will be delivered with only one category of 'reserve'. The provision of water for stock is not considered and failure to recognise this issue could lead to animal welfare breaches by the Crown.

Community Use Reserve

'Community use reserve' is an example of where a range of uses are conglomerated. The absence of 'sub category' discussion in 'water frontage' is therefore more concerning as it seems the need for different management priorities has not been considered.

Mineral Springs

The category of 'mineral springs' reserve is not included in the Appendix and was discussed in VEAC with proposals changed in the final report. They were initially proposed to be 'water' reserves however that is not their function.

The consequence of the 'ease' of allowing change within these 'broad' categories on the values to be protected is most visible in 'community use reserve' and is why the Act must reference statutory duties and obligations. Currently a 'botanic garden' is a specific gazetted purpose. As proposed it would be simple to

turn a botanic garden into a football ground. This could place additional burden on private land, for instance farms with established 'gardens' with species diversity to be "managed" via the Heritage Act or the Planning and Environment Act as Crown reserves for this purpose no longer have to be managed.

VFF has seen this occur in regards to biodiversity and net gain. There have been a series of reports highlighting the need for additional public land and categorisation of public land to provide habitat for red tail black cockatoos. Over the past decade little action in purchasing habitat or actively managing habitat on unreserved land has occurred but several regulations have been applied to private land transferring this duty to private land managers without assistance or compensation. It is critical that the new Act places 'net gain' duties on the Crown, with the paper and the appendices being all but 'silent' on achieving 'gain' that the regulatory system for private land demands.

A modernised public land manager framework to ensure land managers have sufficient autonomy and direction (aligned with risk) to manage public land in the best interests of the community, as well as to facilitate greater opportunities for Traditional Owners to be involved in public land management

There is no real sense of a 'modern' and all-encompassing understanding of 'risk' in the paper. For decades the government has failed to properly look at the consequences of actions (or inaction), have respect for private property (a moral duty to reinstate) or even a belief that all lives are equal.

Fence lines are but one example, and an easy one to keep front and centre in designing the Act. Is it appropriate that the Crown does not need to contribute to fencing its land? If the Crown refuses to give consent to lop or remove vegetation on a fence line and that fence is damaged due to falling limbs and trees and cattle get out and cause an accident should the Crown continue to place the responsibility on the private owner who was banned from taking the action to minimise this risk? Should the public land manager / decision maker have to consider public safety in decisions on fence lines – rather than purely the native vegetation regulations? It leads to a situation where the life of a farmer is valued less than the life of DELWP staff where trees where lopping or removal was not allowed in October but were lopped and felled for staff safety during a bushfire in December. Is it fair that emergency managers can enter land and remove fences without any notification, biosecurity protocols or obligation to repair?

These are all examples where existing management has failed to consider other regulatory systems since the Bolte Government. Autonomy, direction and budget must be provided to a modern regulator and an all-encompassing 'safe and fair' approach given to not only the best interests of the community, but to the public land manager balancing the same full range of statutory considerations and duties as private land managers – including being responsible for the consequences of their actions.

In the interests of transparency and knowledge there must be a requirement for the Secretary to report on how the Crown has met all its statutory obligations and to collect data on the effectiveness of its management actions – in all areas not just biodiversity.

Contemporary public land management tools to provide for strategic and management planning and to support community involvement in the management of public land

The VFF submission to the recent regulations regarding camping in riparian areas highlights some of the issues that must be considered to achieve this aim. Using an 'app' to monitor 'occupation' of crown land will help in threshold management, biosecurity and emergency response.

Having a biosecurity, emergency / public safety and property protection focus as well as pest plant and animal management focus will allow for data collection on the prevalence of issues and the effectiveness of different management tools and regimes in different settings.

Emergency Management must be undertaken under the State Emergency Management Priorities lens. Improved knowledge and understand of different farming systems is essential to prevent long term impacts on farming businesses. Deciding to cut fences rather than use existing gates in control lines on livestock properties has a consequence. Stock are not contained on the site. Bloodlines are lost. Breeding stock is lost. These losses are not reported or rectified as the public land manager has no idea of the consequences of their actions.

Proper consideration or risk should be 'avoid, minimise, recover / support'. Risk assessment requires proper assessment of all risks in the landscape and the potential consequences – including the likelihood of offsite impact. Where cross tenure management is required – weeds or hazard reduction for example - a clear process to consult and engage with all landholders and resource the Crown's share of responsibility is required.

A streamlined framework for tenures (e.g. leases and licences) and other authorisations focused on enabling appropriate uses while protecting public land values (see Appendix C)

VFF is seeking assurances that the Act will acknowledge that traditional management standards on licensed land far exceeds the level achieved on similar 'unlicensed' land and that the Act will not place unrealistic burdens on existing licences or their reissuance in the future.

For instance, bee sites not only support \$8 billion dollars of agricultural production per annum in Victoria, bees pollinate native plants and co-exist with native pollinators. Professional bee keepers understand the values of the bee sites, often to a level of knowledge on flowering cycles and conditions greatly exceeding public land managers. They also have detailed knowledge of biosecurity protocols.

Many other 'agricultural licences' are similar with a level of stewardship that is gained from detailed knowledge of the site in all seasons and conditions.

This practical knowledge should be valued and Licence holders should be considered in regards to duty of care, and involved in decisions that will impact on their ability to meet their obligations and their safety and wellbeing.

The Crown should ensure the license holder is not forced to wear the risk from government policies through unfair license conditions in regard to insurance and indemnification. The license holder should only be responsible for their management actions – not the actions of others.

In relation to Appendix C the following considerations are required in the drafting of the Act, including where relevant, specifying duties on the public land manager – not just the licensee:

- Development of public benefit test parameters for agricultural licences including bee sites which recognise environmental and economic benefits;
- Processes to ensure consistent considerations of biodiversity, biosecurity, protection of assets, safety etc – not just in their tenure but the consequence on neighbours;
- Review of 'not be inconsistent with any strategy or masterplan' – the planning system could be a guide here – nothing can meet all 'state policy' considerations – but the need is to show how these have been considered to achieve a 'fit for purpose' outcome. Or specify a 'specific' management plan – where that plan has taken a 'balanced' view of all issues;
- Ensure a minimum standard for management plan content and preparation – with public safety, biosecurity, pest plant and animal management, overly abundant wildlife and emergency management all being included with mandatory consultation with licensees and neighbouring land holders; and
- A commitment to the government meeting 50% of boundary fencing and the 'additional' expense for 'wildlife' proof fencing.

Modernised compliance, enforcement, and regulation provisions to better support public land managers in protecting public land values.

The riverside camping regulations highlighted some of the vexed issues in relation to compliance. At the moment there is an unfair burden on licence holders to take responsibility for actions undertaken by others. The burden of proof is not on the regulator but on the land holder which must be rectified.

Native vegetation regulations are a prime example of unfair compliance systems. Exemptions apply for actions without a permit. Enforcement looks for permits and prosecutes where no permit exists – even where there is a clear exemption applicable it is called “illegal” removal. Prosecutions occur even when people have letters in writing from ‘decision makers’ saying no permit was required.

Recent regulations proposed the ability of ‘recreational users’ to take native vegetation for firewood. The regulations had no way to demonstrate how many people were there and for how long, so as to estimate ‘removal’ in accordance with that regulation as a ‘defence’ for the landholder who could be prosecuted under the planning system for that vegetation being removed.

It is critical that there is detailed education on what the public can and can’t do on public land. There must be proper registration of longer term occupation of Crown land or licensed land, or on actions such as ‘campfires’ that have potential consequence on land holders.

There needs to be a focus on enforcement against the person undertaking the action – not the nearest landholder.

The consequence of failure to enforce regulations – such as fire safety – should be met by the state in regards to property damage and loss to private land.

Challenges – public land users

The Food truck example used in the document highlights the lack of understanding of biosecurity or public health and wellbeing issues within public land management. The challenge is to make sure that processes understand risk and consequence and that a car park is primarily for car parking. Commercial zones and a range of other zones allow for ‘food premises’ – where waste systems are in place minimising biosecurity risk.

Delivering projects and infrastructure

VFF also believes there needs to be guidance and assurances regarding delivering ‘new projects, infrastructure and uses’ on permanently reserved land. How will the consequences of that change on beneficial uses in an area be considered where currently it is an open and transparent process and the proposal is for a delegated decision with no public scrutiny?

It is curious to state the desire to provide for ‘electricity’ cables on Crown land when at present there are major ‘transmission’ projects where the government is actively avoiding using Crown land for community purposes – with decisions to place these uses on high quality agricultural land without consideration of impact.

It would be better for the Act to clearly state that public infrastructure and easements should be located on public land as a first principle with private land being for ‘connections’ to Crown land and for that to be located to minimise the impact on farm operations with commercial land access, compensation and rehabilitation agreements to be required.

Similarly ‘trails’ which increase the likelihood of trespass or biosecurity breach should require discussion with licensees and neighbouring properties.

Safety in emergencies

The VFF believes there needs to be a broader consideration of 'safety' in emergencies than what is current practice or considered in the recent regulations to guide riverside camping. VFF submissions to DELWP portfolios and the Inspector General Emergency Management (IGEM) in regards to emergency management, bushfire response and recovery, riparian land management and the recent camping regulations should be considered in drafting a more considered emergency management process.

The Act should ensure proper considerations and the development of a system with

- Management standards
- Risk and consequence considerations – agricultural values including understanding impact of action / non action on crown land
- Duty of care to neighbours

CONCLUSION

The VFF believes that for any Act which will be the key statute to outline how the Crown will manage one third of the land mass of Victoria must demonstrate how the Crown will demonstrate land managers can balance productive use, environment, natural hazards and safety and biosecurity.

Farmers are key stakeholders in Crown land management. Poor management impacts farm productivity, environmental health and safety. Farmers endeavour to be good neighbours through environmental works, management of pest plants and animals, maintenance of fences and mitigating fire risks. They simply ask for this endeavour to be reciprocated.

Emma Germano

President

Victorian Farmers Federation

Endnotes

The Victorian Farmers Federation

Victoria's agricultural production accounts for over \$13 billion of Victoria's economy and over 25 per cent of the State's exports per annum. Victoria's farmers produce high quality food and fibre, produced to high standards of safety, with little taxpayer support, and to some of the strictest environmental and highest animal welfare controls in the world.

The Victorian Farmers Federation (VFF) represents a farming community which creates a profitable, sustainable and socially responsible agriculture sector connecting with consumers.

We have a proud history representing Victoria's farm businesses since 1979 – primarily family farms that produce the eggs, grain, fruit and vegetables, meat, and milk that help to feed Victoria's six million people, and the bigger global community, every day.

The VFF consists of commodity groups: dairy (United Dairyfarmers of Victoria), grains, horticulture (including Flowers Victoria), intensives (chicken meat, eggs and pigs), and livestock – and expert committees representing; water, land management, agricultural and veterinarian chemicals, farm business and rural development, and workplace relations.

Our purpose is to make Victorian farmer's lives better; enhancing Victoria's future.

Our mission is to ensure a community of farmers creating a profitable, sustainable and socially responsible agricultural industry connecting with all Victorians.



Our place in Victoria

What we do



- Victoria's **20,775 farms** cover **10.6 million** hectares
- We are **24.2%** of Australian farmers
- **91%** family operated, with only **2%** foreign owned



- We employ **87,800** people mostly in regional areas
- **\$4739** of food consumed each year by every Australian
- As a net exporter we have long term food surity



- Our annual production is **\$13.16 billion**, **3.5%** of Victoria's economy
- **27.8%** of Victoria's exports are agricultural product valued at **\$11.9 billion**

How we do it



-  Farmers invest **\$80 million** in R&D
-  Every R&D **\$1** converts to **\$12** in farmer generated impact
-  **2.7%** productivity growth through innovative efficiency gains
-  Farmers receive less than **1.5%** in government support



-  **63%** reduction in greenhouse gas emissions between 1996-2016
-  Water consumption reduced by **7%** from 2014-2015
-  Land conservation has increased to **18%** of total land mass.
-  Farmers spend **\$20,000** annually on feral animals and pest weeds



-  **3.5 million** beef cattle
-  **140 million** chickens
-  **1.1 million** dairy cows producing **6.186 billion** litres of milk
-  **65,992** sows
-  **13.1 million** breeding ewes and a fleece clip of **66,100 tonnes**
-  **6.5 million** tonnes of grain
-  **\$2.35 billion** in horticultural production