

Review of the interaction between the EPBC and agriculture and food production

Name of submitter: Louise Gilfedder

I am an ecologist with over 30 years involvement in conservation and environmental management, particularly specializing in the integration of conservation into production systems such as the agricultural and forestry sectors. I was a conservation scientist and manager in the Department of Primary Industries, Parks, Water & Environment with the Tasmanian State Government, where I had considerable experience as a regulator and decision-maker working with the Tasmanian *Nature Conservation Act 2002* and the *Threatened Species Protection Act 1995*, and the federal *Environment Protection and Biodiversity Conservation Act 1999*. Part of my role in the state agency was in the approvals process for farm dams, and in this capacity was involved with the development and implementation of the Strategic Impact Assessment for the Midlands Water Scheme section 146 of the *Environment Protection and Biodiversity Conservation Act 1999*. I have specialized in threatened species conservation and management, including writing nominations for listing and delisting of species and ecological communities, recovery plans and the development of legislation and regulation for threatened natural heritage. I am currently involved with the Temperate Grasslands Conservation Initiative (an international specialist group of the IUCN), and the Science Council of the Tasmanian Land Conservancy, a not-for-profit that deals with private land conservation. I am also on the Forest Practices Tribunal (established under the Tasmanian *Forest Practices Act 1985*).

I am currently a member of the Commonwealth Threatened Species Scientific Council, but I offer this submission as a private individual, one with considerable experience of dealing with disaffected farmers. I have also recently been appointed to the Threatened Species Advisory Council (TSAC) for the Tasmanian *Threatened Species Protection Act 1995*.

I welcome the opportunity to provide a submission to the 'Review of the interaction between the *Environment Protection and Biodiversity Conservation Act 1999* and agriculture and food production. I do not consider that there are many or major flaws in the current system that lead to regulatory burden for the agricultural sector. The current process is based on very strong science, with criteria strongly derived from the IUCN, thereby setting consistency with the international approach, an approach that in itself facilitates efficiencies in the system and fosters Australia's international credibility under our responsibilities under the Convention on Biodiversity (CBD). The current system requires a full complement of well-trained staff in the Department of Environment and Energy (DoEE) and a functional scientifically-trained Threatened Species Science Committee (TSSC). Resources to support this work need to be adequate to prevent delays in delivery. Slow process leads to frustrated stakeholders – the system is slow to ensure the evidentiary base is met as required under the Act, hence the need for sufficient resources to service the workload, and the TSSC.

I wish to make a number of points and refer to only the third term of reference in my submission:

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

- The Department of Environment and Energy (DoEE) supports the work of the Threatened Species Scientific Committee, providing high-level ecological and environmental science in order for the DoEE to support the rigorous implementation of the EPBC Act. The EPBC Act determines processes that are reviewed by an independent scientific advisory council (TSSC), who advise both the Department of Energy and the Environment (DoEE) and the Minister for the Environment. The TSSC has a range of expertise in marine and terrestrial disciplines, as well as social science. The process for the selection of this independent committee could be made more transparent, with fixed overlapping terms independent of election cycles. This would ensure better maintenance of corporate knowledge and an improved continuity of process, leading to a more streamlined and efficient process.
- The listing and delisting process for threatened species, ecological communities and key threatening processes is based on a rigorous and transparent science-based process. This should not be reduced in any way. Sound science of the highest standard informs the development of listing statements, conservation advices, recovery plans and threat abatement plans. The criteria for standards are based on the international criteria developed by the International Union for the Conservation of Nature (IUCN). One of the members of the TSSC (Prof. David Keith), has been instrumental in the development of these criteria, and their use in Australia ensures consistency of approaches at the international and national levels, and is an important element of our international commitments through the Convention on Biodiversity (CBD).
- The process for consideration for listing is through the annual Proposed Priority Assessment List (PPAL) which the Minister has the opportunity to review and amend before it becomes the Finalised Priority Assessment List (FPAL). This is a resource-intensive process but provides a strong evidentiary basis for the listing process, something that should reassure and give confidence to stakeholders. There should be no unjustified, political, frivolous or vexatious listings on the EPBC.
- The work of the TSSC is increasingly limited by the capacity of the Biodiversity Conservation Division of DoEE. Ongoing budgetary cuts have had very significant impact on the capacity of the staff to service the TSSC and its work. My understanding is that the Biodiversity Conservation Division has lost sixty staff in the past few years, and further staff cuts are planned. The DoEE are dedicated and hard-working but are seriously constrained in their ability to deliver the necessary work required to facilitate delivery of the requirements of the Act. These cuts have had a significant impact on delivery, as well as staff morale. The role of the staff is to help provide information to proponents, but in recent years they are seriously constrained in their ability to support stakeholders in a timely and effective way. This contributes to the perceived “burden” of the Act on the agricultural sector.

- The current self-referral process for seeking advice on Controlled Actions impacting significantly on matters of national environmental significance (MNES) and other protected matters as defined by the Act does not impose a significant burden on landholders. The proposed activity is referred to the DoEE to determine whether there is a need for formal assessment and approval. Routine agricultural practices are exempt under the EPBC Act. In some cases approvals may also involve the negotiation of environment offsets. An adequately resourced DoEE is needed to deal with these referrals in an efficient and timely manner.
- I do not believe that the agricultural sector carries an unreasonable or disproportionate burden or impact from the EPBC. Data provided by DoEE staff demonstrates that the bulk of referrals for advice under the EPBC are not from the agricultural sector – most referrals are from urban developments. There are perception and communication issues that cause disharmony but the majority of proponents engage appropriately-trained and skilled environmental consultants to negotiate both federal and state regulatory processes on their behalf. As a society, we now accept that most aspects of our day-to-day life need to consider the impact on the broader community and its expectations, and the agricultural sector is no different in this regard.

Identify opportunities for harmonisation between the EPBC Act and each state and territories' native vegetation management regimes

- Much of the regulation of clearance and conversion of native vegetation is primarily the responsibility of state/territory and/or local governments. There needs to be better coordination between state and Federal legislation to reduce these areas of potential misinformation and confusion, to order to improve environmental protection and reduce the regulatory burden on the community.
- The recent development of the Common Assessment Method (CAM) has seen the bilateral adoption of new processes to ensure more efficient listing and delisting, significantly reducing duplication of State and Commonwealth processes. Multiple species and strategic assessment of species groups (ie. frogs, orchids etc) will also introduce efficiencies to the listing process, and an improved harmonization with states and territories.
- Gaining consistency in listing ecological communities through the CAM process is an important and critical way to ensure consistency in regulatory approaches, reducing the burden and concerns of agricultural stakeholders. It is difficult for members of the agricultural sector to negotiate the plethora of state and federal regulatory approaches. I believe this is an area that forms a strong basis for discontent and confusion in the farming sector. In many cases, when a landholder has a frustration with the EPBC it is regulation under a different jurisdiction that is the basis of the conflict. I have worked for the past few decades in Tasmania, a state that had major gaps in its regulatory framework to protect non-threatened ecological communities such as wetlands, native grasslands, sedgeland and heathlands. Threatened ecological community legislation was introduced in Tasmania as a policy commitment under the Bilateral Agreement on the Natural Heritage Trust (2003) to support the protection of rare, vulnerable and endangered non-forest vegetation communities from clearance and conversion on all tenures. The then Minister for Environment chose for socio-economic reasons not to list the lowland temperate

grassland of Tasmania, an ecological community that had suffered more than 90% loss since settlement. This same ecological community was subsequently listed as Critically Endangered under the EPBC, based on demonstrated loss in extent, condition etc. This created inconsistency between the two jurisdictions, provoking much fear and confusion in the farming sector. It also demonstrated that to make a decision based on factors other than scientific criteria did not necessarily reduce the regulatory burden – it potentially increased it.

c. Identify 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

Consideration needs to be made of ways to provide incentives and actively encourage farmers to take advantage of domestic and international marketing opportunities for sustainably-produced agricultural producers, particularly those producers who actively protect biodiversity. There is currently no formal certification schemes that allows farmers to provide evidence of their performance in protecting important biodiversity.

Another opportunity to support agricultural sector and reduce the regulatory burden of the EPBC would be the development of a compensation scheme for producers who are suffer a high impact from EPBC-listed species. One of the obvious examples are 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 would seem reasonable and would enhance the implementation of the EPBC, reducing potential conflicts.

Recommendations

1. That the next review of EPBC in 2019 should consider implementing statutory changes to reflect consistency in criteria with the international standards of the IUCN, as well as alignment of Commonwealth and State processes under the Common Assessment Method established under the CAM MOU, allowing improvement of processes to reduce the confusion and bureaucratic assessment processes that are currently perceived as a regulatory burden by some in the agricultural sector.
2. That improved communications on the operations of the EPBC are established with the agricultural sector. This could be efficiently achieved with the reinstatement of a former position whereby a DoEE staff member was seated at the offices of the National Farmers Federation and was available to assist farmers with negotiating aspects of the EPBC, including the referral requirements.
3. That improved funding and resources be made available/reinstated to DoEE so that its officers can ensure a more efficient and timely effectiveness in the implementation of the valuable work they undertake in relation to the day to day operation of the Act.
4. That consideration be made for developing a national accreditation scheme for the environmental labelling of agricultural products where the producers have actively contributed to the protection and long-term conservation of threatened species and ecological communities and other protected matters, gaining them market reward or

access to specialised markets. This could be undertaken in conjunction with a not for profit or accreditation group already in operation.

5. In summary, I would urge that implementation of the EPBC Act be strengthened and properly resourced to ensure the legislation achieves its legislative objectives, and is easily interpreted and applied by the community, including farmers.

Thank you for the opportunity to present my submission to you.

Louise Gilfedder

Member, Threatened Species Science Council

21 June, 2018