



Name of submitter: Ecological Society of Australia

The Ecological Society of Australia Ltd (ESA, www.ecolsoc.org.au) is the peak group of ecologists in Australia, with over 1200 members from all states and territories.

Our members work in universities and other research institutions, government departments, NGOs, private industry and consultancies. They are at the forefront of many of the ecological challenges facing Australian society, and many members work with agriculture and food production industries to support sustainable practices.

Submission to:

Review of the interaction between the *Environment Protection and Biodiversity Conservation Act 1999* and agriculture and food production.

15 June 2018

Summary

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) is Australia's premier piece of environmental legislation. Current implementation of the EPBC Act is failing to achieve its primary objective of protecting the environment, particularly matters of national environmental significance. The ESA recommends that implementation of the EPBC Act be strengthened and properly resourced to ensure the legislation achieves its objectives and is easily interpreted and applied by the community – including farmers.

With regards to interaction with the agricultural sector, the ESA believes the current regulatory settings in the EPBC Act are appropriate and not burdensome. Perceived burdens of the Act are due to ineffective implementation of the Act, linked to inadequate resourcing of the responsible Department. There is also confusion between the EPBC and environmental planning regulations at the state and territory level, leading to frustration. Thus, increased resourcing of the Department to enable improved support services for the agricultural sector to translate, understand, and apply the legislation, can address the issues identified.

We make the following key recommendation to support improved interaction between the EPBC Act and agriculture and food production, while retaining clear focus on the objectives of the EPBC Act:

Re-invest in strong ecological and environmental science capability within the Department of Environment and Energy, so the Department is adequately equipped to:

- 1) **Maintain high scientific standards of assessment** to underpin the listing processes and formation of recovery strategies for threatened species and ecological communities. Listings must be informed by rigorous scientific assessment focused solely on the basis of threat to the species or community. Decisions about action in response to listing, economic impact of this and other socioeconomic matters should be transparently segregated into separate processes from the threatened listing process.
- 2) **Provide clear, timely and practical advice** to farmers and other members of the community to assist them in their interactions with the EPBC Act, for example by creating 'Extension Officer' roles; and

- 3) **Rapidly assess matters that are referred under the EPBC Act**, providing timely response to proponents that gives them certainty to move forward.

We discuss these matters and respond to questions raised in the Briefing Paper below.

Discussion

Function and implementation of the EPBC Act

The EPBC Act is Australia's premier piece of environmental legislation. It is designed to protect and manage national environmental assets, known as matters of national environmental significance, and other protected matters. This includes nationally and internationally important flora, fauna, migratory species, ecological communities and heritage places.

The current EPBC listing and delisting processes are established on rigorous and transparent scientific processes, with criteria based on those developed internationally by the International Union for the Conservation of Nature (IUCN). Processes prescribed by the EPBC Act are scrupulously overseen by an independent scientific advisory council who review documents and advise the Department of Energy and the Environment (DoEE) and the Minister for the Environment. This council has a range of expertise in marine and terrestrial disciplines.

Recent years have seen the development of new processes to ensure more efficient listing and delisting processes, reducing duplication of State and Commonwealth processes – including the development of a Common Assessment Method (CAM) - and strategically streamlining assessment processes (i.e. the Species Expert Assessment Plan (SEAP)). There is also increased collaboration among expert groups to undertake status review assessments of multiple species at a time and submit a status report to the Committee for consideration that may result in recommendations to amend the EPBC list of threatened species.

These approaches, and related reporting, are an important component of Australia's obligations under a number of international treaties including the *Convention on Biodiversity* (CBD), the Ramsar Convention for migratory birds, and the United Nations Sustainable Development Goals.

Assessment and listing of threatened species is only one step towards protecting matters of national environmental significance. An increasing number of species have been listed as threatened since the Act's introduction in 1999, with over 450 species added to this list since 2000. The Department of Environment and Energy's annual report for 2016-17 shows that there are 1,885 listed threatened species and ecological communities in Australia. Of these, there are 1,150 plant species listed as endangered or critically endangered. It is clear from these figures that current implementation of the EPBC Act is failing to achieve its primary objective of protecting the environment, particularly matters of national environmental significance. In this context, **the EPBC Act and its implementation must be strengthened to ensure it can achieve its objective to protect matters of national environmental significance.**

Interaction of EPBC Act and agriculture and food production

Agricultural intensification and the associated land clearing, habitat fragmentation, spread of invasive species, changes to fire regimes, and more, are all significant threats to listed species and

ecological communities. Despite this, the evidence from the number of EPBC referrals is that the EPBC Act very rarely interacts with agriculture. In fact, *routine agricultural practices are explicitly exempt from the EPBC Act* and most, if not all, state and territory legislation. States and territories have responsibility for regulating land use change, hence most regulatory interactions for farmers occur at the state or territory level rather than under the EPBC Act. Adaptations to the EPBC Act to include language that clarifies protection of listed species in association with farming practices will hopefully reduce the regulatory burden for farmers.

One of the greatest threats to the implementation of the EPBC Act within the agriculture sector is the prolonged and continuing cuts to the Federal Environment Department, which undermine its capacity to effectively support implementation of the legislation. Analysis of budget data shows that the Federal Environment Budget has already experienced a substantial cut in recent years from \$1.4 billion in 2013/14 to \$9.45 million in 2017/18, with further cuts projected to 2020/21 in the forward estimates that could translate to a reduction of up to 65% in federal spending on environment and biodiversity¹. Such severe cuts make it difficult for Australia to provide any meaningful leadership on the positive actions needed to maintain its natural heritage. They also contribute to extraordinary delays in the listing process, and the provision of useful advice to proponents and land managers, including farmers.

The purpose of the current Review is to find practical ways to help farmers fulfil their obligations under the EPBC Act, and the ESA believes this can be achieved by strengthening and properly resourcing the federal Environment Department to support implementation of the Act. Doing this can help to ensure the legislation achieves its objectives and is easily interpretable and applicable for the wider Australian community, including farmers.

Another issue of concern raised is the perception that farming communities have had significant negative interactions with the Australian Government over the EPBC Act. As noted in the Briefing Paper accompanying this Review, there are a very small number of referrals and assessments under the EPBC Act relating to agriculture and food production. Thus, this perception may be due in part to poor communication and confusion between the role of the Federal government and the state and territory governments in vegetation and environmental management. This reflects inconsistencies in the different jurisdictions, some of which is currently being addressed through the implementation of the Common Assessment Method process mentioned above. For example, lowland temperate grasslands of Tasmania are listed as threatened under the EPBC but are not listed under Tasmanian legislation, causing uncertainty and confusion for farmers. This is a case where alignment through the CAM process would provide clarity. Again, this is an issue that does not point to fundamental issues of the Act itself, so much as concerns about effective implementation and communication of the Act.

The ESA also provides the following comments in response to the specific questions raised in the Briefing Paper:

¹Joint ACF and WWF 2018-19 Pre-budget submission to the Department of Treasury. Available: https://d3n8a8pro7vnmx.cloudfront.net/auscon/pages/5148/attachments/original/1513033223/ACF-WWF_Pre-Budget_Submission_2018-19.pdf?1513033223

2. the appropriateness of current regulatory settings of the EPBC Act in regard to their impact on the agriculture and food production sector with consideration to the objects of the EPBC Act.

The ESA believes the current regulatory settings of the EPBC Act are appropriate and have minimal impact on the agricultural sector (as highlighted in the Briefing Paper for this review, p5). However implementation of these settings could be improved.

Routine agricultural practices are exempt under the EPBC Act. Existing, fit-for-purpose activities do not require self-referral for Controlled Actions impacting significantly on 'matters of national environmental significance' (MNES) or other protected matters (as defined by the Act). If the proponent or landholder/farmer considers that the proposal may have a significant impact, then the matter is referred to the Department to determine whether the proposed action will need formal assessment and approval under the EPBC Act. Some approvals may also involve the negotiation of environment offsets.

The ESA considers that the self-referral process and the ability to negotiate offsets do not impose unduly on agricultural practices. As noted in the Briefing Paper, challenges can arise with these processes in-practice if a farmer is not confident of their obligations under the Act and/or cannot access appropriate expert advice or information to make a decision about whether a matter should be referred under the Act. These challenges are not an issue with the settings of the Act, but with the implementation of the Act and the supply of appropriate support from the responsible Commonwealth Department. We discuss this matter and possible solutions in more detail below.

3. Outline options to improve how the agriculture and food production sector is regulated under the EPBC Act and reduce the regulatory burden faced by farmers and applicants, including but not limited to:

a. making recommendations in relation to environmental referrals, assessment and approval requirements, and listing and delisting processes for species and ecological communities under the EPBC Act

As noted above, the ESA considers that the perceived 'burden' of the Act is due to ineffective communication and implementation of the Act, linked to inadequate resourcing of the responsible Department to provide support when the agricultural sector needs it.

To achieve the purpose of the Act, the process of referral, assessment and listing of the EPBC Act must remain focussed on rigorous scientific assessment, solely on the basis of threat to the species or community. Decisions about action, economic impact and resourcing need to be transparently segregated from the listing process. What is clear is that for the EPBC Act to achieve its stated aims and be effectively implemented with reduced burden on the community, Australia needs an adequately resourced Environment Department that can undertake this work, and then communicate outcomes quickly and clearly with those affected.

Designated roles like 'Extension Officers' in the Federal Environment Department could help to translate the implications of listings or other EPBC Act matters to farmers and support them in managing their obligations under the Act. Indeed, the Environment Department and the National

Farmers Federation (NFF) previously jointly employed such an officer to sit in the NFF offices and facilitate farmers' understanding of the EPBC Act and its workings. This strategic and valuable position was ceased several years ago and could be reinstated.

3b. identifying opportunities for harmonisation between the EPBC Act and each state and territories' native vegetation management regimes; and

The EPBC Act is Commonwealth legislation, but management of native vegetation is primarily the responsibility of state and territory or local governments. **It is critical that all state and territory legislation dealing with native vegetation management provide adequate protection for native vegetation communities.** Current variation in legislation across jurisdictions has potential to undermine national environmental protection priorities, and Australia's ability to meet international obligations such as those under the Paris Agreement.

To improve both environmental protection, and reduce the regulatory burden on the community, there needs to be better outreach and communication to explain the implications of state or territory and federal legislation to the agriculture and food production sector. Efforts towards coordination and harmonisation of native vegetation management and legislation across jurisdictions are encouraged, so long as risk to ecological communities is not increased by these efforts or any legislative changes. Any assessment of native vegetation management regimes should be informed by best available ecological knowledge.

3c. identifying opportunities to enhance the EPBC Act to support agriculture and food production to take advantage of domestic and international demand for sustainable agriculture, such as certification schemes and 'clean and green' foods.

Farmers who actively manage and permanently protect EPBC-listed natural assets deserve market reward. This would provide incentives for many involved in the agricultural sector to manage and protect threatened species and ecological communities on their property. The concepts of 'ecolabels' and 'green' products have existed for decades within agriculture, but in many cases this recognition is not supported by a formal accreditation process.

For example, Australian wool producers who have protected biodiversity on their properties have gained access to European and North America markets on an informal basis. Their environmental activities form a component of the marketing of biodiversity-friendly products, but there is limited provision of evidence or attainment of pre-determined criteria for accreditation.

The International Wool Trade Organization is the recognized global authority for standards in the wool textile industry, and at their recent annual Wool Round Table they discussed the issue of biodiversity and environmental standards. Similar discussions are happening in other sectors, showing a demand for formal recognition of 'green' products across the sector.

The ESA is not aware of any formal certification schemes currently in place that allow a producer to provide credible and transparent evidence of their performance in protecting MNES identified under the EPBC Act. Such schemes could provide positive incentives for producers to take advantage of the domestic and international demand for sustainable agriculture. Any such schemes should take a 'beyond sustainability' concept that embraces various levels of

achievement at the national and state levels, and should be developed with expert science advice in partnership across the Federal government, agricultural sector, and ecological and biodiversity science communities.

Another opportunity to support the agricultural sector includes considering the development of some form of compensation scheme for producers who are exposed to a very high regulatory burden. For example, some horticultural producers suffer significant economic impact when large populations of EPBC-listed flying foxes take roost in commercial orchards. Some form of compensation where significant burden is documented could enhance the implementation of the EPBC Act, reducing potential conflicts.

Recommendation:

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- 2) Provide clear, timely and practical advice to farmers and other members of the community to assist them in their interactions with the EPBC Act
- 3) Rapidly assess matters that are referred under the EPBC Act, providing timely response to proponents that gives them certainty to move forward.

This submission has been prepared by the ESA's Policy Working Group and is approved by the Vice-President (Public Policy and Outreach) and President on behalf of the ESA.