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Victorian
Farmers
Federation

White Paper

**Environment Effects Statements –
Improvements for assessment of
renewable energy infrastructure and
mining on farmland**

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Contents

I.	Introduction	3
II.	The Problem with EES and planning processes	3
	Standards and information	4
	Environmental Impact.....	5
	Notice and adequate exhibition; Hearings and scoping.....	5
III.	Potential solutions to improve EES and planning projects.....	6
	EES Guidelines.....	7
	If no EES is required	7
	Types of issues to be covered in EES guidelines	8
IV.	Conclusion and Recommendations	9
	Recommendations	10

I. Introduction

This paper provides a brief overview of the opportunities to improve how Environment Effect Statements (EES) are prepared for agricultural land.

The Environment Effects Act governs the preparation of EES Statements. The Act itself is from 1978 and uses a very broad meaning of the term 'environment'.

The Act is brief and authorises the preparation of guideline(s) to determine how the objectives of the Act will be delivered. Section 10 of the Act establishes the ability to have guidelines. At Section 10(2) it allows guidelines to set out different procedures for different kinds of works or use any matter or standards published by an authority or body.

II. The problem with EES and planning processes

Despite the ability to have multiple guidelines in place, including guidelines specific to types of proposals or to address specific standards there is currently only a single EES guideline in place.

The review of these guidelines has not been inclusive of the views of the agriculture sector.

This guideline does not seek to differentiate between proposals where the landholder is also the proponent and where the proponent fails to gain landholder consent.

This is significant as proponents are required to identify whether they are the landholder. The process seemingly assumes that the landholder is the proponent and therefore:

- Has given commercial consent to the process;
- Is funding the preparation of the statement so will have access to all draft reports and statements for checking for accuracy and impacts on their useability of their land; and
- Will be ensuring that the property is not negatively impacted by the proposal.

Renewable energy generation and storage proposal are often undertaken by a company with a lease on land (commercial consent). There are no regulatory requirements on proponents to provide landholders with detailed information on the potential impact of the proposal on their farm operations. There is little regulatory oversight of the fairness of these contracts. Landholders are often not given access to the technical studies or the opportunity to ensure co-location benefits are delivered. In most instances the VFF needs to call for Agriculture Victoria to be on a Technical Reference Group and often the representative is not a technical expert in the type of farming undertaken on the site.

For mining and transmission, the landholder has no commercial consent. They do not get to see any studies or reports. There is no landholder representative on a technical reference

group to ensure that the process is given full and proper consideration to the impacts of the proposal on farm businesses.

At the end of a multi-year process that excludes the landholder, farmers are given a month to digest thousands of pages of reports to understand what the impact on their land and livelihood will be. Exhibition is often over summer where farmers are working long hours harvesting crops and their lawyers and agronomists are on leave, increasing the stress of the process.

Proponents are restricted from showing reports to impacted landholders in a draft format. This is a risk for the landholder in that they are unable to highlight issues or concerns to be addressed and for the proponent as they have no opportunity to address landholder concerns prior to exhibition.

Standards and information

VFF's paper on co-existence and conflict between renewable energy and agriculture demonstrates that most standards used in the assessment process are developed by industry bodies using international research that does not consider the machinery used in Australian Agriculture or the impact of other regulatory systems –such as safety standards, on co-existence or conflict. Cauliflowers may grow under solar panels, but can you safely operate the machinery needed to water, feed and harvest them?

The on the ground impacts demonstrate that the application of theoretical standards in EES considerations leads to perverse outcomes for agriculture. The failure to monitor the actual results of desktop assessments post operation is driving the not only the loss of social license in rural communities but the loss of faith in the regulatory processes in place.

Transmission projects highlight the problem of the EES not properly considering agriculture impacts. This can be due to the failure to address the absence of commercial consent and the need to ensure forced access will not lead to loss to production and farm profitability. The VFF's Paper on compensation has indicated that for horticulture production the direct corridor cost (without wider severance and disturbance) is conservatively in the order of \$62,000 per kilometre of easement per annum or \$3.750 million per kilometre of 100m wide transmission easement in a 60-year operational life.

On pure economics the EES process should be considering the economic impact of a route that traverses 50km through horticulture versus extensive livestock (0.1875bn versus 0.042bn). Allowing a system that fails to consider this impact and ensure that the proponent not the landholder is bearing the burden of the loss of production attributable to the infrastructure identifies the perverse outcomes of the current regulatory processes, including the EES.

The EES is enabling companies to apply minimal impact with farm operations to all commodity production systems. Victoria produces nearly a quarter of Australia's food and fibre on approximately 1.5% of Australia's land mass. This demonstrates that the productivity of Victoria's agricultural land must be given proper consideration.

Environmental Impact

The current system needs to be improved to ensure environmental impact frameworks include impacts on individual farm businesses. The EES process cannot assume that the proponent will be considering this when they are not the landholder. A public company must actively seek to maximise its profits to shareholders. They will act to transfer costs to others in the absence of regulatory oversight.

The environmental impact and rehabilitation assessments often use adaptive management. It is not appropriate for a third party to damage the property of another without the ability to return it to full productivity.

Notice and adequate exhibition; Hearings and scoping.

As the EES Guidelines do not foresee situations where the proponent is not the landholder, they fail to ensure that impacted landholders are given materials in a timely manner. The content of the guidelines needs to be reviewed to overcome the following problems.

- How to ensure that the TRG has an agriculture specialist that understands the operating / on farm issues relevant to the consideration of farm business impacts. EES are being exhibited without the proper QA assurance.
- The Guidelines preclude landholders from viewing draft documents so they can give the proponent feedback on the assessment of their production or the likely effectiveness of control measures.
- The guidelines fail to consider co-ordination to achieve procedural fairness where proponent is not the landholder. They fail to ensure the exhibition period is for a long enough period and at the right time to allow directly impacted landholders to understand the impacts on their property. Exhibition over harvest which is a busy time for farmers and where advisors are often on leave.
- The Guidelines have no requirement for direct notice to impacted landholders.
- The Guidelines have no requirement for the proponent to give property specific information to landholders or support their ability to engage with the process. Eg LAC Act requires reasonable costs to be reimbursed.
- The Guidelines treat farmers as a community of interest where the impact will be different for different farm businesses.
- The Guidelines do not ensure proponents should be required to discuss the feasibility of mitigation measures with landholders prior to finalisation of the statement, including meeting reasonable expenses occurred to prepare a response.
- The Guidelines for the hearings do not envisage the need for impacted landholders to raise impacts in a commercial in confidence basis.
- Where the proponent is not the landholder, and landholder consent is not given, the Guidelines do not ensure the proponent should be responsible for ensuring landholders have access to technical support and representation at the hearings.
- The guidelines give no description of when an agriculture specific environment report would assist in scoping. The NSW [Land Use Conflict Risk Assessment](#) tool is an example of how to ensure the proponent has considered agricultural impacts.

- The Guidelines fail to outline how impacted landholders' views and concerns will be incorporated into scoping the study – especially when they are not the proponent.
- There is a need for the DT&P to ensure that they have sufficient knowledge of agriculture productions systems to ensure that the scoping process is sufficient to ensure consideration of impacts on agriculture, including potential impacts to farm businesses.
- There is a need for the DT&P to ensure that the TRG has the technical knowledge to consider if the EES has properly addressed agriculture impacts. The Act itself does not limit a TRG to government bodies.

III. Potential solutions to improve EES and planning projects

The existing guidelines are seen as not giving full and proper consideration of the impact of the proposal on agricultural land.

For an EES on agricultural land to fully provide “*an assessment of a projects potential effects on the existing environment (including identified future trends such as changes to the climate¹)*” it is important that the nature of the agricultural use and the inter-relationship with its physical systems is known. This is essential if the continuation of existing land uses and the potential displacement of land uses is to be achieved in accordance with relevant land use considerations.

This is even more essential for the circumstances where the proponent is not the landholder and where Government can force access. It is essential that the EES process gives timely access to information to the landholder so that they can contribute to its review and ensure it gives an accurate description of the impacts on the farm business and human rights to property. The EES should demonstrate the level of the impact and the issues that need to be addressed in the compensation process, and those that will be addressed through mitigation of impacts. It should foreshadow the need for additional payments where control measures fail.

• ¹ extract from the EES Guidelines 2022 *Environmental effects* An EES should provide an assessment of a project's potential effects on the existing environment (including identified future trends such as projected changes to the climate). The assessment should address effects on: • physical systems including potential changes to geology and soils, landform, landscape, land stability, hydrology and quality of surface, ground and marine waters; • ecological communities, populations or habitat of indigenous species of flora and fauna and ecosystem processes supporting biodiversity; • Aboriginal cultural heritage and historical heritage places and values; • continuation of existing land uses and the potential for displacement of land uses taking into account relevant planning scheme provisions; • opportunities for future land uses supported by strategic land use policy; • economic aspects including employment, business and industry viability and economic well-being at local, regional and national scales; • social aspects including amenity (related to air quality, noise, vibration and traffic and visual changes), continuation of social and recreation activities, access to social infrastructure and community cohesion; • human health for example related to changes in air quality and the noise environment or changes to public safety; and • climate change, including greenhouse gas emissions and the ability of communities and ecosystems to adapt to climate change.

EES Guidelines

The EES Guidelines state *“The examination of alternatives for a project, in an EES, should include a screening of feasible alternatives as part of the project planning or design process, leading to a preferred alternative or alternatives. Preferred alternatives should offer clear potential to minimise and/or avoid significant environmental effects whilst meeting the objectives of the project.”* The examples in the current guidelines fail to ensure that the economics of the project has been assessed in the situation where forced access by the Government is proposed. If the route is adding 0.162 billion of economic loss per 50 kilometres, and that cost has not been factored into the project cost, it is essential that the EES directs that this cost must not be transferred to the landholder but met by the proponent.

The Environment Effect Act provides a simple solution. Section 10(2)a states that *guidelines may set out different procedures for different kinds of works.*

S10(2)a would allow the existing guidelines to include specific procedures for mining and stone extraction renewable energy and transmission, water and gas pipelines projects in relation to the type of studies and reports that are required to ensure impact on agricultural land is considered. Specific processes for access to documentation and representation on technical reference groups could be given to impacted landholders that are not the proponent. This section would also allow a standalone guideline to be created for EES projects on farming land.

S10(2)b enables guidelines to refer to any matter or standards published by an authority or body. Neither authority or body is a defined term in the EE Act or in the Interpretation of Legislation Act. Neither is prefaced by the term statutory.

DTP or VicGrid could therefore create standards that outline the issues to be considered in an EES for transmission or renewable energy on farming land, and additional steps for when there is no commercial consent. They could ensure that the guidelines address all the shortcomings in the current process as listed in this document. Standards in a special act, such as the Land Access Code under the Electricity Industry Act could be referred to. This is why it is essential that the Electricity Industry Act places operational constraints and controls on all Transmission Network Service Providers (TNSPs).

It could also be argued that the VFF could publish standards and seek their reference or use in relation to EES procedures. Our preference is to work with Government to create processes that give fair consideration of issues.

If no EES is required

The current EES guidelines allow for guidance to be placed on projects that do not require a full EES. This enables conditions / standards to be set, and if the proponent fails to meet those standards / conditions a full EES would be required. The VFF believes that a full EES is required for projects on agricultural land, especially when the proponent is not the landholder. Any ‘fastracking’ of these projects must be premised on landholder agreement that full compensation can be made for project impacts, preferably by commercial consent.

The test of the effectiveness of the action would be an EES that involved the landholder in determining the impact of the proposal on their farm business. It would reinforce the need for proponents and governments to understand the potential costs on farm businesses in projects such as the Victorian Transmission Plan so that routes were not selected where full and proper compensation on just terms would jeopardise the business case for the project if compensation is paid.

Types of issues to be covered in EES guidelines

The current guidelines have a narrow description of the projects potential effect on the existing environment, and a narrower interpretation by proponents and Technical Reference Groups, who rarely have an expert in the type of agricultural production occurring.

The following is a brief list of key questions or considerations that are not prompted by the guidelines:

- Ensuring specific guidance in how to consider agriculture – site characteristics; property / business impacts; how to avoid / mitigate those impacts; what needs to be considered during construction, operation, rehabilitation (stages) and decommissioning.
- Ensuring EES documents address business impacts rather than desktop planning zone-based studies. Soil based production is not footloose and cannot simply relocate to another building. This should include requirements that rehabilitation ensures full production, all footings and sub surface works are fully removed, and soil health is restored including its structure, organic matter and microbial properties.
- How do we get greater rigour around ensuring alternatives are discussed in relation to minimise / avoid impacts on ongoing productive agricultural use?
- Should cost be the basis for selecting the preferred project where the landholder (not the proponent) will be bearing the costs? Is this a scenario where guidance should be given as to how these impacts are to be compensated for?
- How do we ensure that ability to rehabilitate post construction and post decommissioning includes full productivity.
- Need for guidance where proponent is not the landholder and there is an incentive to maximise profit by minimising costs by transferring negative impacts (costs) to other parties.
- How to improve the standard of considerations to potential changes to soils and drainage?
 - How do improve consideration of land use impact beyond a zone? Do we need to demonstrate why you cannot just move to another location for soil-based industries?
 - Should there be a prompting document so that agriculture is recognised in relation to social and economic aspects?
 - In relation to renewables, should the climate change impact of food miles / food security be considered. How is the concept of maladaptation and the water-food-energy nexus in the Sustainable Development Goals.

- Opportunity for agriculture guidance – what are the cumulative impacts? Issues relating to use of technologies and burden when projects mean landholders cannot use technology (market access; cost of production; regulatory compliance)
- Should a directly impacted landholder where consent has not been given be seen as a generic stakeholder?
- Why isn't there direct consideration of landholders that are not proponents? There should be specific requirements to engage, including provision of any report or study pertaining to their land in a draft form for checking.

IV. Conclusion and Recommendations

Creating better guidance to the issues to be considered in EES and planning approvals for transmission projects on farmland is critical to the ability to assess the impact of renewable energy and transmission, mining, (including rare earth minerals) and projects that generate or store energy to both the broader agriculture industry and to individual farm businesses. Transition to renewable energy is an internationally recognised need. However, there is not support for transition at any cost.

The United Nations (UN) document [Water, Food and Energy](#) states that *Sustainable agriculture is critical. The integrated systems of land, soil and water are being stretched to breaking point. Efficiency measures along the entire agrifood chain can help save water and energy, such as precision irrigation based on information supplied by water providers, and protection of ecosystems alongside agriculture and energy production can ensure environmental integrity.*

Australian agriculture is sustainable. It is investing in smart agriculture that lowers emissions intensity and water use. The use of this technology is often restricted or prohibited by regulations relating to renewable energy and transmission, or even in some planning provisions.

We must move beyond the currently regulatory rhetoric that is driving the loss of social license through failure to understand where there is a land use land use conflict between agriculture and renewable energy that is leading to the loss of agricultural land.

The VFF has been advocating for improvements to ensure that Victoria is a world leader in demonstrating how planning and environmental regulations and approvals process can deliver true co-location of energy and agriculture.

VCAT in *Helios Volta Holdings* used the term co-location to describe the balance between solar farm and agricultural land uses being achieved where co-location is evident, that is where the facilities were '*subservient to agriculture...(and) acting to support ongoing agricultural activities within productive areas*'. This is a similar concept to the "in conjunction with" test in planning.

Recommendations

- 1. That Department of Transport and Planning, in conjunction with DEECA and the VFF prepare an EES Guideline to be utilised for projects on agricultural land and include specific arrangements for when the proponent is not the landholder. The Guidelines will seek to rectify the issues and concerns raised by the agriculture sector in relation to the EES process, including but not limited to, the issues raised in this paper.**
- 2. That the EES Guidelines refer to the following documents or processes that are subject to recommendations in relation to conflict and co-existence with agriculture and compensation papers:**
 - **renewable energy and transmission assessment guide that outlines how co-location with agriculture can be achieved and to identify potential conflicts**
 - **with existing agricultural land uses so that proposals have eliminated the conflict.**
 - **DEECA and Energy Safe Victoria guideline on how to design energy generation, transmission, distribution or storage on farms to ensure co-location with agriculture without the need for permits or spotters;**
 - **DEECA Guideline on construction, maintenance and removal of energy generation, transmission, distribution or storage on farms to ensure minimal impact on soil health, soil fertility and drainage.**
 - **DEECA Guideline for the calculation of compensation for land access for Energy and Mining projects to ensure the calculation of business impact from the infrastructure or safety and other related regulations stemming from the presence of the infrastructure including but not limited to the impact on the use of machinery or production systems normal to that industry so that an annual payments can be made to at least the impact of the losses to the business . This should include:**
 - **Training and guidance for all experts involved in calculating compensation payments.**
 - **guidelines on how to value severance and disturbance in the Victorian farm context – especially to ensure that ongoing impacts are recognised.**
 - **A check list for farmers to discuss with valuer during an assessment – need to ensure the valuer has the right information.**
 - **The use of a 20 percent to allow for uncertainty in estimating impacts on future farm operations.**
 - **Regulatory oversight to ensure all contracts and written agreements give full information to landholders to enable the calculation of impact and ensures the proponent or the Government is responsible for ensuring rehabilitation and decommissioning of infrastructure occurs and ensures additional compensation to be calculated where conditions change, or additional restrictions are put on farm operation.**