



Australian Government
Department of Agriculture
and Water Resources

Ref: EC18-000274

Dr Wendy Craik
Independent Reviewer
Agriculture Review (Aither)
Level 2, 45 Exhibition St
MELBOURNE VIC 3000
agreview@aither.com.au

Dear Dr Craik

The Department of Agriculture and Water Resources welcomes the opportunity to provide a submission to the Review of the interaction between the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and agriculture and food production.

Australian farmers, recognise their role as stewards of the land and understand that the sustainable resource management of private agricultural land is critical for the long term viability of Australian agriculture. The States and Territories have primary responsibility for the legislative and administrative framework for natural resources, including land use. The Commonwealth has regulatory responsibility for a range of environmental matters, which are specified in the EPBC Act.

The EPBC Act provides a national approach to environmental protection and clarifies the roles and responsibilities of the Commonwealth. The EPBC Act interacts with State and Territory legislative regimes dealing with environmental management and protection and can have an impact on agriculture and food production. This is the complex framework under which farmers care for the land.

Direct impacts on agriculture from the EPBC Act have been minor. Any impacts could be reduced without lessening environmental safeguards through, for example, the development of agricultural industry code of conducts to be taken into account during an assessment process. Providing better information about matters of environmental significance and improved education on EPBC Act processes could alleviate any uncertainty the EPBC Act creates for farmers and land managers. Improved education may also increase farmers' understanding of the differing obligations under state and Commonwealth environmental law.

Additionally, there may be utility in further consideration of opportunities for farmers to gain benefits through market based mechanisms, such as independent eco-labels, that draw on information and assessments undertaken for the EPBC Act.

We note a statutory review of the EPBC Act must commence before October 2019. Some areas for consideration in the attached submission may benefit from further community discussion and government consideration as part of the statutory review.

Yours sincerely

Cindy Briscoe
Deputy Secretary
22 June 2018

Australian Government Department of Agriculture and Water Resources submission to the Review of the interaction between the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and agriculture and food production

Summary

Farmers own or manage over half the Australian landscape. Environmental laws affect the way farm businesses operate. Farmer awareness of national environmental law under the EPBC Act could be improved to facilitate compliance with requirements and to improve relationships in the referral and assessment processes under the Act.

In light of this, the Department of Agriculture and Water Resources suggests a number of areas for consideration on ways the EPBC Act could be administered differently to help farmers and land managers in their role as stewards of the land:

- Consider developing codes of practice for different agricultural actions that are part of farm management plans (e.g. high vegetation cover, riparian buffer zones) to be certified by independent assessors (e.g. registered Australian Government farm consultants, natural resource management officers). These could be taken into consideration when assessing proposed actions at the referrals stage.
- Consider different methods of updating farmers about nominations to list threatened species and ecological communities under the EPBC Act, including any 'matters of national environmental significance' (MNES) on their properties or in their region. This could include the development of an app for smart phones or an SMS alert or simply better email linked website notifications.
- Consider a single point of contact within the Department of the Environment and Energy for farmers to: discuss proposed actions; gain preliminary advice about referring proposed actions including those likely to have significant impacts on MNES; and obtain advice on the need to engage consultants.
- Consider improving accessibility to key EPBC Act information and environmental impact assessment documents, in one location on the Department of the Environment and Energy website.
- Encourage the Department of the Environment and Energy to work with the National Farmers' Federation to understand the information needs of farmers.
- Encourage farmers to make use of the cost-recovery fee exemption (available to individuals and businesses with a turnover of less than \$10 million p.a.) to 'get the ball rolling' on agriculture referrals.
- Consider strategic assessment of new agricultural developments to accelerate agricultural development and enhance investor certainty, particularly for northern Australia.
- Facilitate industry bodies and state and local governments to develop landscape agricultural plans that could be used as a means for preliminary assessment under the EPBC Act, thus avoiding the need for individual referrals.

- Agricultural land managers could apply stewardship standards based on relevant best management practices. These stewardship standards could be set by independent bodies (e.g. Forest Stewardship Council).
- In the absence of financial incentives, farmers who adopt best management practices and contribute to the protection and conservation of the natural environment including MNES, should have the opportunity to gain a market advantage through the use of an appropriate, independent eco-label.
- The Department of the Environment and Energy could consider developing a factsheet which clearly outlines and distinguishes the roles and responsibilities of the Commonwealth and state and territory governments in relation to environmental impact assessments.
- Build the capacity of Local Land Services, agricultural, and Natural Resource Management organisations so they can be the first point of contact on the ground for farmers to seek preliminary advice about proposed actions.
- Consider ways to give more information to farmers of their obligations under state and Commonwealth environmental laws, particularly environmental impact regimes, through local Natural Resource Management organisations or Local Land Services.
- Consider a uniform approach between state and Commonwealth application processes.

The Agricultural Sector

1. Agriculture covers 58 per cent of Australia's land mass. In 2016–17, the gross value of farm production was more than \$63 billion, with farm exports earning Australia \$44.9 billion. The largest agricultural land use is grazing of native vegetation at 45 per cent, with most (90 per cent) occurring on leasehold land. Most other agricultural land use occurs on freehold land (ABARES, 2017).
2. Given the variety of land types and use, as well as the jurisdictional differences across the country, it is unsurprising the agriculture sector is subject to a vast and sometimes complex array of regulations at every stage of the supply chain, and applied by all levels of government (Productivity Commission, 2016).

Drivers of farmer land management

3. For farmers and other landowners, economic considerations are a significant driver of short and long-term land use management. Increases and changes in local and global demand for food and fibre has provided the incentive for farmers to maintain productivity and profitability.
4. To remain competitive in domestic and international markets, farmers may expand, intensify or change farming operations, placing additional pressure on the natural resource base. Such actions can cause onsite environmental impacts including soil compaction, soil nutrient depletion, changes to soil chemistry (e.g. increased acidity), soil erosion, and habitat destruction, which can contribute to offsite land and water pollution.
5. Farmers may also diversify their revenue sources based on market and climate pressures and in doing so, change their farming practices to reduce financial risks.
6. Clearing of native and regrowth vegetation has been an important tool for farmers to flexibly manage land within their property boundaries (e.g. expand to increase production; convert land for different uses).
7. It is noted that clearing land for agriculture has been a significant area of controversy for farmers. It can reduce the ability of ecosystems to provide ecosystem services such as water of good quality, carbon sequestration, native animal habitat, and opportunities for recreation (FAO, 2018).

Farmer interaction with legislation

8. As noted above, land clearing can impact on the natural environment (e.g. habitat destruction) and it can conflict with state and territory and Commonwealth environmental laws.

State legislation

9. Under the Australian Constitution, states and territories have primary responsibility for the legislative and administrative framework for natural resources, including land use planning (e.g. native vegetation legislation; granting approval for land clearing).
10. Frequent changes to state vegetation management laws are a cause of concern to farmers. In recent times, state governments (e.g. Queensland) have passed legislation to significantly restrict land clearing to protect threatened species and ecological communities. First-time

clearing of undisturbed forest is now prohibited in many areas. Changes to state legislation has a direct impact on land clearing rates across the country.

11. Farmer industry groups have campaigned against tighter state vegetation management laws and for stronger property rights in relation to the management of their land and other natural resources on their properties.
12. Farmers and landholders who wish to undertake proposed actions (e.g. land clearing) on their properties may have to seek assessment and approval through environmental impact assessment regimes under relevant state and territory legislation. In some cases, assessment and approval may also need to be sought under the EPBC Act.
13. Most environmental regulatory impacts on farmers in relation to vegetation management tend to be from state and territory legislation, not the EPBC Act.

The EPBC Act

14. The interaction between the EPBC Act and farmers is related primarily to 'matters of national environmental significance' (MNES).
15. The EPBC Act can directly affect farmers when they want to undertake actions to enlarge, expand or intensify an existing land use. Under Part 7 (section 68) of the EPBC Act, a person proposing to take an action must refer the action for a decision on whether approval is required under the EPBC Act. This requirement also applies to proponents who are unsure of the potential impact(s) of their proposed action(s) on MNES.
16. Part 4 (sections 43A and 43B) of the EPBC Act, exempt certain actions from the assessment and approval provisions of the EPBC Act. They apply to lawful continuations of land use that started before 16 July 2000 or actions that were legally authorised before 16 July 2000 that have been undertaken on a continuing basis since that time. Examples include routine grazing activities, continuing cropping and crop rotation, and maintenance of existing dams, roads and fences.
17. The number of agricultural referrals under the EPBC Act is low. Agricultural projects are rarely required to proceed to assessment (Productivity Commission, 2016). Additionally, those that do require assessment under the EPBC Act are rarely denied but approved with conditions.
18. The Department of the Environment and Energy has indicated that agriculture and forestry made up just 2 per cent of all referrals received under the EPBC Act from 1 January 2000 to 4 March 2013 (Productivity Commission, 2016, pg. 114).
19. Under ordinary circumstances, the EPBC Act does not affect the majority of farmers.

Matter for consideration

- Consider developing codes of practice for different agricultural actions that are part of farm management plans (e.g. high vegetation cover, riparian buffer zones) to be certified by independent assessors (e.g. registered Australian Government farm consultants, natural resource management officers). These could be taken into consideration when assessing proposed actions at the referrals stage.

Inadvertent potential impacts on MNES

20. A situation may arise when a farmer is informed through an environmental impact assessment process, that there are no MNES on their property (i.e. the action is not a controlled action). The farmer may then assume that future referrals are not required based on this assessment. However, as MNES can be added under the EPBC Act (e.g. a wetland becoming a declared Ramsar wetland, a species becoming listed as a threatened species), the farmer may then be legally obliged to resubmit a referral for assessment.
21. It is difficult for a farmer to know when these listing events occur, and whether they may affect future operations.

Matter for consideration

- Consider different methods of updating farmers about nominations to list threatened species and ecological communities under the EPBC Act, including any MNES on their properties or in their region. This could include the development of an app for smart phones or an SMS alert or simply better email linked website notifications.

Availability of information about the EPBC Act

22. The Department of the Environment and Energy's website contains a wealth of information for anyone interested about the EPBC Act. However, the information in relation to environmental impact assessment is spread across multiple webpages. In addition, most of this information are accessible in an easily printable format. For example, information on the website includes:

- [About the EPBC Act](#)
- [What is protected under the EPBC Act?](#)
- [What is a referral, an action and 'significant impact'?](#)
- [When do I have to refer actions to the Minister?](#)
- [Preparing a referral](#)
- [Controlled actions – what next?](#)
- [EPBC Act permits and forms](#)
- [Exemptions](#)
- [Public notices and invitations to comment](#)
- [EPBC Act policy statements](#)
- [Help on assessment and approval notifications](#)
- [Cost recovery](#)
- [Compliance and enforcement](#)
- [Farmers and the EPBC Act](#)

23. There is a [Protected Matters Search Tool](#) that can aid farmers to initially determine whether MNES or other matters protected under the EPBC Act are likely to occur on their properties. In addition, the [Species Profile and Threats Database](#) provides information about species and ecological communities listed under the EPBC Act. There is also a [referrals database](#) where access to key documents regarding proposed actions are available based on project name and referral number.

24. General guidance is available on whether approval needs to be obtained for certain actions or activities that affect the environment and "what is a significant impact". However, based on our interaction with farmers and related enquiries to the department, active information campaigns are required to inform farmers of the obligations and the potential impact of their future actions in MNES, and of what actions may have significant impacts on a MNES.

Matter for consideration

- Consider a single point of contact within the Department of the Environment and Energy for farmers to: discuss proposed actions; gain preliminary advice about referring proposed actions including those likely to have significant impacts on MNES; and obtain advice on the necessity to hire consultants.
- Consider improving accessibility to key EPBC Act environmental impact assessment documents in one location on the Department of the Environment and Energy website. Information should be available in PDF format to allow ease of printing.
- The Department of the Environment and Energy be encouraged to work with the National Farmers' Federation to understand the information needs of farmers.

Regulatory Costs

25. The person proposing an action is responsible for the cost of the environmental impact assessment under the EPBC Act. However, under section 520 (4C) (e) (v) of the EPBC Act, an individual or a small business entity may be eligible for an exemption. A summary of costs for environmental assessment under the EPBC Act is provided below.

Table 1: Basic costs of environmental impact assessment under the EPBC Act

Activity	Cost
Referral	\$6577
Evaluation of new action management plan	\$2690
Request additional information for referral or assessment approach decision	\$1701
Variation to proposed action	\$1353
Reconsideration of the controlled action decision at the applicant's request	\$6577
Request additional information for approval decision (assessment on referral information, preliminary documentation or bilateral/accredited assessment)	\$1701
Request additional information for approval decision (assessment by environmental impact statement assessment or public environment report)	\$7476
Variation of approval conditions	\$2690
Variation of an action management plan under conditions of approval	\$2690
Administrative variation of an action management plan under conditions of approval	\$710
Transfer of approval to new approval holder	\$1967
Extension to approval expiry date	\$2690

Source: [Cost Recovery Implementation Statement](#) (2016-17), Department of the Environment and Energy

26. The cost and process for advising of the need for assessments or making a referral may be a barrier to farmers meeting their obligations under the EPBC Act or cause confusion as to what action is required.

27. A referral can be made online and there is a mechanism to seek more information via any of the usual avenues by telephone or email. The online information about referrals notes: "You may still make a referral if you believe your action is not going to have a significant impact, or if you are unsure"
28. The referral fee listed above is \$6 577, appears to be a substantive fee for proposed actions(s) that may not have significant impact(s). This may discourage a farmer from making a referral and in some scenarios to resubmit a referral, as alluded to at (20).

Matter for consideration

- Encourage farmers to make use of the cost-recovery fee exemption (available to individuals and businesses with a turnover of less than \$10 million p.a.) to 'get the ball rolling' on agriculture referrals.

Consultancy costs

29. Due to perceived complexity of environmental law and issues to be considered, the majority of farmers would likely hire private consultants to undertake environmental impact studies and to assist in the preparation of referrals. These costs could be substantial.
30. The department considers that farmers could be provided more guidance on whether they need to hire consultants. This could be addressed through obtaining preliminary advice, from a variety of organisations (e.g. Local Land Services) as outlined in the 'options and opportunities' section of this paper.

Penalties

31. Strict compliance and enforcement mechanisms are in place under the EPBC Act for those who take actions without appropriate approval or for contravening approval conditions (e.g. court injunctions, required environmental audits, civil and criminal penalties, remediation of environmental damage, enforceable undertakings).
32. For example, in 2004, the Federal Court of Australia imposed a record \$450 000 penalty on a NSW farmer and his company for illegally clearing and ploughing a wetland of international importance. In 2013, following an investigation by the Department of the Environment and Energy, two Victorian landowners were ordered to take remediation action in reparation for the removal of 4 hectares (ha) of critically endangered Natural Temperate Grassland of the Victorian Volcanic Plain and to conserve, manage and enhance native grasslands across their 43 ha property.
33. The department considers that due to a lack of awareness of the requirements under state and territory regulations and the EPBC Act, it may be possible that some farmers may not refer actions that should be referred under the EPBC Act.

Lost opportunity costs

34. Although there are few cases of farmers being prosecuted, there may be other direct and indirect impacts of the EPBC Act on farmers including:
- a. Time required to complete referrals
 - b. Prescribed fees
 - c. Opportunity costs/loss of production (failure to innovate due to legal uncertainty)
 - d. Breaches of the EPBC Act (farmers may not refer when they should do so)
 - e. Over-referring by farmers (farmers may refer when it is not necessary)
 - f. Lost production due to protection of MNES.

Options and opportunities for further consideration

Strategic assessments and new agriculture precincts

35. While farmers undertake actions individually that may need referral as to whether they may have a significant impact on a MNES, there may be a number of farmers who are considering changes through new farming operations or intensification of operations.
36. These changes could be a shift in farming operations within a region using new equipment or crop or animal varieties or new developments such as broad scale irrigation enterprises. The potential for agriculture to expand and intensify in Australia is significant, particularly in northern Australia.
37. The actions to be taken by individual farmers in expanding and intensifying agriculture operations could necessitate many referrals under the EPBC Act as to whether the action(s) may have a significant impact(s) on any MNES protected under the EPBC Act.
38. Part 10 of the EPBC Act, allows for the assessment of actions to be taken in accordance to a policy, plan or program. Strategic assessments are landscape scale assessments and unlike project-by-project assessments, which look at individual actions, they can consider a much broader set of actions. The benefit of this approach is that a class of actions covered by an endorsed policy, plan or program do not require individual approval under the EPBC Act.
39. Strategic assessments are rarely undertaken in the agricultural sector. We understand this is because:
- a. These assessments are costly and require an appropriate sponsor (e.g. mining companies, Aboriginal land councils, urban development industry) to collaborate with the Australian Government.
 - b. The assessment process is lengthy (e.g. 12 months +) and hinders the ability of farmers and businesses to make shorter term financial decisions, pending the outcome of these assessments.

40. For example, on 30 September 2014, Tasmanian Irrigation entered into an agreement with the Australian Government to undertake a strategic assessment of proposed irrigation development throughout Tasmania. However, on 20 January 2015, Tasmanian Irrigation notified their intention to end the agreement. Tasmanian Irrigation submitted a number of referrals under the EPBC Act:
- c. EPBC 2015-7560 - Swan Valley Irrigation Scheme
 - d. EPBC 2015-7491 - Southern Highlands Irrigation Scheme
 - e. EPBC 2017-7936 - North Esk Irrigation Scheme
41. Under Australian Government cost recovery policy and rules, the costs for strategic assessments for agriculture operations would need to be determined and applied.
42. Further consideration, particularly in the context of developing northern Australia should be given to undertaking strategic assessments of proposed agriculture developments that are appropriate for the scale of development proposed. This would support delivering strategic outcomes for the protection of MNES as well as offering administrative efficiencies.

Matter for consideration

- Consider strategic assessment of new agricultural developments to accelerate agricultural development and enhance investor certainty, particularly for northern Australia.
- There is scope to facilitate industry bodies and state and local governments to develop landscape agricultural plans that could be used as a means for preliminary assessment under the EPBC Act, thus avoiding the need for individual referrals.

Farmer Recognition for best management practices and conservation

43. Farmers are used to responding to economic signals and may be more willing to engage in conservation measures where there is some incentive to be gained for the losses or disruption to their businesses, which environmental assessment may cause.
44. Australian governments have provide payments for ecosystem services (e.g. National Landcare Programme: environmental stewardship programme, New South Wales Biodiversity Trust) for landholders to enter long term contracts (e.g. 15 years) to conserve environmental assets on private lands. Due to the limited funding available, payments are limited to conserving high priority environmental assets. There is a significant risk that other environmental assets could continue to be degraded and permanently lost.
45. There is a potential for the agricultural sector to contribute significantly to the conservation of native vegetation and forests on their properties. The sector is continuing to develop best management practices (BMPs) (e.g. Cotton BMP, Banana BMP, Smartcane BMP) and sustainability frameworks (e.g. Australian Beef Sustainability Framework) and other ways to preserve the environment and natural resources that help to maintain its viability. For example, the Australian cotton industry proudly claims 50 per cent of cotton farms conserve native vegetation.

Matter for consideration

- Agricultural land managers could apply stewardship standards based on relevant best management practices. These stewardship standards could be set by independent bodies (e.g. Forest Stewardship Council).
- In the absence of financial incentives, farmers who adopt best management practices and contribute to the protection and conservation of the natural environment including MNES, should be allowed to gain a market advantage through the use of an appropriate, independent eco-label.

Education and awareness campaigns

46. There are misconceptions in the community about the responsibilities of the Australian Government regarding the approval or disapproval of proposed actions. The scope of the EPBC Act environmental impact assessment regime is limited to considering the potential impacts of proposed actions on MNES. The primary regulator for the approval or disapproval of proposed actions are state and territory governments. There are also misconceptions the Australian Government 'forces' states to implement restrictions to land use management to meet obligations under international law (e.g. *Peter James Spencer v The Commonwealth of Australia & Anor*).
47. The department considers that there would be benefit in better informing farmers of the differences between state and Commonwealth environmental impact assessment processes.

Matter for consideration

- Encourage the Department of the Environment and Energy to develop a factsheet which clearly outlines and distinguishes the roles and responsibilities of the Commonwealth and state and territory governments in relation to environmental impact assessments.

Local land services, agricultural organisations and natural resource management organisations

48. Farmers need a first point of contact for free professional advice and access to information and data, to enable farmers to make informed decisions during their interaction with environmental impact assessment processes both at the state and Commonwealth levels.
49. The department considers that local land service organisations, agricultural organisations and natural resource management organisations are in a good position to provide such advice at local and regional scales. The department considers there are merits in building the capacity of these organisations to provide free data, information and advice on state and EPBC Act related matters, including:
- a. Identifying MNES within farmer properties
 - b. Assisting farmers to complete basic referrals (for minor proposed actions that are unlikely to require assessment under the EPBC Act)
 - c. Identifying and assisting farmers manage protected matters under the EPBC Act (e.g. developing farm management plans that incorporate measures for protection)

- d. Referring farmers to registered private consultants for completing referrals related to complex actions

Matter for consideration

- Build the capacity of Local Land Services, agricultural, and Natural Resource Management organisations so they can be the first point of contact on the ground for farmers to seek preliminary advice about proposed actions.
- Consider ways to give more information to farmers of their obligations under state and Commonwealth environmental law, particularly environmental impact regimes, through local Natural Resource Management organisations or Local Land Services.
- Consider a uniform approach between state and Commonwealth application processes.

References

ABARES, 2017, 'Snapshot of Australian agriculture reveals record production in 2016-17', accessed on: 31 May 2018, from: www.agriculture.gov.au/abares/news/media-releases/2017/snapshot-aus-ag-reveals-record-production-2016-17

Department of the Environment & Energy, 2018, 'Cost Recovery Implementation Statement (2016-17)', accessed on: 13 June 2018, from: www.environment.gov.au/system/files/resources/148ab56d-0090-421a-ac66-9d3c87d507e0/files/cris-2016-17-current.pdf

FAO, 2018, 'Ecosystems Services & Biodiversity', accessed on: 13 June 2018, from: www.fao.org/ecosystem-services-biodiversity/background/provisioning-services/en/

Productivity Commission 2016, Regulation of Australian Agriculture, Report no. 79, Canberra.
Queensland Audit Office, 2014, 'Managing water quality in Great Barrier Reef catchments', Report 20: 2014-15

