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Agriculture Review  
Level 2, 45 Exhibition St  
MELBOURNE VIC 3000

Dear Dr Craik,

## Submission to independent review of interactions between the EPBC Act and the agriculture sector

Thank you for the opportunity to provide a submission to this important review. Friends of the Koala (FOK) is a voluntary organisation licensed by the NSW Office of Environment & Heritage to rescue, rehabilitate and release koalas in the NSW Local Government Areas of Ballina, Byron Bay, Kyogle, Lismore, Richmond Valley and Tweed. Generally we rescue about 300 koalas each year, although last year we rescued 437. Sadly, we also generally release only 15% of animals rescued to the wild, with the remainder either dying or being euthanased. We have considered the questions posed in the discussion paper, and as several questions are targeted to agricultural landholder and not relevant to our organisation, I have addressed these from the perspective of koala conservation, with the majority of FOK's comments under Question 10.

1. Have you interacted with the EPBC Act in the past? Please be as specific as possible, including if you have previously referred actions, noting that submissions will be made public unless confidentiality is specifically requested.

Yes, FOK has interacted with the EPBC Act in the past including: the listing process of the Koala in Qld, NSW and the ACT as a vulnerable species; the development of koala-related documents e.g. Koala Referral Guidelines and the Koala Strategy; providing advice and submissions regarding referrals and controlled actions; and following up with the Compliance Branch. FOK has not made referrals itself but has been active in ensuring compliance with approved controlled actions that will be, or are, impacting on koalas in the Northern Rivers. In particular, FOK is heavily involved in Sections 8 - 11 of the Woolgoolga to Ballina Pacific Highway Upgrade being members of the related Koala Interest Group, and the implementation of the approved Ballina Koala Strategy. I am FOK's representative on Ballina's Koala Advisory Group.

2. Do you feel that you have an adequate understanding of your obligations under the EPBC Act?

While FOK itself does not have obligations under the EPBC Act, we have active members who have a good understanding of the Act, the referral of actions, the determination process, and the requirements for assessing impacts, as related to threatened species, in particular, the koala.

3. Where have you sought advice on your obligations under the EPBC Act in the past (e.g. from DoEE, a State Government, a local government, a consultant, your neighbour etc.)? How would you assess the quality and usefulness of the advice you received?

Where FOK has sought advice or information from the Federal Government, State Government and Local Government in relation to EPBC Act listings, documents being prepared, referrals and controlled actions, the information and advice was generally useful in guiding direction, but the end decisions have not been sufficient to adequately protect the koala and its habitat. It is recommended that all policies, plans, procedures, and legislation must do more to protect the koala if it is to avoid extinction in NSW.

For example, from our experience, mostly on the outside of the referral process, offsets are all too quickly recommended and adopted as a preference to avoidance of loss of koala habitat. Planting of trees to replace those being lost has a time-lag resulting in less food for koalas until those trees grow, which in the case of Tallowood plantings can take up to 18 years before they are suitable as koala food. In addition this ignores the individual koala's fidelity to its own chosen food trees, and the fidelity of a koala in a colony to its home range.

It also appears that often when a referral is made, the DoEE has determined (by their assessment not necessarily the koala's needs) that if the appropriate avoidance, mitigation measures or offsets are in place the matter of significance has not been

treated as a controlled action or a non-controlled action with conditions. This removes the action from any further involvement with the EPBC Act and any associated reporting requirements or compliance audits from the DoEE. This is of concern to FOK as this approach could lead to a failure of those measures to be implemented as intended, or at all. With no further regulation or enforcement, which are the best outcomes for biodiversity, koalas and their habitat, this approach is often less than should be required.

With regard to koalas, the DoEE has prepared Koala specific referral guidelines. However, these do not, and have not, prevented further loss of koala habitat as a result of a lack of understanding by landholders of their obligations, the self-assessment requirement, consultants either doing what their client's desired outcome, a lack of relevant koala conservation knowledge and experience, and the enabling of offsets to be established, which in some cases can be contributing funding for research or putting money into a pool that can be used for other actions. This is not acceptable for the short or long term survival of our iconic koala, which requires protection of existing habitat, enhancement of habitat through weed control of existing habitat and increasing plantings to make patches larger and providing link areas in the landscape.

The referral process puts the onus on the landholder to make the decision whether or not to refer the action to DoEE. If advice is sought, it would be impossible for the person providing the advice to consider every scenario to make that advice meaningful. Leaving the person seeking advice believing that it is alright to proceed without referral. This is largely because koala ecology and the effects of habitat disturbance and loss are poorly understood and considered by most ecologists in considering the significance of proposed actions, let alone the general landholder whose primary interest is in their agricultural pursuits. It is too easy for consultants and landholders to identify koala food trees as isolated paddock trees and therefore not habitat. The importance of all remaining koala habitat in the NSW Northern Rivers cannot be underestimated. We know that every tree matters in this region. Chronic stress in koalas from the loss of their preferred food trees can result in a number of disorders that suppress the immune system and lead to disease, such as Retrovirus and Chlamydia, the biggest killer of koalas in the Northern Rivers koala populations. To ask a consultant or landholder whether their action is "*Facilitating the introduction or spread of disease or pathogens for example Chlamydia or Phytophthora cinnamomi, to habitat critical to the survival of the koala, that are likely to significantly reduce the reproductive output of koalas or reduce the carrying capacity of the habitat*" is not something that they will be able to answer such that it leads to a referral. It is probably not something that the DoEE staff in their assessment of the application could answer.

4. Ideally, how would you like to receive information about the EPBC Act and your obligations under it?

This is not directly relevant to FOK, however it is clear from being on the end of picking up the pieces when the legislation, policy and procedures have failed our local koalas, either from not being referred, not being determined as a controlled action or from non-controlled action with conditions. Our koalas are subject to loss of habitat which means they are on the ground more in search of food, making them more vulnerable to dog attack, vehicle strike and disease.

The obligations of landholders under the EPBC Act need to be promoted through as many channels (perhaps attached to people's local council rates notices) as possible to reach as many people as possible. It would also be important to ensure that Federal, State and Local Government staff providing advice regarding the EPBC Act obligations are provided with training to understand better the issues related to koalas so that advice provided is meaningful and assists in achieving the objectives of the EPBC Act.

5. What has been the time or cost involved in ensuring your compliance with the EPBC Act in the past? Please be as specific as possible.

This is not directly relevant to FOK as assessments are undertaken by the farmer or their consultant, however the amount of time and cost to FOK members in ensuring or attempting to ensure compliance by others with their obligations under the EPBC Act has been in the many hundreds of hours since the inception of the EPBC Act.

6. Are you aware of the threatened species and ecological communities that may be present on your property? What measures, if any, do you undertake to manage your impact on these species and communities?

This is not relevant to FOK.

7. Have you ever gained any direct financial benefits from managing the threatened species and ecological communities present on your property (e.g. through EPBC Act offsets or other government grants)?

This is not relevant to FOK. We note that the discussion paper identifies "*It is also possible that farmers are not aware of the financial benefits that may, in theory at least, flow from fulfilment of their responsibilities under the EPBC Act. Having a MNES on your property – for example, a threatened ecological community or species – can potentially be a source of income if you are*

*able to negotiate with project proponents to have this MNES classified as an environmental offset in future. The payment and income structure are negotiated directly between the farmer and the project proponent (e.g. a property developer seeking an offset for MNES impacted by new urban development on the fringes of a city). For example, a landowner on a 220-hectare property in Victoria agreed to covenant 100 hectares of their property as an offset site. Ongoing funding was provided by an EPBC approval holder to the landowner for activities such as ecological monitoring and weed control. In addition, the landowner has been able to continue using the offset site for rotational sheep grazing, as this is an appropriate tool for managing biomass for the relevant species/ecological community."*

While we believe that there is a group of landholders (e.g. small family farmers) who should be financially compensated for any costs and/or loss of productivity due to avoiding, enhancing or increasing koala habitat on their land, offsets are not appropriate in the koala conservation sphere.

8. Have you ever been deterred from proceeding with an agricultural development due to your understanding of the requirements of the EPBC Act? Have you ever withdrawn or let lapse a referral under the EPBC Act? If so, why?

This is not relevant to the FOK.

9. How do you think the Australian Government can improve achievement of its environmental protection and biodiversity conservation objectives through its interactions with the agriculture sector?

FOK agrees with the approach to helping farmers understand when their activity does (or does not) require referral, assessment or approval under the EPBC Act. FOK also agrees with the premise that *"unlike some mining or property development firms that may operate at a scale sufficient to employ staff to ensure the firm's compliance with the EPBC Act, most farms do not employ such individuals, acknowledging that there is significant diversity in the scale of farming operations in Australia, from family farms to large corporate operations."* Recommendations need to encourage, not deter, participation and part of that is ensuring consistent advice, and sources of consistent advice.

It is acknowledged that *"Some farmers are concerned that significance is hard to determine and worry that actions perceived to be low-impact in nature (e.g. felling of individual paddock trees) may require extensive scientific assessment and bureaucratic process to ensure compliance with the EPBC Act. DoEE is currently working to improve clarity around the specific issue of paddock tree management, including by providing guidance when the clearing of paddock trees would not trigger the EPBC Act."*

In the NSW Northern Rivers, paddock trees are critically important habitat for the survival of our koala colonies and populations. Due to the fragmented landscape koalas, being a landscape species, are heavily reliant on paddock trees, linear vegetation, and remnant vegetation on farms for their food trees and movement between food trees. Without paddock trees we would see more koalas trampled by cattle.

10. Is there anything else you would like to raise in relation to the interaction between the EPBC Act and the agriculture sector?

Ensuring environmental regulation is applied to farmers in a practical way, considering on-ground farming practices and minimising any duplication or conflict with state or local laws.

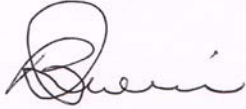
FOK does have concerns with this. In NSW, the Local Land Services Act and the Biodiversity Conservation Act are deficient in providing for koalas' needs. The legislation is confusing for many, and the mapping that forms the basis of what needs to be done isn't finished. In reality what may have looked good on paper has been a fiasco in its rolling out. FOK believes it is important that the National Biodiversity Laws do protect our koalas. It is not appropriate to weaken the federal laws to accommodate the dysfunctional State laws. The federal laws should be the pinnacle of achieving the objectives of the EPBC Act, not contradicting them.

Examining how farmers are informed and able to participate in the listing process for species and ecological communities, and the implications for them when a listing occurs.

The nominations for listings are advertised and open for public comment. The lack of contribution is more a failing on the part of the DoEE and the agriculture sector bodies to get this information to the broader community. A simple fact sheet on listing that advises landholders of the listing, of the habitat for that species or ecological community, the implications of the listing and where to get more information is all that is needed. A flow chart similar to that contained in the Koala Referral Guidelines would be useful to explain the process for all listings.

Again, thank you for the opportunity to comment on this important issue. If you have any questions, I am more than happy to answer them, and can be contacted on 02 6621 5906 or 0417 445 359.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roslyn', is centered within a light pink rectangular box.

Dr. Roslyn Irwin  
President

22 June 2018