



30 May 2014

Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
By email: ec.sen@aph.gov.au

Dear Secretary

**Re: Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014***

The National Farmers' Federation (NFF) welcomes the opportunity to make a submission to the Senate Standing Committee on Environment and Committee's inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014*.

NFF is the peak national body representing farmers and the agriculture sector across Australia. The NFF's membership comprises all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. While our members address state-based 'grass roots' or commodity specific issues, the NFF's focus is representing the interests of agriculture and progressing our national and international priorities.

NFF opposes Government recovery of costs for agriculture referrals under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). In NFF's view cost recovery from agriculture will not achieve the objectives of the EPBC Act, and indeed may result in negative environmental outcomes.

Relative to the number of referrals received for agricultural developments, agriculture is over-represented in the number of compliance cases that are investigated by the Department. This is the result of duplication and confusion between State & Commonwealth environmental laws, and the limited effort the Commonwealth has invested to communicate with the sector a farmer's responsibilities under the EPBC Act.

In our view, the imposition of costs provides a further barrier to refer agricultural projects.

NFF recognises that Government proposes to provide a "small business exemption" and this is welcome. Small business is to be defined as businesses with a turnover of \$2 million or less. Defining the threshold on the basis of turnover as opposed to profit is particularly problematic for the

agriculture sector. The NFF recommends that the Government adopts the ATO definition for Primary Producer and include this as an additional exemption<sup>1</sup>.

Furthermore, we oppose in principle Government recovery of costs where there is:

- a lack of independent regulatory oversight for what is essentially a monopoly service provision;
- no benchmarking of the costs recovered to determine whether these are efficient, prudent and relevant;
- little transparency in the process of establishing the cost base to be recovered and then how these costs are to be recovered;
- no review mechanism for the costs charged to proponents, particularly for activities that are complex and where the circumstances of the complexity could change.
- no commitment to establishing and maintaining service standards.

I also attach for the Committee's information, the submission NFF prepared in response to the Department of Sustainability, Environment, Water, Population and Communities Draft Cost Recovery Impact Statement.

Should you require clarification on any issue arising from this submission, please do not hesitate to contact Ms Jack Knowles, Manager NRM Policy on 02 6269 5666 or by email [jknowles@nff.org.au](mailto:jknowles@nff.org.au)

Yours sincerely



**MATT LINNEGAR**  
Chief Executive Officer

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<sup>1</sup> <https://www.ato.gov.au/Business/Primary-producers/In-detail/Who-is-a-primary-producer-/Who-is-a-primary-producer/>

16 August 2012

Charging Policy Team  
Financial Framework Policy Branch  
Department of Finance and Deregulation  
John Gorton Building,  
King Edward Terrace  
PARKES ACT 2600

Dear Sir/Madam,

**RE: Review of the Australian Government Cost Recovery Guidelines**

The National Farmers' Federation (NFF) welcomes the opportunity to engage in the Department of Finance and Deregulation whole-of-government review of the Australian Government Cost Recovery Guidelines (the Guidelines) process.

The NFF would like to note its involvement in the Department of Sustainability, Environment, Water, Population and Communities Draft Cost Recovery Impact Statement in June 2012. In this submission (attached for your information) the NFF raised a number of concerns regarding the impacts of the Australian Government policy, rather than issues directly related to cost recovery under the EPBC Act. The NFF would urge the Australian Government to address these policy issues within the scope of this review.

The NFF remains committed to engaging in the Government's process of *Review of the Australian Government Cost Recovery Guidelines* and is open to considered and cost effective suggestions to fix proven material problems with the mechanism and simplify the administration. For further information regarding the NFF views on this matter, please contact the NFF Natural Resource Manager, Deb Kerr on (02) 6269 5666.

Yours faithfully,



**MATTHEW LINNEGAR**  
Chief Executive Officer

## NFF Member Organisations



CANEGROWERS



CORPORATE AGRICULTURAL GROUP



COTTON AUSTRALIA



GrainCorp



RICEGROWERS' ASSOCIATION OF AUSTRALIA INC



Ruralco HOLDINGS LIMITED



The Pastoralists' Association of West Darling



WOOLPRODUCERS AUSTRALIA



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## **1. Introduction**

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The National Farmers’ Federation (NFF) welcomes the opportunity to make a submission on the Department of Sustainability, Environment, Water, Population and Communities (the Department) Draft Cost Recovery Impact Statement (CRIS). This submission should be read in conjunction with the NFF’s earlier submission to the Department’s EPBC Act Cost Recovery Discussion Paper (Discussion Paper).

Moreover, the NFF concerns expressed in its earlier submission remain valid. While the CRIS now appears to exempt small business, the definition relates to a turnover volume which will include a significant number of agricultural enterprises.

The NFF also notes that the application of cost recovery will very much depend on the process currently underway through COAG to streamlining environmental approvals nationally. Should the states and territory receive accreditation, the application of Australian Government cost recovery will only occur in a limited number of situations where the Australian Government will undertake the assessment and approval process.

It is therefore questionable whether continuation of the current cost recovery proposal is warranted. At best, it would seem pragmatic to defer the process (and the inherent costs associated with it) until the COAG process is completed.

## **2. Drivers for Department’s Referrals and Approvals**

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It is notable that 92% of the Department's referrals are driven by nine sectors: water, waste, transport, tourism and recreation, residential development, mining, petroleum, energy, NRM and commercial. It is notable that a considerable focus of the Department is significant in applications for mining and petroleum. Agriculture, conversely, and in conjunction with forestry makes up less than 1% of referrals. Yet agriculture and other small sectors will be forced into this cost recovery policy through no fault of their own.

In its last submission, the NFF noted some first principles regarding cost recovery. To reiterate these are:

- Cost recovery may be appropriate in certain circumstances where beneficiaries can be identified;
- However, cost recovery for the Department is driven by a small number of sectors with highly complex referrals and approvals. It is not appropriate to introduce cost recovery that will adversely impact on other sectors or result in perverse outcomes. These should be clearly identified as a community service obligation (or CSO) and the reasons for exclusion.
- Any cost recovery must be based on recovering sufficient income to cover costs that are deemed prudent, relevant, appropriate and efficient. In other words, not all costs are recoverable.
- Any costs must be subject to independent oversight and not determined arbitrarily by a monopoly service provider.

### **3. A monopoly service provider determining its own cost recovery**

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The NFF notes that the Department is currently following the Australian Government's cost recovery protocols set by the Department of Finance. However, it is worrying that the Department is a monopoly service provider setting its own cost recovery arrangements, albeit with Department of Finance oversight. Monopoly service providers have no incentive to be efficient – and the application of “efficient” must be in the context of whether another organisation could undertake the functions in less time and cost. It cannot be based on the Department's own assessment of efficiency.

Where state and territory governments apply cost recovery through regulated charges (e.g. electricity and water), an Independent Regulator provides this oversight. NFF strongly recommends that the Australian Government seek to provide this independence through the appointment of the Australian Competition and Consumer Commission (ACCC) to ensure that the costs being recovered by the Department are efficient, relevant and prudent – and are appropriately benchmarked against “like” services offered by other governments/government agencies or the private sector.

It is only through such oversight that it can be shown whether the costs sought by the Department are appropriate in terms of quantum, and whether the manner in which these have been determined for recovery are appropriate, i.e. the referral and assessment “fee for service levels”.

For example, the Department claims that its cost recovery is based on those employees undertaking each level of assessment, including its internal technical experts. To this end, a relative cost recovery per hour per full time equivalent (FTE) can be approximated from

the proposed costs using the base cost time in Table 3.1 on page 17 and the costs outlined in Appendix A of the CRIS. The cost per base cost hour is shown in Table 1 below.

**Table 1: Estimate of total cost per hour for proposed cost recovery**

Activity	Days	Hours <sup>2</sup>	Base	Tech	Complexity	Total	Activity \$/hr	Total \$/hr
<b>Simple assessment</b>								
Referral	13.7	103	\$7,010	\$798	N/A	\$7,808	\$76	
Ass'ment Method	Referral	20 <sup>3</sup>	\$68,019	\$12,390	\$-	\$80,409	\$536	\$349
	Prelim Doc	16.5	\$8,263	\$12,390	\$-	\$20,653	\$167	\$126
<b>Moderate level of complexity</b>								
Referral	13.7	103	\$7,010	\$798	N/A	\$7,808	\$76	
Ass'ment Method	Referral	20	\$68,019	\$12,390	\$74,307	\$154,716	\$1,031	\$643
	Prelim Doc	16.5	\$8,263	\$12,390	\$74,307	\$94,960	\$767	\$454
<b>High Level of complexity</b>								
Referral	13.7	103	\$7,010	\$798	N/A	\$7,808	\$76	
Ass'ment Method	Referral	20	\$68,019	\$12,390	\$291,730	\$372,139	\$2,481	\$1,503
	Prelim Doc	16.5	\$8,263	\$12,390	\$291,730	\$312,383	\$2,524	\$1,414

There are significant differences between the cost per hour for each activity (referral and assessment method) and total cost per hour (i.e. referral cost added to assessment method cost). This is perplexing given that the majority of the costs relate to FTE salary and on costs. The CRIS notes that these are the major component of all costs:

*“The major component for base costs of ELAs is staff costs..including base salary, superannuation and other on costs.”<sup>4</sup>*

*“The major component of complexity costs for ELAs is staff costs, which includes base salary, superannuation and other on-costs...includes a component of accommodation and property expenses, IT costs and human resources support. Complexity costs may also include the procurement of specialist advice in high or very high complexity scenarios.”<sup>5</sup>*

*“The major component of these technical and operational costs are the costs of the support staff, including salary, superannuation and other on-costs.”<sup>6</sup>*

Notably, the Department has only provided estimates of the time for the base cost only making it nearly impossible to determine if the costs for technical and complexity are reasonable and prudent. Nor are specific capital costs in any category identified.

By contrast, Food Standards Australia New Zealand (FSANZ) has released a discussion paper reviewing their cost recovery arrangements<sup>7</sup>, which seeks to increase cost recovery from \$115 per hour to \$180 per hour. According to the discussion paper, it would appear that salary a significant driver for cost recovery<sup>8</sup> for FSANZ is salary and on costs, with

<sup>2</sup> Based on an 7.5 hour day, e.g. 10 days \* 7.5 = 75 hours

<sup>3</sup> Statutory period of 30 days less 10 days public consultation

<sup>4</sup> CRIS 2012, p. 16

<sup>5</sup> Ibid, p. 17

<sup>6</sup> Ibid, p. 22

<sup>7</sup> 2012 FSANZ, *Call for submissions on review of cost recovery arrangements*, media release 18 June 2012

<sup>8</sup> 2012 FSANZ, *Review of cost recovery arrangements for applications*, accessed <http://www.foodstandards.gov.au/srcfiles/FSANZ%20Cost%20recovery%20review%20Consultation%20paper%20FINAL.pdf>, 18 June 2012

the consultation paper noting that it costs \$11 million for 94 revenue generating staff (RGS). However, FSANZ does not seek to recover the total amount, as some of the duties are “non billable functions” such as staff development, supervision and leave. FSANZ recovers costs for 23 RGS (EL2) at 5 hours per day and 71 RGS (EL1) at 5.5 hours per day, each for 220 days. This means that FSANZ are recovering approximately \$6.6 million from their total RGS cost.

This level of transparency is clearly devoid in the Department’s previous discussion paper and now the CRIS. In order to finalise any cost recovery, the Department must be able to demonstrate this level of transparency, i.e. total costs of the approvals division and what costs relevant to the activity being undertaken. Consistent with the FSANZ methodology, the NFF recommends that non-billable functions are removed from the cost recovery assessment for all costs being sought, i.e. base, technical and complexity. Doing this would reduce further the costs being sought and increase the quantum of over recovery.

In order to understand how the Department arrive at the costs for which cost recovery is being sought, it is necessary to have an understanding of the average costs for each level of staff involved.

In analysing the Department’s time (in days, see Table 3.1 on p. 17), it is apparent that the major staffing driver is the Assessment Officer who is the lowest salary earner of the billable employees and not the Department’s higher staffing echelons in the approval chain:

- 65% of the time for a referral;
- 73% of the time for an assessment based on preliminary documentation;
- 64% of the time for an assessment based on an EIS; and
- 64% of the time for a Bilateral Assessment.

Therefore, the principle driver for the costs associated with a referral and assessment where approximately two thirds of the time is assigned to the lowest cost FTE. The NFF has made a number of assumptions (based on limited information provided by the Department) regarding the likely average salary for each level of staff involvement in the processes. Therefore, the NFF assumes that the Assessment Officer (APS5-6) would likely be an employee receiving an average salary of \$74,846; the Assistant Director (EL1) is likely to be earning around \$100,949; the Director (EL2) earning \$123,718 and the Delegate (SES1-2) on an average of \$197,305<sup>9</sup>.

To determine on costs for each FTE, there are a number of options from adding a certain percent to doubling. The basic rule of thumb is to add 20% of salary for on costs (see Table 2 below for this calculation, which is based of 100% but NFF recommends this only be for “billable time” essentially meaning that the NFF calculation is likely at the upper end).

Given the days allocated in Table 3.1, the total base cost of salaries and on costs is likely to be \$5,432 or \$53/hour against the \$68/hour<sup>10</sup> claimed for base cost recovery. Without

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<sup>9</sup> Based on averaging the relevant public service wage for each category. The Department has advised that their staff sit on about the average mark of the public service sector in each category.

<sup>10</sup> \$7010 divided by 103 hours (see Table 1)

adequate explanation of the difference, then the NFF is of the view that the Department is seeking to over recover its base costs by:

- \$1,578 per referral;
- \$13,477 per assessment on referral information<sup>11</sup>; and
- \$1,510 per assessment on preliminary documentation.

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<sup>11</sup> But noting that NFF is of the view that there has been some gross error in the determination of this figure – see later discussion

**Table 2. Analysis of base costs for salary and on costs based on average salaries**

		Assessment Officer	Assistant Director	Director	Delegate	Total \$	Total \$/hr
Base <sup>12</sup>		\$74,846	\$100,949	\$123,718	\$197,305		
On Costs @ 20%		\$14,969	\$20,190	\$24,744	\$39,461		
Total		\$89,815	\$121,139	\$148,462	\$236,766		
\$/hr		\$45	\$61	\$75	\$120		
Referral	Days	8.9	3.6	1	0.2	13.7	
	Hrs	66.75	27	7.5	1.5	103	
	Cost	\$3,034	\$1,655	\$563	\$180	\$5,432	\$53
AOR	Days	33.5	60	18	6	117.5	
	Hrs	251.25	450	135	45	881	
	Cost	\$11,420	\$27,587	\$10,143	\$5,392	\$54,542	\$62
APD	Days	12	3.5	0.8	0.2	16.5	
	Hrs	96	28	6.4	1.6	132	
	Cost	\$4,363	\$1,717	\$481	\$192	\$6,753	\$51

The Department has advised that its total cost (i.e. salary and on costs) for each staff category is:

- Assessment officer (APS5-6) \$118,806
- Assistant Director (EL1) \$152,741
- Director (EL2) \$185,362
- Delegate of the Minister (SES1-2) \$238,487

It would appear that the discrepancy between the Department and NFF's calculations arise around the quantum of on costs. A simple calculation puts on costs for the first three staff categories at between 50% to 59% while the Minister's delegate is consistent with industry standards at 21%. Such an analysis shows unacceptable discrepancy and NFF would encourage the Department to provide better transparency on the calculation of salary and on costs. Until such information is available to allow stakeholders to make informed comment, the cost recovery process should be paused.

#### 4. Base costs for assessment on referral concerns

In order to understand the cost implications for the assessment decision, an extrapolation of the above is warranted. Therein lays the first problem. According to the CRIS, the cost of approval on referral is significantly more than the cost of assessment based on preliminary documentation (i.e. \$80,409 vs. \$20,653). It seems incongruent that an assessment based on preliminary documentation costs significantly less than the approval based on the referral documentation – by a massive 74%.

<sup>12</sup> Typically includes salary and superannuation but excludes on costs.

NFF analysis shows that regardless of the complexity, the difference between the assessment methods of “on referral” and “preliminary documentation” is a consistent \$59,756 – mainly driven by the difference between base cost for assessment on referral information and assessment based on preliminary documentation.

According to the Department’s website, the major task in undertaking an assessment on referral is the preparation of a recommendation report, which will be subject to a 10-day public comment period. Conversely, the assessment on preliminary documentation requires that the proponent publishes the referral information, and the Minister may seek additional information, which must also be published. The Department then prepares a recommendation report. Assessments by EIS through to public inquiry are undoubtedly much more complex.

Given that, the difference between the approval on referral information and assessment on preliminary documentation is the requirement for the proponent to undertake some activities for the latter, in addition to some additional oversight and requests for additional information.

Therefore, it cannot be argued that the time and cost involved by the Department in undertaking an approval on referral information is 75% more than the activity, which required more oversight. Neither can this amount be justified by requiring a concentration of staff to undertake the approval in a 30-day period.

Yet the Department has advised that approval on referral is more expensive because it has a statutory period of 30 days and consequently the Department prioritises staff to undertake this assessment. The Department has not advised how many staff and time to prioritise such an assessment. However, given that these are normally simpler assessments, this argument does not stand up to scrutiny.

NFF analysis notes that total Department FTEs to make this assessment is 117.5 days, which is well outside the statutory period. Moreover, approval on referral information is usually limited to low complexity simple projects, e.g. removal of a single paddock tree. However, although the statutory period is 30 days, 10 days is for public comment. This means that the total time for working on the report and finalising this for the Minister is 20 days maximum. To reach 117.5 days, this would require nearly six staff full time to write and finalise one report. This is clearly not the case.

Having a total time of 117.5 FTE days is worrying to say the least. This is 236% more time than the approval on referral information and is 115% more time than is required to undertake an assessment based on an EIS.

If 117.5 days was the determinant for the total base cost for approval on referral information, then NFF believes that the total cost of the approval on referral information is incorrect because it was calculated from an erroneous estimate of the time for the assessment process.

It is more likely that the Department is seeking to add a “premium” to the cost recovery to undertake a “faster” assessment. This is unwarranted and unfair to the proponent and should be rectified before finalising the costs.

During a consultation meeting (held 14 June 2012), the Department agreed to look further into this issue. From an agricultural (and non-agricultural sector) perspective, if the preliminary documentation process costs significantly less than the approval on referral

information, there will be a natural inclination to go with the least cost alternative, which would tie up resources and staffing time, resulting in perverse outcomes for the Department in terms of staffing. Moreover, for agriculture, farmers are simply unlikely to refer which would lead to perverse outcomes.

## 5. Complexity costs

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The Department is seeking to recover, in addition to base costs, additional costs for the complexity of the assessment process. While on the face of it this might seem plausible, the CRIS notes that again this mainly relates to salary and on costs but unfortunately provides no transparency in the likely cost of this internally and the quantum of any external procurement. Nor has the Department provided any estimates of time to undertake these functions. Therefore, there is no transparency at all, in relation to how these costs have been determined. This is clearly untenable.

The Department should be able to demonstrate the additional staff time take to assess the controlling provisions (labelled rows A-J in the complexity fee matrix) and provide a clear and adequate explanation, including the likely cost for “billable” staff time.

Consistent with independent regulators<sup>13</sup>, cost recovery for coordination with other legislation, for Australian, State or Territory Governments is not warranted and should be removed from cost recovery. Moreover, this ought to be extended to the information adequacy and clarity of project scope.

In summary, determining the quantum of the complexity costs is difficult, as the Department has failed to provide any information on the staff time taken for these activities or what costs relate to internal or external functions. Until such time that this information becomes available, the NFF rejects the proposed complexity fees entirely.

## 6. Technical and other costs

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The Department has advised that the drivers for the assessment process include the technical costs, which primarily seeks to recover salary and on costs, but also includes some systems and other measures.

The NFF rejects the recovery of any costs associated “*database management for matters of NES*”<sup>14</sup>. Systems that support management of project information may be an appropriate cost recovery. However, the preparation of information, advice and database management for matters of NES is a cost associated with the listing of NES matters, not the referral and approval process side of the “ledger”. The NFF recommends the removal of such costs from this cost recovery process due to this not being relevant to the referral and approval process.

There is a well known principle in cost recovery that investment in capital costs at the time of the introduction of cost recovery recognises that capital costs to date are deemed to be sunk costs and therefore not recoverable. This is particularly relevant to the recovery of costs under “technical and operational” costs.

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<sup>13</sup> For example, see NSW IPaRT’s historic decisions that specifically preclude the recovery of costs for other NSW government agencies such as agriculture and fisheries

<sup>14</sup> CRIS, p. 22

The Department appears to be treating technical and operational costs as a fixed cost per project. Clearly if the major driver is staff, then this is inappropriate.

Again, consistent with the complexity costs, the Department has failed to disclose the staffing time involved with these costs, and the amounts unrelated to staff such as costs associated with “business systems”. Until this information is provided, then the NFF rejects the recovery of funds to cover technical and operational costs.

## **7. Best practice**

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NFF notes that the Department, in calculating the costs for this CRIS, have advised that they used the most efficient staffing time to undertake the process, i.e. the internal Department’s analysis of “best practice”. While it may be the Department’s “best practice”, it is also known that Government Department’s are, by their very nature, notoriously inefficient.

In commencing the regulation of water charges in NSW, the Independent Pricing and Regulatory Tribunal was scathing in the ability for the NSW agencies involved to provide the transparency to be able to determine costs. IPART also noted of the inability of monopoly service providers to be efficient. As a result, IPART routinely deducted a percentage of the costs to be recovered in acknowledgment of a monopoly’s inability to be efficient.

The Department has not undertaken any benchmarking with comparable activities in other Government agencies (e.g. state or territory) or the private sector. It is the latter that is notable. When Governments recover costs for undertaking activities as a monopoly service provider, the private sector ought to expect a comparable level of service and efficiency to the private sector. There are essentially two issues here – service standards and the recovery of costs that are effectively inefficient even if the Department has determined that they are efficient by their standards.

NFF recommends that prior to the implementation of any cost recovery, that the Department undertakes benchmarking to be satisfied that its cost recovery is prudent and efficient given comparable functions. This may also assist in determining whether the Department may be over recovering its costs.

Should this not be undertaken, then the NFF recommends that the Department applies an efficiency reduction to the quantum of costs to reflect the monopoly nature of the service provision.

## **8. Incentive to seek to recover higher costs than applies**

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As noted earlier, the Department is a monopoly service provider. There is some argument that there is an incentive for the Department to deliberately increase the complexity to increase revenue for the Department. Complexity is the cost that appears to be the major area this can occur. For all referral and assessment processes, the basic costs and the technical and operational costs do not change. For example, the technical and operational

costs are \$12,390 regardless of the assessment process. In itself, this is a problem as a “set fee” applies regardless of the size and impact of the project.

However, the complexity costs can range from zero to a maximum of \$555K. In fact, staff key performance indicators (KPIs) may be set to achieve this outcome or it may be a deliberate decision of the person setting the complexity fee. Stakeholders will have no confidence that they are not subject to any KPI in the setting of their fees. Moreover, there is no judicial review or appeal of the decision particularly when there are significant moneys involved.

## **9. Review of complexity fees**

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The NFF notes that during the consultation meeting, the Department advised that there is no mechanism to review fees for assessment in the event of material coming to light that reduces some of the complexity decision points. For example, a property might “potentially” include a Ramsar wetland, the farmer may advise that there is no such wetland, the Departmental Office might set this fee for a moderate complexity project then seek a survey to underpin this decision.

This is inappropriate. While this may advantage the proponent with more than the complexity originally envisaged (i.e. saves them significant fees) the reverse is also true in that those project proponents which the Department perceives as unnecessarily being more complex than is in fact the case will be disadvantaged. The difference if a project is determined to be of moderate complexity when it should be low is of the order of \$95,000.

NFF recommends that the Department provides a mechanism to review the complexity cost recovery charges should there be significant changes to the pre-determined project costs, e.g. from moderate to low complexity.

## **10. Service Standards**

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The establishment of agreed levels of service often accompanies the introduction of cost recovery, or recovery of regulated charges for government services.

It is notable that the Department has failed to provide any information to affected stakeholders on what stakeholders can expect from the Department in terms of improved service levels – as per oral undertakings.

NFF recommends that prior to cost recovery being introduced, that the Department negotiates agreed levels of service with stakeholders, and that oversight of this occurs through either the ACCC or Department of Finance.

## **11. Exemptions**

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The NFF welcomes the proposal to provide exemptions for small business. However, the NFF are extremely concerned that the definition will be not helpful to the agricultural sector:

*The proposed definition of a small business is as specified in subdivision 328C of the Income Tax Assessment Act 1997 (ITAA)...*

- *An individual (such as a sole trader), partnership, trust or company with aggregated turnover for the previous income year less than \$2 million; or*
- *Estimate aggregated turnover for the current year of less than \$2 million (if turnover for one of the previous two years was less than \$2 million).*

It is also particularly relevant that the definition relates to turnover rather than profit or taxable income. As such, it is likely to mean that a significant number of small businesses may not be exempt depending on their turnover. Many businesses may reach the turnover but simply not be sufficiently profitable to withstand the shock of such a substantive cost recovery fee. This is certainly the case for agriculture where farm business turnover does not translate into substantial farm profits.

In a 2006 submission to Treasury, the NFF noted that the number of agricultural businesses in the over \$2 million turnover category increased by 43% in just two years<sup>15</sup> – primarily due to the need to very quickly remain efficient by increasing the scale of their operation. The NFF called upon Treasury to increase the collective bargaining threshold to \$3 million based on this trend.

There are 134,000 agricultural businesses in Australia of which, 99% are family farms. According to ABARES, the average farm business profit in 2007-08 for broadacre farms was \$11,900 – or just 4% of average farm receipts (turnover). In that same year, 62% of farm businesses made a business loss.<sup>16</sup>

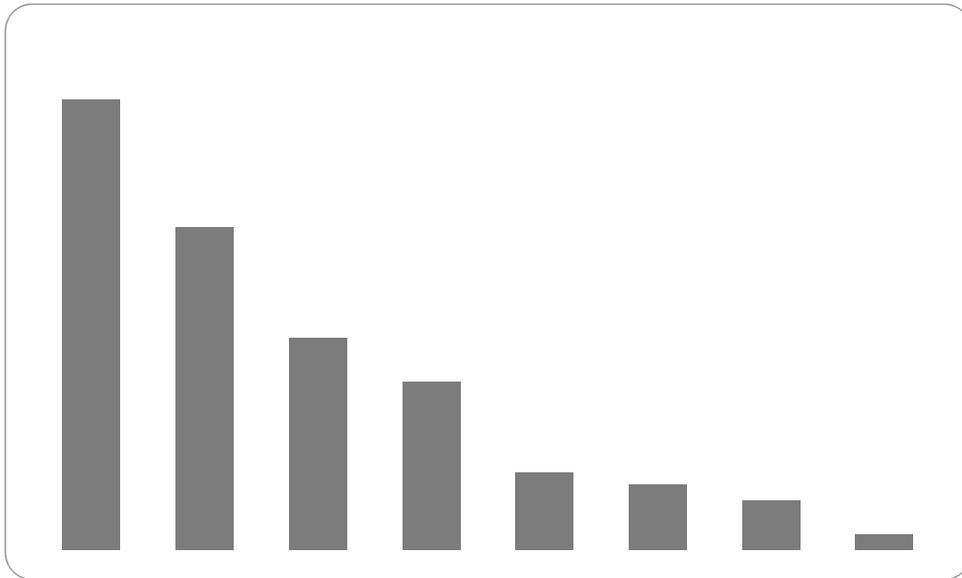
However, the above needs to be extrapolated to only those businesses that might breach the exemption threshold of \$2 million. Using ABARES data, the number of businesses breaching this threshold is 2,375 out of 134,184 businesses – or 2%. These can still be family corporate farms. According to ABS, the composition of these businesses vary but the majority relate to horticultural enterprises followed by grain and cotton, beef and sheep and poultry and pig.

### **Figure 1: Composition of agricultural enterprises with \$2 million turnover**

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<sup>15</sup> 2006 NFF, Submission to Collective Bargaining Thresholds, accessed [http://www.google.com.au/#q=australian+farm+turnover&hl=en&prmd=imvns&ei=\\_MbFT9rsFY PomAXKpJmSCQ&start=10&sa=N&bav=on.2,or.r\\_gc.r\\_pw.r\\_qf,.cf.osb&fp=b2f35a06479a56b7&biw=1280&bih=766](http://www.google.com.au/#q=australian+farm+turnover&hl=en&prmd=imvns&ei=_MbFT9rsFY PomAXKpJmSCQ&start=10&sa=N&bav=on.2,or.r_gc.r_pw.r_qf,.cf.osb&fp=b2f35a06479a56b7&biw=1280&bih=766), 19 June 2012.

<sup>16</sup> 2008 Hooper et al, Farm financial performance, Australian Commodities, Vol 15, No 1, March quarter, ABARES



However, the issue of concern is related to how much a referral and assessment might cost compared to farm profit (rather than revenue). This is an issue, as this information is not normally extracted from agricultural surveys for these businesses. However, data from around 2000 suggests that this depends on the type of agricultural enterprise (e.g. mixed cropping versus grazing) and the changes to the industry since 2000 (interest rates, Australian dollar, commodity prices and the cost of inputs etc). It is commonly known that Australian agriculture's terms of trade are declining, i.e. less money received for production and more money paid for inputs. It would be difficult to extrapolate dated data and come up with a realistic financial situation.

The position of agricultural businesses in Australia have been significantly affected by the Millennium drought, with farm debt increasing as shown on Figure 2 and exceeding gross agriculture's production income from 2005 and continuing this trend in the foreseeable future. The interest bill alone will swallow up 12-14% of farm income, as shown in Figure 3.

**Figure 2: Estimated debt and the value of farm production 1990-2015<sup>17</sup>**

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<sup>17</sup> Source: Neil Clark & Associates 2011, Megatrends in Agriculture, accessed <http://maps.neilclark.com.au/web/news/Megatrends%20and%20Agriculture%20March%202011.pdf>, 20 June 2012

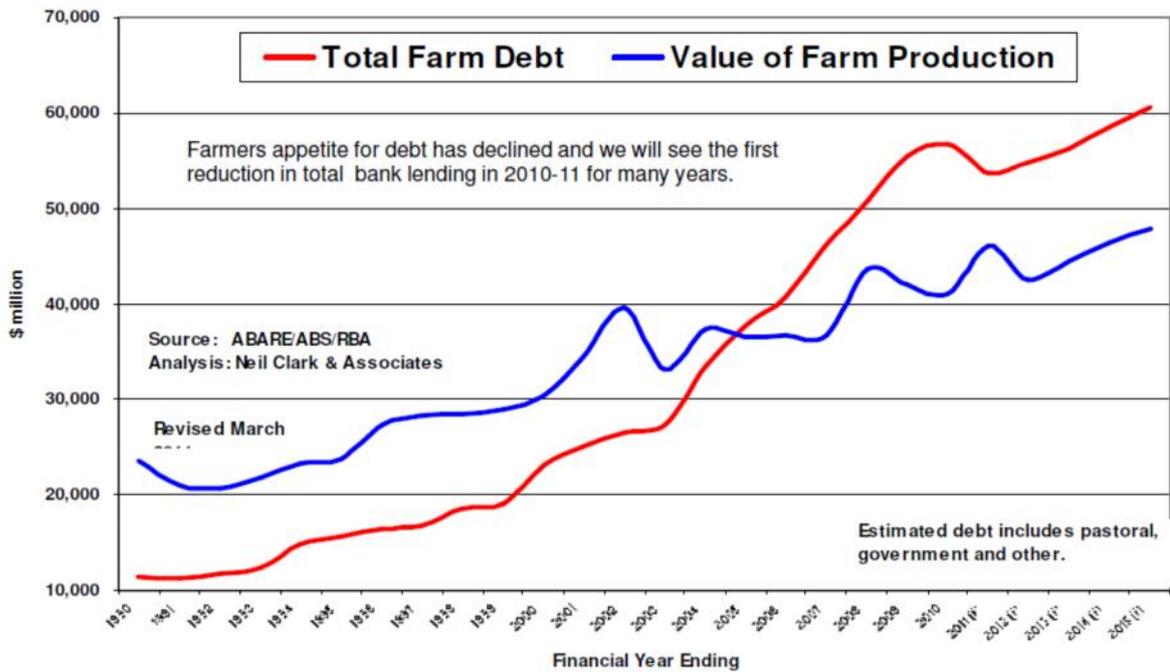
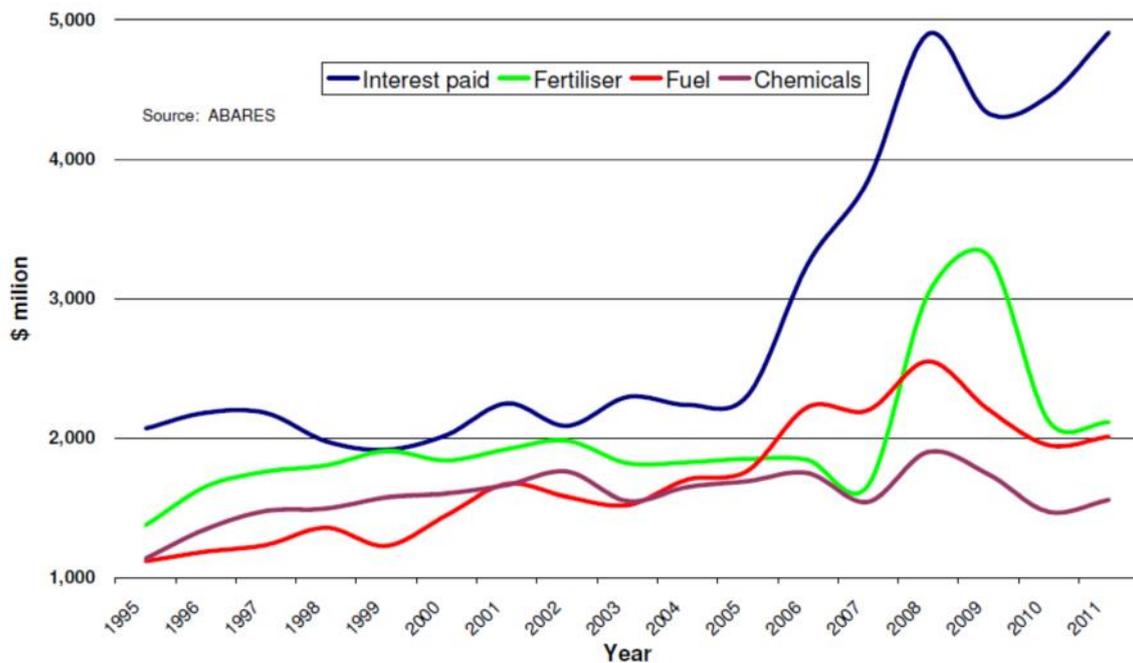


Figure 3: Key Farm Input Trends 1995-2011



Farms in excess of \$2 million turnover receive an average of \$4.5 million in income but could have around 85% in operating costs, which means that around 25% of income remains for other commitments such as loan and equipment repayments and personal costs (such as family wages). This suggests that the flexibility to enable businesses to be able to pay these proposed charges is minimal at best and likely to turn an existing profitable business into an unprofitable businesses.

If only a small number of farm businesses were covered by the proposed definition, then one must assess the likelihood that a farmer would be required to seek a referral and approval under the EPBC Act, considering that existing use is exempt.

Given that agriculture is a minute driver for the Department's costs (less than 1% for agriculture and forestry), an exemption is strongly warranted to prevent perverse outcomes (e.g. farmers simply seeking to avoid these substantial costs in relation to their business by not referral or seeking an approval). Therefore, the NFF recommends that in addition to the definition that might apply rightly to small business, the Department adopts an additional definition for agriculture. In undertaking agricultural surveys, the ABS uses the following criteria:

- the business must be registered for Goods and Services Tax (GST) purposes and have an active Australian Business Number (ABN);
- the business must undertake some agricultural activity during the reference period;
- the business must have an Estimated Value of Agricultural Operations (EVAO) or a derived Business Activity Statement (BAS) turnover value of \$5,000 or more.

However, from 2006-07 ABARES has used a stricter criterion of \$40,000 EVAO for its agricultural surveys, which ensures that ABARES surveys reflect businesses whose primary business activity is agriculture.

Under section 22 of the Energy Grants (Credits) Scheme Act 2003, the definition of agricultural is set out as follows:

*(1) Subject to subsection (2), the expression agriculture means:*

- (a) the cultivation of the soil; or*
- (b) the cultivation or gathering in of crops; or*
- (c) the rearing of livestock; or*
- (d) viticulture, horticulture, pasturage or apiculture;*

*and includes:*

- (e) a livestock activity; or*
- (f) an agricultural soil/water activity; or*
- (g) an agricultural construction activity; or*
- (h) an agricultural waste activity; or*
- (i) a sundry agricultural activity.*

According to the ATO's Fuel Tax Credit Scheme, the following has been adopted to determine if you use fuel in an agricultural activity if the purpose of your business is to obtain produce for sale (or it directly supports such a business), including:

- *cultivating or gathering in crops*
- *cultivating the soil*

- *rearing livestock*
- *viticulture, horticulture, pasturage or apiculture*
- *transporting livestock other than on a public road - for example, moving for agistment*
- *hunting and trapping*
- *removing waste from an agricultural activity.*

*The following activities are also eligible if they are carried out on an agricultural property:*

- *drilling bores*
- *building or maintaining firebreaks*
- *fencing*
- *frost abatement*
- *controlling weeds, pests or disease*
- *building or maintaining sheds, pens, silos, silage pits, dams, water tanks, troughs, channels, irrigation systems and drainage systems*
- *planting and tending trees not intended for felling*
- *constructing earthworks, including dams, levee banks, windbreaks, contour banking and levelling or grading land*
- *conserving soil and water*
- *milking, shearing and mustering stock*
- *breeding animals for working the land, such as draught horses*
- *breeding animals for livestock activities, such as stockhorses or working dogs*
- *baling hay on the agricultural property where the hay was cut*
- *service, maintenance and repairing business vehicles or equipment*
- *storing or packing produce*
- *preventing produce deterioration*
- *disposing of waste from an agricultural activity.*

Moreover, the ATO has a specific definition of “primary production” for the purposes of Income Tax assessment:

*A primary producer is an individual, trust or company carrying on a primary production business. You are a primary producer if you carry on a business of:*

- *Plant and animal cultivation*
  - *cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things) in any physical environment*
  - *maintaining animals for the purpose of selling them or their bodily produce, including natural increase*
  - *manufacturing dairy produce from raw material that you produced.*
- *Fishing and pearling*
- *Tree farming and felling*<sup>18</sup>

The NFF recommends that the Department adopts the ATO definition for Income Tax assessment (immediately above) and includes this as an additional exemption definition. Agriculture must be exempt from cost recovery because of the:

- Complexities for agricultural businesses, including the significant difference between farm business turnover and profit;
- Likelihood that some businesses will be adversely affected financially by the requirement to pay for a referral and assessment;
- Fact that agriculture has a currently available exemption under the EPBC Act; and
- Likelihood that an application will come forward requiring referral and assessment is small and given that, the likely contribution that agriculture might make to the Department's cost recovery is miniscule.

If agriculture is not exempt, there is a significantly high risk that farmers who need to refer simply will not because of the level of cost recovery in comparison to farm business profit, even for the over \$2 million turnover category will see a significant proportion of their profit lost.

## **12. Conclusion**

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Any cursory reading of the CRIS shows numerous issues that remain to be addressed. These are addressed in the preceding discussion but include:

- Lack of independent regulatory oversight for what is essential a monopoly service provision;
- No benchmarking of the costs recovered to determine whether these are efficient;

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<sup>18</sup> See ATO website, accessed <http://www.ato.gov.au/businesses/content.aspx?doc=/content/33519.htm&pc=001/003/015/001/009&mnu=3359&mfp=001/003&st=&cy=>, 19 June 2012

- Little transparency in the costs recovered, and NFF brief assessment shows that there are significant issues, for example this significant costs associated with approval on referral information compared to the more substantially preliminary documentation assessment process. Moreover, with a statutory timeframe of 30 days to make a decision meaning there are in fact 20 working days, when according to the CRIS, the assessment on referral document takes 117.5 days of staff time is a major concern. The Department needs to urgently review this.
- The NFF suggests that cost recovery for technical and operational and complexity are not progressed until stakeholders are given sufficient information to determine whether the costs are efficient, prudent and relevant. Moreover, adjustment to all proposed costs must occur to ensure that recovery is not made for non-billable staff activities.
- The proposal to include what should be deemed sunk capital costs, costs associated with the listing and management of NES records, recovery of costs associated with other legislation, is rejected. The costs should have these omitted and recalculated accordingly.
- There is no review mechanism for the costs charged to proponents particularly those associated with complexity should the circumstances of the complexity change. This is likely to have significant cost implications for proponents.
- The intention to continue with a cost recovery proposal when it is apparent that COAG are negotiating other means of undertaking assessments through the state and territory governments. This means substantial investment in the cost recovery determination, which may not be used that frequently. NFF has recommended that the process cease until the completion of the COAG process, which ought to be followed with an analysis of the need for cost recovery going forward. For example, if the Department will only conduct a small number of strategic assessments of which an even smaller number will attract cost recovery, then it is doubtful that it policy is worthwhile pursuing.
- Cost recovery must be developed in conjunction with service standards – the latter have not yet been determined, or even discussed with stakeholders.
- It is recommended that the exemption include a specific definition for agriculture so that agriculture is not disadvantaged leading to perverse outcomes for the matters of NES.