



**Victorian
Farmers
Federation**

SUBMISSION

**The new contaminated land duties: Duty to Manage
and Duty to Notify**

15 February 2022

OUR POSITION

The Victorian Farmers Federation is the peak body representing Victorian agriculture. VFF has been on the record regarding our concerns in relation to lack of regulatory knowledge and considerations in relation to agriculture and the GED and the appropriateness of the EPA in relation to human health.

Even though some aspects of the 1970 Act applied to agriculture – such as organic matter as industrial waste, agriculture was applying the circular economy approach to what we know is a key material for plant growth and soil health.

The guidelines are not suited for agriculture. They are not fit for purpose or clear in regulatory intent.

It is acknowledged that agriculture is a low-risk activity, but there is not clear guidance on when it 'notifiable'. The guidelines seem to have been written with consultants in mind who should already understand the system. The document is not suitable for the target audience.

Agriculture should be removed from these guidelines and a specific guidance note be prepared in conjunction with industry.

The existing document must be reviewed to remove 'farming' from a contaminating process. Every aspect of every farm is not a contaminating activity. In fact, these are rare. Certain practices may, in certain circumstances, lead to contamination. They should be specified.

It is counter intuitive to have agriculture as a beneficial use and as a contaminating practice. This is not responsive to risk.

Agriculture provides food and fibre. Soil, water, and air are key inputs to our production system. Our industry practises are built around keeping our environment health. Just saying all farming is a contamination risk is misleading and could lead to market risk. Food cannot be produced on contaminated soil. Federal regulation manages chemical registration and use so there is no contamination or health issue. This is the state of knowledge and is what should be reflected in guidelines.

EPA is used to dealing with contamination. It has had very little exposure to agriculture which demonstrates that the vast majority of farms have very few risks. Where there are risks industry research and development has been built into industry standards to minimise that risk.

In an initial pre consultation draft of the EP regulations the word soil was used instead of contaminated soil. VFF would appreciate industry involvement in the drafting of these guidance notes to address issues before they are made public.

Agriculture is different from many other industries and needs industry specific guidance. EPA would be better placed to work with industry and coregulators to improve its knowledge of 'farming' and provide helpful guidance responding to potential contamination sites and what to do if you come across them / how to identify them. For example, historic fuel storage, household waste burial or sheep drenching.

VFF calls for agriculture to be removed from these guidelines and an agriculture specific guideline be prepared in conjunction with industry groups, RDC and federal regulators using the principles in 3.3¹ and the land use sections of the Regulation of Australian Agriculture report of the Productivity Commission, including fit for purpose regulation. ²

EPA could talk to Worksafe to include what to do if you encounter contamination into the Making Our Farms Safer project. That would not only be proportional to risk and focused on human health but provide a practical way to improve farm sector awareness of the issue.

1 Recommendation 3.3

The Australian, state and territory governments should review the way they engage with landholders on environmental regulations, and make necessary changes so that landholders are assisted in understanding the environmental regulations that affect them, and the actions required under those regulations. This would be facilitated doing more to:

recognise and recruit the efforts and expertise of landholders and community-based natural resource management organisations

build the capability of, and landholders' trust in, the organisations that administer environmental regulations (including local governments).

² -for-purpose regulation

Land use regulations and policies affecting farm businesses can be improved by ensuring that they are fit for purpose.

Fit-for-purpose regulation should be:

- *targeted* — the scope of the regulation (that is, who or what the regulation applies to) should be clear and appropriate for addressing the regulatory problem
- *evidence-based* — there should be an apparent and demonstrable connection between the content of the regulation and the regulatory objective
- *proportionate* — the burden imposed by the regulation on government agencies and the public should not be disproportionate to the regulatory outcome achieved.

Ensuring that regulation is fit for purpose can help confine the incidence of regulation, reduce unnecessary regulatory burdens and limit unintended consequences. Governments should also undertake periodic reviews of regulation to ensure that they are, and remain, fit for purpose over time. As discussed above, participants identified regulations relating to rural zones and intensive farming as areas of particular concern.

Outcomes-based regulation

In many cases, the overly restrictive nature of land use regulation affecting farm businesses could be mitigated by preferring outcomes-based regulation (PC 2013a). This includes regulations that require farmers to achieve certain performance standards or outcomes, without prescribing how to do so or proscribing certain land uses or activities. For example, reforms to zoning regulations in Victoria now allow a broader range of complementary land uses to take place in rural zones, subject to certain standards being met (box 2.9).

Outcomes-based regulation can also give landholders flexibility and control over how they use and manage their land, while ensuring regulatory objectives are met. This can allow regulatory problems to be addressed efficiently and at least cost.

However, outcomes-based regulation may not be appropriate where outcomes are too difficult or costly to quantify or monitor. For example, the Animal Industries Advisory Committee noted that an outcomes-based definition of intensive animal husbandry would be difficult to implement because 'it attempts to classify uses based on information that is often simply not available at the time of the application: the use's actual impacts' (2016, p. 44). Similarly, if outcomes-based regulation does not give landholders additional choice or flexibility (for example, if there is only one way of achieving a regulatory outcome), it may not be appropriate to regulate based on outcomes.

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) protects and progresses farmers' interests and our vision is for a secure farming future for Victoria and for generations to come.

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 global community.

The VFF consists of commodity groups: dairy, grains, horticulture, chicken meat, eggs, pigs and livestock – and expert committees representing; water, planning, environment and climate change, farming systems, farm business, transport and infrastructure and workforce and social infrastructure.