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Dr Wendy Craik
Agriculture Review (Aither)
agreview@aither.com.au

Submission to the review: Exploring ways to improve farmers' interaction with the *Environment Protection and Biodiversity Conservation Act 1999*

BirdLife Australia is an independent science-based conservation organisation with over 125,000 supporters throughout Australia. We are recognised as a leading authority on the ecology and conservation of Australia's birds. We are non-party-political and place great importance on our work with agricultural and other landholders to sustain research and conservation effort on the ground.

The EPBC Act (the Act) and Australia's nature conservation system, of which the Act forms a central part, requires significant reform to ensure effective environmental interactions and outcomes in relation to the agricultural sector.

Laws are a necessary but not sufficient part of an environmental health system. A range of complementary policy tools are needed to prevent environmental harm, promote environmental health, and lead constructive participation.

Australia's performance in environment and nature conservation is poor because we have weak laws, inadequate public funding and a politicised and fragmented approach to environmental issues and policy.

Many environmental assets and risks have their locus on agricultural land. Although some within the agricultural sector perceive the requirements of the EPBC Act to be onerous and/or difficult to understand and fulfil, in fact the Act has had little direct impact on the agricultural sector.

We note in this submission that regulation is a normal and long-accepted practice across all sectors including in relation to private and leasehold land use, and that landholders have both rights and responsibilities (legal and/or ethical) to avoid harm and to leave a healthy environment for future generations.

We suggest that some people's perceptions of the Act as onerous may be improved by ensuring that environmental education, public funding and environmental laws are improved fundamentally and in unison, rather than in the piecemeal fashion adopted to date.

BirdLife Australia
Suite 2-05
60 Leicester Street
Carlton VIC 3053
T 03 9347 0757
F 03 9347 9323
info@birdlife.org.au
birdlife.org.au

ABN 75 149 124 774

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Nature conservation and environmental protection is largely an area of 'public good'. Successive reviews have found that public funding for environmental management is inadequate. We argue that a sufficient (large) increase in funding is required to address Australia's environmental problems, and that equitable and sufficient public funding for environmental land stewardship is a necessary part of ensuring improved interaction between environmental regulations and the agriculture sector (conditional on a high standard of environmental protection and management being achieved).

We refer to the findings of many previous similar reviews, in proposing a major improvement on Australia's environmental laws, investment, and leadership.

Please contact Dr Jenny Lau, Acting Head of Conservation, jenny.lau@birdlife.org.au, if you wish to discuss this submission further.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Paul Sullivan".

For

Paul Sullivan
Chief Executive Officer



Summary of BirdLife Australia Recommendations

Recommendation 1

That this review should note the biodiversity and environmental crisis Australia is facing (indicated by continuing negative trends on most parameters in national State of the Environment reports) and flag a need for broad reform (including of the EPBC Act) and reinvestment to achieve sufficient environmental repair and on-going management.

Recommendation 2

Establishment of an independent National Sustainability Commission to inter alia set national environmental standards, undertake strategic regional planning, address complex and cumulative pressures, coordinate regulation and policy across jurisdictions, and report on national environmental performance.

Recommendation 3

Establishment of an independent National Environmental Protection Authority to conduct transparent environmental assessments and inquiries, and undertake monitoring, compliance and enforcement actions.

Recommendation 4

That this review should include recommendations urging increased public resourcing for environmental and biodiversity conservation, including for equitable environmental land stewardship payments predicated on achieving a high standard of environmental land stewardship, on a scale adequate to meet Australia's national and international responsibilities and reverse the negative trends in national State of the Environment reports.

Recommendation 5

The panel recommend creation of a new generation of environmental laws in Australia wherein the Federal Government retains responsibility for matters of national environmental significance, with expanded Federal oversight encompassing land clearing, biodiversity and ecosystems, water resources, climate change, air pollution and protected areas.

Recommendation 6

The panel recommend that the new environmental laws (Recommendation 5, above) guarantee community rights and participation in environmental decision-making, including open access to information, review of decisions on their merits, third party enforcement provisions and protections for costs in the public interest.



BirdLife Australia's experience and knowledge

BirdLife Australia is an independent science-based conservation organisation with over 125,000 supporters throughout Australia. We are recognised as a leading authority on the ecology and conservation of Australia's birds.

BirdLife Australia works with agricultural and other landholders across the country to monitor, study and conserve birds. For example, we produce bird identification booklets, assist in facilitating conservation covenants, collaborate to identify and protect nesting trees, run workshops to build landholder skills in bird survey and monitoring, and we help landholders access funding to fence and protect important bird habitat.

For many years now, BirdLife Australia, our partner organisations and landholders have striven to deliver better on-ground outcomes for Australia's birds and biodiversity. At the same time, Birdlife has led the country's monitoring and knowledge management about the wellbeing of Australia's birds. Our Atlas of Australian Birds, Birddata web portal and database, Key Biodiversity Areas program and periodic State of Australia's Birdsⁱ reports are important tools for conservation practitioners nationwide.

These sophisticated programs inform us that despite our efforts and those of many conservation-minded landholders, two hundred and ten taxa of Australian birds are threatened with extinction, or close to being threatened. Sixty-seven of these are listed as Endangered or Critically Endangered under the EPBC Act.

Australia's conservation system is failing

Australia's nature conservation system is not reaching the policy goals that it is intended to achieve. For example:

- Instead of “reversing the decline in the quality and extent of Australia's native vegetation”ⁱⁱ (an erstwhile central goal of several national programs) Australia continues to rank among the worst in the world for native vegetation loss.
- Instead of “...prevent[ing] the extinction, and promot[ing] the recovery, of threatened species...”ⁱⁱⁱ, the country has suffered several recent extinctions and most of Australia's threatened species, along with the nation's biodiversity as a whole, continue on a downward trajectory.
- Instead of “reduc[ing] by at least 10% the impacts of invasive species on threatened species and ecological communities in terrestrial, aquatic and marine environments”^{iv}, the country's environmental biosecurity system still lacks adequate knowledge, resources, capacity and responsiveness to tackle environmental biosecurity in a concerted way.



Periodic national State of the Environment (SOE) reports make it clear that, with few exceptions, things are going from bad to worse. The latest (2016)^v report noted the following key challenges to the effective management of the Australian environment:

- Lack of an adequate national policy and legislative framework
- Poor collaboration and coordination amongst various governments, sectors and managers
- Inadequate data and long-term monitoring
- Lack of follow-through from policy to action
- Insufficient resources for environmental management and action, and
- Inadequate consideration of cumulative impacts

In this context our submission addresses the interactions between the agriculture sector and the EPBC Act but also addresses Australia's whole nature conservation and environment protection system, urging that this review should flag a need for broader reform and reinvestment.

Recommendation 1

That this review should note the biodiversity and environmental crisis Australia is facing (indicated by continuing negative trends on most parameters in national State of the Environment reports) and flag a need for broad reform (including of the EPBC Act) and reinvestment to achieve sufficient environmental repair and on-going management.

Some directions for reform

The EPBC Act and Australia's whole nature conservation system require significant reform to ensure effective environmental interactions and outcomes in relation to the agricultural sector.

Laws are a necessary but not sufficient part of an environmental conservation system. A range of complementary tools are needed to prevent environmental harm, promote environmental health, and motivate constructive participation. These tools include visionary leadership, sufficient funding and strong laws, ideally operating in unison and at scale.

Australia's current environmental laws are weak, environmental funding is intermittent and inadequate, and there is a lack of national leadership toward successful stewardship of the nation's environment.

We discuss below, selected aspects of Australia's environmental conservation system, suggesting some ways that this current review might contribute to



development of a more functional environmental conservation system including in relation to agricultural lands.

Leadership

Leadership is the art of getting someone else to do something you want done because he [sic] wants to do it.— *Dwight D. Eisenhower*

Under Australia's current system of "cooperative" federalism there is no clear leader in national environmental policy or practice. There is no consistent direction, inspiration or motivation for improving environment and conservation outcomes. The results can be seen in the declining indicators in any national State of the Environment report.

Without leadership, environmental regulation *and the need for it* is poorly understood by many players, and the EPBC Act exists as a slender coercive "stick" in the absence of concomitant public investment in environmental education, engagement, remediation and management.

Worse still, this slender stick and the meagre "carrots" of whimsical, stop-start public funding are undermined by political interests keen to make mileage out of the confusion and division in the rudderless environment sector. Politicians bicker over environmental issues in state and national legislatures, states fight with each other, undo and redo their own statutes, and the grey zone between state and Commonwealth responsibilities languishes unoccupied. Conservationists and agriculturists alike (often one-and-the-same) are variously demonised, bewildered and disappointed in the face of this dysfunction.

In this leaderless context, a wide range of differing cultural perspectives on the interaction between agriculture and environmental regulations have (inevitably) arisen. This is true across the population at large and within the agricultural sector, where some groups and individuals see environmental regulation as an unfair imposition on their enterprises and lifestyles, while other farmers and food producers happily go beyond statutory requirements to restore, protect and maintain environmental values on their land (the occasional welcome help they receive from governments often depending on which ephemeral funding program was thought marketable in the lead-up to a recent election- whether habitat corridors, tree planting, salinity control or Landcare funding).

Australia is a wide and ancient land whose environmental stewardship must be approached at sufficient scale over the long term. To achieve this requires a more cohesive national culture of support for effective environmental stewardship, including on agricultural land. By "effective", we mean that Australia's culture and practice of environmental stewardship must be capable of reversing the negative trends seen in most parameters in national State of the Environment reports.



There is an opportunity now for our leaders to craft a new vision for Australia's environment, reflected in renewed laws linked to, administered and supported by purposeful institutions, and reflected in sufficient equitable public funding for effective environmental stewardship.

We draw the review panel's attention to section 3.1 of the publication *Blueprint for the Next Generation of Australian Environmental Law*^{vi} by the Australian Panel of Experts on Environmental Law, for discussion of more specific ideas about national environmental leadership. These ideas can help to de-politicise environmental issues, and to foster a more concerted and effective approach to their on-ground resolution at scale and over the long term.

We specifically urge the following:

Recommendation 2

Establishment of an independent National Sustainability Commission to *inter alia* set national environmental standards, undertake strategic regional planning, address complex and cumulative pressures, coordinate regulation and policy across jurisdictions, and report on national environmental performance.

Recommendation 3

Establishment of an independent National Environmental Protection Authority to conduct transparent environmental assessments and inquiries, and undertake monitoring, compliance and enforcement actions.

Funding

Sufficient funding needed

This current review is focussed on regulation (the EPBC Act), but improvements are needed not only to regulation but to environmental stewardship funding, and to the whole system of environmental conservation in Australia.

The 1996 national State of the Environment Report^{vii} noted that governments are not providing enough resources to give effect to their biodiversity policies. The 2011 SOE report^{viii} noted a lack of public sector funding for conservation of natural and cultural heritage. The 2016 SOE report flagged insufficient resources for environmental management and restoration.

Funding of adequate environmental land management is challenging for all land stewards, whether national park management agencies, farmers, Aboriginal



Traditional Owners or owners of private nature conservation reserves. For effective environmental stewardship on public, leasehold and freehold lands and waters, sufficient resourcing is needed.

Who should pay?

Discussion of the interaction of environmental regulations with the agricultural sector entails discussion of the relative rights and responsibilities of landholders and governments vis-à-vis environmental values such as native vegetation and threatened species. These discussions are relevant to regulatory policy as well as to decisions about who should pay the costs of environmental stewardship.

The upshot of decades of deliberations on this topic is that the Crown has always reserved the right to limit private property rights including in the public interest (often as interpreted by Parliaments) and so there is no compulsion for governments to compensate landholders when environmental regulations affect them. It is broadly accepted that rights to use and manage land and water come with responsibilities to avoid harm to others' rights in interests (e.g. pollution, salinity, erosion, sedimentation, reduction of amenity, loss of biological diversity and ecosystem resilience). Property rights also entail at least an ethical responsibility to leave a healthy environment and natural resource base for future generations- an ethic shared by many agricultural landholders^{ixx}.

Having said that, BirdLife Australia understands that very significant change is needed to the way that Australia's lands and waters are managed in order to transition from the current downward trend in environmental parameters to a situation where those trends are arrested and reversed to achieve ecological sustainability.

The degree to which public good outcomes are sought from private and leasehold land management is a matter of public policy, and so the specific outcomes sought in the public interest will depend on the ethics and politics of the Parliaments and governments of the day. Generating public environmental goods from private and leasehold land management will often also generate private benefits to the landholder in shade and shelter, erosion and salinity control, water quality management, pest management and fodder and timber resources. In other cases, the generation of public goods may occur against the private interests of the landholder, or vice-versa.

The scale of change to land management required to halt and reverse declining environmental trends nationwide suggests that a decisive intervention is needed in the public interest. Such an intervention will go beyond enforcement of existing weak regulations. What is needed is a review of the public and private benefits likely to be deliverable from Australia's agricultural landscapes. Where public (e.g. environmental) values are relatively high, a transition from production of private goods to public goods should be considered. For example, on more marginal lands with unimproved native pasture and vegetation, a transition from use for producing



food or fibre to use for producing biodiversity, salinity control, water quality maintenance and other environmental benefits could be paid for by the public purse, to offset lost private revenue.

Taking this approach, of implementing broad-based reform to achieve more efficient use of agricultural lands in parallel with increasing biodiversity conservation and environmental outcomes in the public interest, may help to moderate any potential adjustment impacts and create opportunities for complementarities and offsetting benefits, as has been suggested by the Productivity Commission^{xi}.

A word on markets for ecosystem services is required here. There is merit in creating certain market incentives for ecosystem services. Market mechanisms such as revolving conservation land purchase funds have delivered good environmental outcomes if at limited scale.

BirdLife Australia has reservations about some other market mechanisms, and it is unlikely that market mechanisms alone can deliver the overall quantum of public good environmental outcomes needed at national scale. We therefore believe that market mechanisms, especially those that are privately funded, will only ever provide part of the capacity needed to firstly restore and then maintain adequate environmental health across Australia.

Biodiversity offset schemes, for example, are still largely unproven. At the heart of our reservations about offsets is the fact that biodiversity is not fungible and therefore does not lend itself to being traded. To effectively counter-balance a loss of biodiversity values, a biodiversity or native vegetation offset must deliver the same amount of the same biodiversity and native vegetation values as are to be lost, in the same time-frame and with the same certainty as the impact. While one can apply multipliers to try to address time lags and uncertainties about future biodiversity values delivered, offsets are rarely an appropriate response to proposed biodiversity or native vegetation loss.

In fact, biodiversity offsets, seen by proponents and governments alike as a tool for reparation following biodiversity loss, are often in reality more of a tokenistic penance than a real conservation tool. Biodiversity offsets are now used- although they are not supposed to be- to avoid protecting the environment under environmental regulation. On the other hand, other forms of offset- for example water, or carbon offsets- can likely play a significant role in delivering environmental outcomes associated with these more fungible things. Further detail of our position on biodiversity offsets can be found in the attached BirdLife Australia policy on the matter.

Nature conservation and environmental protection is largely an area of “public good”. Strong public resourcing of conservation is and always will be vital. Australia now has a century of conservation awareness behind us and a set of global responsibilities before us under the UN Convention on Biological Diversity (reflected in the EPBC Act). We know from successive reviews that public funding for environmental management is inadequate. It is past time for a quantum leap in



environment funding to repair the damage done to agricultural and other lands and waters during 200 years of trial and error in land management policy.

Public funding is needed on an unprecedented strategic scale to achieve a once-off major shift in environmental land management outcomes, and then to maintain Australia's environment in good health on a permanent basis.

Looking at parallels in the education sector, to realise Australians' aspiration for improved education the nation embraced a visionary goal (education for all), then made historic public (and private) infrastructure and institutional investments in schools, universities and the development of teaching professions, to give Australia a world-class education system. Similarly, Australia needs a new societal goal for environmental management around which to frame strategic public investment in environmental repair, and in on-going maintenance of a healthy environment.

The Australian Conservation Foundation and National Farmers Federation proposed such an approach in 2000, suggesting that an extra capital investment of \$60bn with an ongoing maintenance program of \$0.5bn was needed to achieve this (ACF and NFF suggested that around half of the required funding would need to come from the public purse)^{xii}.

BirdLife Australia makes no assertions about the quantum of funding needed except to say that the ACF/NFF proposal rings true. The current Commonwealth environment budget sits at around \$1bn, so this would be a ground-breaking increase in funding, but the alternative is to watch the environmental health of continent continue to decline.

Without such a strategic and sufficient injection of resources for environmental repair and on-going land stewardship, it is likely that even today's weak environmental regulation will continue to be resented when applied as intended. Equitable and sufficient public funding for environmental land stewardship is a necessary part of ensuring improved interaction between environmental regulations and the agriculture sector (conditional on a high standard of environmental protection and management being achieved).

We hasten to add that we are not suggesting that public funding be provided in *compensation* for regulation. In the great majority of situations environmental stewardship funding will be *ex-gratia*. Exceptions to this would occur where unambiguous property rights were compulsorily acquired by government and under certain circumstances where broadscale structural reforms required a radical change in land use and/or tenure.

It may be expedient and arguably reasonable then to provide *ex gratia* adjustment assistance if major structural reforms to agricultural land use or tenure (including to



relevant regulations) were made to achieve environmental repair and sustainability. The Productivity Commission has noted that:

“Decisions about whether or not to ‘buy-off’ resistance to reform are inherently difficult. They raise a number of particularly challenging issues including whether providing such assistance would actually overcome opposition to reform, its economic costs, its underlying equity and fairness, and whether it impedes opportunities for future reform.”

It would be important therefore to have transparent and independent processes of decision-making about adjustment assistance accompanying major reforms (whether ex-gratia or otherwise), and for those decisions to be made systematically against clear criteria directed at producing specific public good outcomes.

Once any needed broad structural reforms are made, a significant emphasis should be placed on performance-based payments for environmental stewardship services where the public interest clearly outweighs the private interest in land management. We envisage payments focussed on situations where outcomes can be delivered well above statutory land management requirements (once these are established at a sufficiently high benchmark) and above normal community best practice standards (thus using public monies to ‘lift the bar’).

Careful attention should be paid to ensuring equity in use of public funds for environmental services. As there are often both public and private benefits from improved environmental land management, it will be important that public funds not be applied in a way that gives one producer an unfair advantage over another.

Some increased investment is also warranted in the *promotion* of environmental regulation and management. A public education campaign accompanying the increased public funding and strengthened regulations suggested in this submission could help to build a reinvigorated culture of environmental land stewardship. Such a campaign could also help to ensure that landholders are well informed about their rights and responsibilities, about how they can fulfil these, and about the opportunities available to engage in both paid and voluntary land stewardship.

Recommendation 4

That this review should include recommendations urging increased public resourcing for environmental and biodiversity conservation, including for equitable environmental land stewardship payments predicated on achieving a high standard of environmental land stewardship, on a scale adequate to meet Australia’s national and international responsibilities and reverse the negative trends in national State of the Environment reports.



Improving the effectiveness of environmental laws

Many, but not all, environmental assets and risks have their locus on agricultural land, but environmental regulations are not aimed at nor do they unduly affect the agricultural or food production sector. All sectors, and all members of Australian society are subject to the law.

Urban people and industries are subject to regulation of their land use to avoid nuisance, negligence and impacts on their neighbours, future generations, and on the public good. The same goes for people and enterprises in agricultural areas.

Having said that, BirdLife Australia acknowledges the significant contribution of agricultural landholders to environmental management and urges an increase in appropriate and equitable funding support for land stewardship.

We understand that some within the agricultural sector perceive the requirements of the EPBC Act to be onerous and/or difficult to understand and fulfil. This perception understood in the context of the Productivity Commission's 2004 finding that:

“The actual and perceived impacts of the EPBC Act on landholders appear to differ markedly. In terms of preventing activities, or of requiring activities to undergo the assessment and approval process, the EPBC Act to date has had little direct impact on the agricultural sector. However, uncertainty about its potential future impacts has been a concern for some landholders”^{xiii}.

We suggest that agricultural stakeholders' perceptions of the Act may be improved by ensuring that environmental leadership, education, funding and laws are improved purposefully, fundamentally and *in unison*, rather than in the piecemeal fashion that has evolved to date.

We therefore direct the review panel's attention to the following documents outlining historic proposals for reform of Australia's environmental laws, institutions and funding: *Restoring the balance: the case for a New Generation of Australian Environmental Laws*^{xiv} and, *Blueprint for the Next Generation of Australian Environmental Law*^{vii}). Coupled with our comments above, these proposals provide a way for Australia to at last fulfil its promise to the world, of protecting its environment and biological diversity, avoiding desertification and tackling greenhouse gas emissions.

We urge specifically that:

Recommendation 5

The panel recommend creation of a new generation of environmental laws in Australia wherein the Federal Government retains responsibility for matters of national environmental significance, with expanded Federal oversight encompassing land clearing, biodiversity and ecosystems, water resources, climate change, air pollution and protected areas.



Recommendation 6

The panel recommend that the new environmental laws (Recommendation 5, above) guarantee community rights and participation in environmental decision-making, including open access to information, review of decisions on their merits, third party enforcement provisions and protections for costs in the public interest.

Conclusion

Adoption of the recommendations in this submission and the proposals for reform of Australia's environmental laws, institutions and funding in *Restoring the balance: the case for a New Generation of Australian Environmental Laws* and *Blueprint for the Next Generation of Australian Environmental Law* will provide an historic opportunity to reinvigorate Australians' love for their lands and waters, and lead a purposeful, collegiate and effective culture of environmental stewardship.

Just as Australia has embraced universal education and universal health care, it is time now to take the politics out of environmental issues and to offer tangible commitments and support to each other in repairing and sustaining Australia's environment into the future.



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