

2.1. Understanding the obligations of individual farmers under the EPBC Act

Some industry groups have stated that farmers do not sufficiently understand their obligations under the EPBC Act and/or are not able to make an informed decision about whether proposed projects should be referred under the Act. 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. In many cases, a farmer may only have a need to consider their obligations under the EPBC Act once or twice in the course of their working life, if at all.

Where farmers are aware (and sometimes they appear not to be) that an activity may intersect with the EPBC Act, they will seek to understand this by engaging expert agronomic or botanical assistance. Many agricultural actions are likely to be routine land management activities or ongoing cropping or grazing practices; these will generally not require referral as they do not constitute new, expanded or intensified agricultural developments that are likely to have a significant impact on an MNES.

Nonetheless, there have been some instances of agricultural actions that require referral under the EPBC Act. It is likely that some of these actions have not been referred in the past where they should have been. This supports the assertion by some that many farmers have not become aware of, or are not confident in understanding, their obligations under the Act.

Response:

Individual Farming projects unlike single mining projects do not amount to billion dollar projects, with the ability to engage teams of staff to wade through a very complex, complicated and fluctuating piece of legislation

The return on farming projects is so minimal that it is not cost effective to even begin projects due to the legislative restrictions. We also have the problem of unforeseeable government interference and the constant changing of legislation which constantly moves the goal posts.

Today you are farming as you have always done and tomorrow what you are doing is now illegal.

The overlap and dual regulations afforded by State and Federal Statutes has burnt the livelihoods of many famers. There persists a deep distrust of regulatory impost in environmental because the State and Federal Government via COAG have a track record of riding roughshod over property rights that has persisted since the mid 1990's.

It is unlikely that trust will be regained unless the State and Federal Government can organise for all Native Vegetation that cannot be cleared to have some monetary value attributed for compensation purposes to the land owner.

2.2. Time and cost implications for farmers

*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. It is not yet clear to the independent reviewer how common such arrangements are in the agriculture sector under the EPBC Act. The independent review will seek to better understand how farmers and industry groups view the time and cost implications of fulfilling their obligations under the EPBC Act, and how they leverage (or do not leverage) MNES on their properties as offsets. Options for improved communication and streamlining of regulatory processes will be considered.*

Response:

This is not possible under Western Australia's Environmental Protection Act and Regulations.

Offsets are paid in monetary value to the Department of Environment and then the Department purchase offset land or fund programs as they see fit. The individual developers and land owners have no say in this process for approvals.

Once land is locked up by State Environmental Laws it is deemed to be illegal clearing to allow livestock to graze in these areas.

Any land that is determined to be Environmentally Sensitive under the Act doesn't allow for on ground proofing the decision is made by broad mapping – and very broad definitions.

Western Australian farmers have had a rough deal on environmental issues via the State Government in response to the COAG agreement to stop clearing Native Vegetation. The track record of off-sets had been opaque and arbitrary; entirely unconvincing of achieving any real gains in environmental outcomes or respecting any property rights. If the Federal Government wishes to deal in off-sets it should review all the areas the State has taken without any consideration for the land holder and make good those rights taken for Federal benefit.

The last thing most farmers need is to open a Pandoras box of leading landholders through a morass of procedural fairness and natural justice issues executed by Cavalier Officers.

2.3. Possible impacts of the listing process for threatened species and ecological communities

In the case of the 'Natural Temperate Grassland of the South Eastern Highlands' ecological community, the 2016 revised listing focused protection on the best examples of remnant grassland, by introducing condition thresholds to exclude areas of lower quality, and hence reduce the potential area subject to the EPBC Act in the Monaro region. As for other ecological community listings, these condition thresholds were introduced primarily to provide more certainty for landholders about when the listed grassland is present and to explicitly exclude areas of farmland that are of less significant conservation value. However, there is evidence that the new condition thresholds have been confused by some people with thresholds for significant impact (see Section 2.4). Condition thresholds are welcomed by some stakeholders, who are looking for certainty around when an EPBC matter is present, but the Monaro example also highlights that it can be difficult for some farmers to identify when they may have an area on their property that is subject to the EPBC Act as a threatened ecological community or as threatened species habitat. Determining whether the EPBC Act applies to a particular activity due to the continuing use exemption or significant impact considerations can also be difficult.

The independent review will seek to better understand farmer and industry group concerns in relation to listing processes and outcomes, and pursue suggestions for how to ensure that clear and relevant information is available to, and discussed with, potentially affected farmers.

Response:

Unfortunately, the difficulty of identifying area's comes from unclear, unconcise, broad and interpretive definitions within the State and Federal Acts.

In the Federal Act you refer to Ramsar Wetlands, however in the State Act a wetland is defined as;

'wetland means an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland, tidal flat or estuary'

This definition covers any piece of land, puddle, man-made dam or pond.

2.4. Determining how 'significant' an impact is as part of a risk based Approach

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.

*Another tool available to the Australian Government under the EPBC Act, which can be used to facilitate a risk-based approach to considering impacts on MNES, is the **strategic assessment**. Strategic assessments are landscape scale assessments. Unlike project-by-project assessments, which look at individual actions, they can consider a much broader set of actions, such as a large urban growth area that will be developed over many years. Some farmers believe that strategic assessments should often be undertaken in preference to individual project assessments for agricultural developments, as they are more suited to the breadth and nature of the impacts often associated with agricultural development. However, strategic assessments are costly and need to be led by an authority responsible (such as a state or territory government or industry body) for the adoption and implementation of the policy, plan or program that would oversee the approved agricultural actions.*

The independent review will seek to better understand how farmers are assessing the significance of proposed agricultural developments and how they are engaging with and interpreting available advice from DoEE and others. Options for closing the gap between the scientific nature of available conservation advice and the on-ground experiences of individual farmers will be considered, as will options for increased use of the strategic assessment mechanism.

Response:

Unfortunately State Environmental Legislative undermines Federal Environmental Legislation. The removal of a paddock tree is a complicated process and involves many layers of 'red' and 'green' tape.

2.5. Alignment between State and Commonwealth law

*The EPBC Act is Commonwealth legislation, but management of native vegetation is primarily the responsibility of State and Territory or local governments. Some farmers are frustrated by poor coordination between Commonwealth and State regulatory authorities in the provision of conservation advice and approvals for farmers. Significant effort has been expended in recent years to make progress on this front. **Assessment bilateral agreements**, which provide for a single environmental assessment process conducted by a State or Territory government, resulting in a report to the Australian Government assessing the likely impacts of an action on MNES, have been agreed with several States and Territories. As at April 2018, the Australian Government and seven State and Territory Governments have signed a memorandum of understanding to develop and implement a **Common Assessment Method** (CAM). A key aim of the CAM is to align listings of threatened species and ecological communities across jurisdictions. New South Wales and the Australian Capital Territory have agreed to apply the CAM to ecological communities. Another proposal to streamline interactions between Commonwealth and state and territory systems is a One-Stop Shop for environmental approvals, which would accredit state or territory planning systems under the EPBC Act to create a single environmental assessment and approval process for MNES. The establishment of a One-Stop Shop is government policy but has not yet received the support of the Australian Government Senate and some State and Territory governments that is required to implement this policy.*

The independent review will seek to better understand how farmers are engaging with multiple levels of government in applying for and receiving approvals and participating in assessment processes. Practical options for improving coordination, in addition to existing bilateral agreement processes already in place, will be considered.

Response:

Any develop application involves multiple agencies and departments. These departments commonly have conflicting legislation. If Department of Fire and Emergency Services demands certain criterion it could be illegal under the Environmental Legislation to comply with this criterion.

Therefore, bringing the project to an end before it has started, as neither department will repeal its legislation.

A 'one stop shop' was the slogan for the MoU on Native Vegetation Clearing under the Soil and Land Conversation Commission in the leadup to the amendments to the Western Australia Environmental Protection Act. It was a contorted affair where one Magistrate commented on a case of alleged clearing: "neither the Minister nor her Department appear to understand the process for the law.'

The best thing is either the Federal Government take total control of the Environment Portfolio solely or remove themselves from it completely and insist that the States Environmental Legislation protects Private Property Rights. The law needs to be straightforward, simple and consistent.

3. Key questions for consultations

There are several key questions that will guide consultations with farmers, industry groups and other interested parties during the independent review. These questions should also be considered by those individuals and organisations seeking to make a public submission to the independent review.

Submissions framed around these key questions will assist consideration and integration of ideas and feedback from stakeholders as appropriate.

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. *As State Legislation was formed from the EPBC Act we deal with it on a daily basis for normal everyday agricultural practices.*

2. Do you feel that you have an adequate understanding of your obligations under the EPBC Act? *The EPBC Act and the State Environmental Legislation conflict and this is just another layer of bureaucracy to deter development at any level.*

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? *Trying to gain insight or information is not the easiest using the DoEE website or the Act it is unclear, unconcise, broad and interpretive. An attempt to find the actual EPBC Act on the DoEE website was unsuccessful.*

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

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.

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? *In Western Australia if you were to find any of these on your property and advise the authorities you would lose your land and the right to use it for no compensation. While land may be locked up due to it being pristine environment for the 'public benefit' it doesn't mean it qualifies to being pristine enough for purchase under the 'offsets' payments.*

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)? *No in Western Australia having any threatened species or ecological communities would result in the property being locked up and it would be illegal to do anything on the property other than fence it off. There is no compensation for the loss of land or productivity of the land.*

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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?

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? *Stop using the environment legislation to take productive land out of production. If the environmental legislation is invoked, then full fair and just compensation must be paid.*

Take away current individual State Environmental laws and make one clear and concise Federal Environmental legislation.

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

It is unfortunate that environmental officers when dealing with landholders/farmers have proven to have an adversarial approach. They also have no experience of the Agricultural industry. They also have shown a questionable knowledge of the Act.

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