



8 May 2020

LAA Review Project Team
Property and Construction Division
Department of Finance
One Canberra Avenue
FORREST ACT 2603

Dear Secretariat

Re: NFF submission to Department of Finance review of the *Lands Acquisition Act 1989*

The NFF welcomes the opportunity to respond to the Department of Finance review of the *Lands Acquisition Act 1989* (LAA). The NFF notes its main interest of this legislation involves the application of the LAA in the context of restrictions in land clearing.

The NFF acknowledges the purpose of the LAA to provide a mechanism for the Commonwealth to acquire land for essential public infrastructure that must occur on 'just terms' under the Constitution. The NFF recognises the Commonwealth Parliament may only make laws with respect to the acquisition of property on just terms', whereas states do not necessarily have to pay compensation.

Under these restrictions, the NFF raises ongoing concerns it has regarding the lack of compensation through the restriction of use of land. The NFF notes that, under the LAA, any transaction that results in an authority acquiring or disposing of an 'interest' is likely subject to the LAA, which captures restrictions on the use of the land, however slight or insubstantial.

Over the past few decades, landholders across the country and in particular New South Wales and Queensland have been subject to land clearing restrictions through state policies to meet international obligations under the Kyoto Protocol. It is the view of the farm sector that it is at least convenient that state land clearing restrictions were tightened at a similar time to the Commonwealth's agreement to the Kyoto Protocol. Farmers remain seriously concerned that they carry an inequitable burden where the sequestration required to meet the international commitment was largely met by removing an otherwise legitimate property right. They firstly eroded the intrinsic land value, and secondly meant that farmers undertaking legitimate development were unfairly stifled through this statutory theft. As a matter of constitutional law, the question of whether this sort of arrangement is consistent with the Federal government's obligations to acquire property only on "just terms" is very unsettled: compare *P J Magennis Pty Ltd v Commonwealth* (1949) 80 CLR 382, *Pye v Renshaw* (1951) 84 CLR 58, *ICM Agriculture Pty Ltd v Commonwealth* (2009) 240 CLR 140, *Spencer v Commonwealth* [2015] FCA 754. Indeed, a legal challenge through the

Federal Court system is underway, and the Australian Farmers Fighting Fund has previously supported cases to test the validity of this interference and may be open to doing so again.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Tony Mahar". The signature is fluid and cursive, with a large initial "T" and "M".

TONY MAHAR
Chief Executive Officer