



# HUMANE SOCIETY INTERNATIONAL

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Dr Wendy Craik  
Agriculture Review (Aither)  
Level 2, 45 Exhibition St  
Melbourne VIC 3000

By email to: [agreview@aither.com.au](mailto:agreview@aither.com.au)

20 June 2018

Dear Dr Craik,

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

Humane Society International (HSI) is the world's largest conservation and animal welfare organisation with more than 10 million supporters globally, including 70,000 in Australia. HSI has a long history of engaging with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), beginning with supporting its passage through Parliament. At the time we felt that, on balance, the EPBC Act was a substantial advance on the laws it was replacing, especially considering that with its enactment the Federal Government was able to take responsibility for environmental impact assessment of actions affecting World Heritage sites, Ramsar wetlands, Threatened Ecological Communities, and threatened and migratory species, as well as the Commonwealth marine environment and nuclear actions, without relying on indirect triggers.

Following its commencement HSI quickly moved to utilise the Act to its full potential through public scientific nominations to have eligible Matters of National Environmental Significance (MNES) assessed for listing under the Act's schedules. This successful program has resulted in HSI being the nominator of more than 70 threatened species and 28 of the 78 threatened ecological communities currently listed under the EPBC Act, as well as two ecological communities that were disallowed in 2013 and the large majority that are currently under assessment by the Threatened Species Scientific Committee (TSSC) or awaiting a listing decision from the Minister for the Environment and Energy. We undertake this substantial body of scientific nomination work at no cost to government and in service of the public good. Despite these considerable efforts, we estimate that less than half of eligible threatened ecological communities nationwide are currently afforded protection through the Act. We recommend a substantial increase in the budget of the Threatened Ecological Communities Section of the Department of the Environment and Energy (DEE) to facilitate the listing of all eligible ecological communities for biodiversity conservation and planning purposes.

HSI is also in direct contact with a number of agricultural landholders through our Wildlife Land Trust private land conservation and Humane Choice farm certification programs. Many of the several hundred participants in these programs have benefited from land management funding through initiatives such as the Federal Government's now discontinued Environmental Stewardship Programme (ESP), and producers involved with these programs have not raised any issue with the EPBC Act or other environmental safeguards interfering with the management of their properties.

HSI appreciates the opportunity to provide this submission to the *Review of the interaction between the Environment Protection and Biodiversity Conservation Act 1999 and agriculture and food production* (hereafter referred to as 'the Review'), though our considerable experience with the Act

leads us to believe that the Terms of Reference are unnecessarily broad in extending to considerations such as listing processes. It is also HSI's view that the EPBC Act rarely significantly impacts on agricultural activities due to concessions built into processes, while MNES listings have seen hundreds of millions of dollars in management funding delivered to rural communities.

The listing of MNES such as Threatened Ecological Communities (TEC) allows for the protection of important habitat for many species, including efficiencies in threatened and migratory species protection, and encourages the targeting of scientific research, project funding and community efforts in areas of the environment in most need of threat abatement and restoration. It can also be a landscape (or seascape) approach to the protection of ecosystem functions and services. Listing threatened matters is essential for good planning, ensuring development impacts on our species and ecosystems in most need of protection are properly considered, mitigated and ideally avoided.

#### **Productivity Commission Inquiry Report on the Regulation of Australian Agriculture**

Included within the scope of the Review's Terms of Reference and often cited as a significant influence in it being initiated is the *Productivity Commission Inquiry Report on the Regulation of Australian Agriculture*. HSI would like to bring your attention that relevant sections of that report focus on the Act's interaction with agriculture, such as this paragraph from page 114:

*"The number of agriculture referrals is low. The Department of the Environment said that: There are fewer referrals from the farming sector than in any other sector. Agriculture and forestry made up just 2% of all referrals received under the EPBC Act from 1 January 2000 to 4 March 2013. And agricultural projects are rarely required to proceed to assessment. In the period 1999 to 2014, there were 54 agriculture-related projects referred for assessment, of which eight projects were subject to conditions."*

HSI also disputes the example of onerous assessments presented within the report (page 135) pertaining to a blueberry farmer who erroneously submitted "19 pages of application information and an independent expert report on proposed environmental impacts - which included 22 pages of detailed text, 18 [geographic information system] maps, 19 pages of detailed lists of potential species on site and likelihood of occurrence site." It is incorrectly stated in the report, with the example having been taken from a National Farmers Federation submission, that this was all required information. That the outcome of the referral was that "the action was 'not controlled' and as such Commonwealth approval was not required" shows that this documentation was not required and that it is not an issue of a burdensome EPBC Act but a misunderstanding about the Act's requirements. Allocating more resources to explaining the Act to landholders is the solution, though it should be noted that the National Farmers Federation already has a Liaison Officer on secondment from the Australian Government to provide services direct to the agriculture sector in the area of environmental law who is tasked with ensuring farmers are aware of such requirements.

#### **Threatened Ecological Communities Delivering for Rural Landholders**

Documents obtained by HSI through Freedom of Information requests show that for several EPBC Act listed eucalypt woodland TECs occurring in agricultural regions, hundreds of millions of dollars in stewardship funding has been provided to rural landholders. And just six agricultural projects were referred for potential impacts on the TECs, none of which resulted in development refusal.

**Table 1. EPBC Referral and compliance actions, and Australian Government environmental funding targeted to key ensoypt woodlands listed as nationally threatened under the EPBC Act.**

Details of EPBC-listed ensoypt woodlands in rural areas.			Species likely to use TEC as habitat		Indicative No. of EPBC referrals within range of TEC (16 July 2000 - 7 Aug 2017)			Compliance	Australian Government funding
Name of woodland TEC; Jurisdiction	Year listed	Estimated Area lost (ha) and % decline *	a) No. of EPBC-listed species	b) Threatened Species Strategy targets	a) Total referrals	b) No. classified as "agriculture" sector	c) No. classified as "agriculture" & with TEC present	Rural sector EPBC Act enforcement	Examples of key national funding since listing
<a href="#">Box Gum Grassy Woodland</a> (ACT, NSW, Qld, Vic.)	2000	4,595,000 (92%)	28	Swift parrot; Plains wanderer; Ragwort honeyeater	908	4	0	0	\$111,854,972 - Environmental Stewardship Program - 221 farmers in NSW and Queensland A key target of funditions provided as regional Landcare and other grants. \$804,410 - 20 Million Trees Program Round 2 \$60,000 - Threatened Species Recovery Fund (2017).
<a href="#">Peppercorn Box Grassy Woodland</a> (SA)	2001	885,000 (98%)	6	Silver daisy-bush	34	0	0	0	\$4,738,182 - Environmental Stewardship Program - 17 farmers A key target of funditions provided as regional Landcare and other grants.

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<a href="#">Cory Box Grassy Woodland</a> (NSW, SA, Vic.)	2010	3,001,000 (85%)	30	Silver daisy-bush; Mullerflow; Ragwort honeyeater; Red-capped black-cockatoo; Swift parrot	248	1	0	1 (Property near Melbourne)	\$89,001 - 20 Million Trees A key target of funditions provided as regional Landcare & other grants. \$20,000 - Landcare 25th Anniversary Grants (2014-15)
<a href="#">Coolibah Black Box Woodland</a> (NSW, Qld)	2011	2,494,000 (85%)	9	None	246	0	0	0	A key target of funditions provided as regional Landcare and other grants.
<a href="#">Eucalyptus Peppercorn Blue Gum Woodland</a> (SA)	2013	10,700 (91%)	6	None	2	0	0	0	A key target of funditions provided as regional Landcare and other grants.
<a href="#">Eucalypt Woodland of the W.A. Woodchuck</a> (WA)	2015	5,238,000 (85%)	87	Mullerflow; Numbat; Western quail; Woylie	10	1	0	0	A good target for future funding rounds of the National Landcare Programme.

\* Note that the conservation status of these woodlands is not just based on area lost, it typically is related to the degradation and loss of function and biodiversity is remaining remains due to a variety of factors across the full range e.g. loss of connectivity; loss of diversity of flora and fauna; increase in weeds and feral animals.

That documents were submitted to check on potentially significant impacts to MNES on six occasions before each project was found not to be impacting on TECs present in excess of prescribed thresholds is surely a reasonable regulatory requirement given the TEC's importance to biodiversity conservation and the retention of natural capital, as well as the hundreds of millions of tax payers dollars they have delivered to rural areas for land management purposes. The overwhelming evidence is that these ecological community listings deliver substantial benefits to farmers with extremely little regulatory intervention, and provide additional benefit to rural communities by ensuring large mining and infrastructure projects are properly scrutinised.

These FOI documents also revealed what HSI believes to be erroneous arguments used to oppose the listing of TECs from the NSW Farmers' Association and other groups during the consultation phase of the listing process for the *Poplar Box Grassy Woodland on Alluvial Plains* ecological community, as well as the Department's briefing to the Minister in response to the allegations. *Poplar Box Grassy Woodland on Alluvial Plains* was nominated for listing by HSI in 2013, with the ecological community being recommended for listing by the TSSC. However, the Minister has unprecedentedly deferred his listing decision three times under s194(Q) of the EPBC Act:

*Comment: The NSW Farmers' Association considers EPBC listings are unnecessary duplication of state processes.*

*Department Response: The EPBC Act is not a vegetation management law, which already exist at the State level. Rather, National listings are intended to protect key elements of Australia's nature and*



*heritage identified as being nationally significant and to fund management and restoration activities. State native vegetation regulations cover all native vegetation, while national ecological community listings complement state vegetation laws by providing specific protection to select Australian species and ecosystem functions that are at most risk of extinction.*

*Comment: Farmers have little understanding of EPBC requirements.*

*Department Response: If listed, the Department would encourage the NSW Farmers' Association and National Farmers' Federation to assist in drafting and distributing a farmers' information guide which would be aimed at explaining how to identify the ecological community and the implications of listing in plain language.*

*Comment: It is unclear what a listing would achieve.*

*Department Response: The purpose of listing ecological communities is to improve awareness of, protect and restore the most threatened ecosystems in Australia. EPBC listed ecological communities are taken into account during major new developments (most likely large mining and infrastructure projects); and encourage and target conservation efforts, including through Australian government programs directed to farmer and other community groups such as the National Landcare Program.*

*Comment: There was limited information and no quantified assessment about the extent, distribution and quality of the ecological community.*

*Department Response: This assessment was undertaken using the best available data from state agencies, scientific literature, and advice received from consultation. All relevant information has been presented with sources. Estimates of extent and distribution across the range of the ecological community are available, as detailed in the conservation advice. The description was clarified and has been presented as simply as possible, given the complex nature of most ecological communities.*

The exchange highlights three areas that can be improved during listing and management of MNES: communications with and materials provided to relevant landholders; clarity as to where a TEC may occur through more accurate mapping; and stewardship funding. DEE typically creates landholder guides for TECs in agricultural regions, though further resources could be directed to ensuring these are understood by landholders. More accurate mapping would give clarity to landholders as they would have a more accurate idea of what TECs they should be considering. This would require significant investment due to complexity and the backlog of listed communities. Furthermore the claim of lack of benefit from a community being listed is reflective of the lack of funding opportunities currently available to land managers to incentivise conservation. HSI recommends a restoration of environmental stewardship programs. As EPBC Act listings don't affect existing practices, financial incentives can encourage changed management.

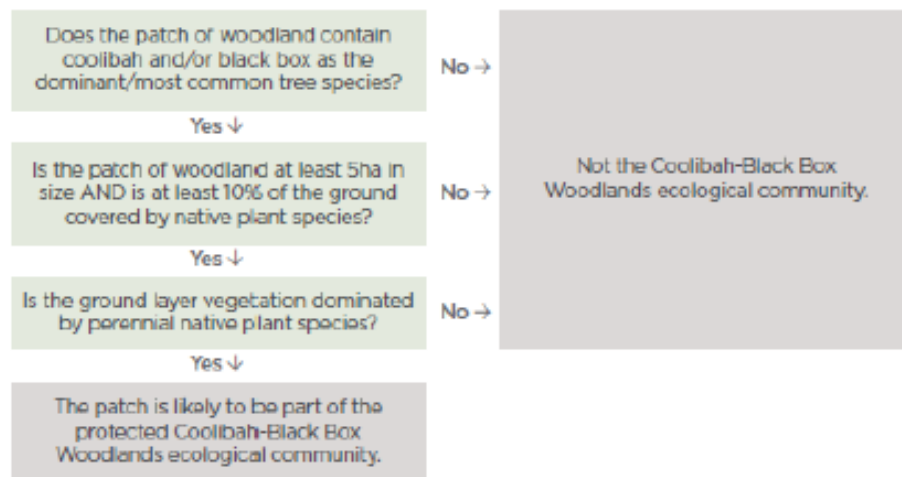
#### **Generous EPBC Act Agricultural Exemptions**

In terms of conservation, the treatment of EPBC Act TECs once listed leaves much to be desired. It is HSI's view that the EPBC Act is in fact too lenient on agricultural activities, with generous exemptions for continued use, Condition Thresholds, Key Diagnostic Characteristics, Tests of Significance and broad Ministerial discretion resulting in insufficient consideration of MNES during impact assessments with only the most extreme cases triggering the EPBC Act's involvement.

#### **Condition Thresholds and Key Diagnostic Characteristics**

During assessment of a nominated ecological community, the TSSC determines Key Diagnostic Characteristics and Condition Thresholds which are included in Conservation Advices. These can be used for conservation planning, but are more commonly used during proposed developments to determine if habitat to be impacted upon is first of all the listed TEC, and secondly whether it is of sufficient size and condition to be considered a MNES and warrant referral to the Minister.

The HSI nominated TEC Coolibah-Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions, which were listed as Endangered in 2011, offer an example of how these Key Diagnostic Characteristics and Condition Thresholds are used in the event of a listing. An information sheet was developed by the Department titled '*Farming and nationally protected Coolibah-Black Box Woodlands*', which provides the following flowchart to assist landholders in determining whether or not referral to the Minister is required for the action they wish to take:



**Figure 1.** Condition thresholds from EPBC Act Information Sheet Farming and nationally protected Coolibah-Black Box Woodlands

Instances of the community that are under five hectares in size, or approximately seven football fields, even if in excellent condition, can be safely cleared without referral to see if EPBC Act approval is needed. A concerning situation when along with the Key Diagnostic Characteristics, the TSSC's Conservation Advice for the TEC also lists clearing and fragmentation as the primary threat to its existence, with more than 2,500,000 hectares of the community being cleared since European settlement.

In this way Key Diagnostic Characteristics see many patches of remnant habitats, as well as recovering vegetation, considered regular vegetation rather than a MNES. As a result only the very best bits move past this preliminary stage of determining whether a development is able to proceed, bringing into question the issue of long-term TEC recovery - how can severe declines even begin to be reversed when all small remnants and regrowth can be destroyed with impunity? HSI sincerely hopes that the outcomes of this Review do not include lowering this bar even further.

#### Test of Significance

The significance of those remnants that pass the above stage and are therefore likely to be a MNES is then to be considered by the proponent, who assesses the project using Significant Impact Guidelines to decide whether or not they should submit a referral to see whether EPBC Act approval is required. If the proponent comes to the conclusion that the development is unlikely to have a significant impact on the TEC then they may proceed without further scrutiny - recourse for an incorrect determination occurring only if investigated by the EPBC Act compliance unit.

If the development is referred to the Minister as potentially impacting on a MNES in a significant manner, the decision on whether further approval is required is at their discretion. Should the Minister decide that it is, they can request further assessment such as the development of Species and Environmental Impact Statements, which are put out for public consultation to assist the Minister in deciding whether to approve the development or not. This Test of Significance is also only applied to Endangered and Critically Endangered TECs, as even the most important remnants of Vulnerable TECs are not considered MNES, a situation HSI has long campaigned to reverse.

#### Minister's Decision

If the Minister decided further assessment was required for approval and the process has passed through the public consultation phase, Section 139(2) of the EPBC Act states that if:

- (a) *the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and*
- (b) *the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community;*

*the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.*



In HSI's view this wording allows far too much discretion, with almost all developments that go through the process and are found to significantly impact upon a MNES still being given approval.

#### **Independence of the Listing Process**

The listing process for EPBC Act MNES is extremely thorough and intended to be scientifically independent and rigorous. First a matter needs to be identified and its likelihood of meeting threatened thresholds under the EPBC Act determined, before a detailed nomination is prepared. After the annual deadline for nominations closes, the Department assesses nominations for eligibility prior to the TSSC suggests a Proposed Priority Assessment List to the Minister. The Minister then decides on the Finalised Priority Assessment List (FPAL) which is announced along with an assessment deadline for the TSSC to compile and provide advice. These assessment deadlines are often extended, with advice taking up to five years in some cases, and once provided they require the Minister to make a listing decision within 90 business days.

The EPBC Act binds the Minister for the Environment to consider only the threat status of an ecological community in deciding whether or not to list it, however s194(Q) of the Act allows them to defer this decision for any reason – a loophole currently being used by Minister Frydenberg for two ecological communities ('Poplar/bimble box grassy woodland on alluvial plains' and 'Tasmanian Forests and Woodlands dominated by black gum or Brookers gum (*Eucalyptus ovata* / *E. brookeriana*)') and a threatened species (the spectacled flying-fox). This extremely rarely used provision allows for politically motivated delays of the scientific process and in HSI's view must be removed from the Act. Documents received through a Freedom of Information submission by HSI show that lobbying from farming groups and Coalition colleagues occurred prior to the Minister deferring these listings.

Allowing further interference in what should be a robust and objective scientific process would put Australia's precious biodiversity at even greater risk than currently faced and damage our global reputation and ambition to align with standards set by the International Union for the Conservation of Nature (IUCN). Considerations such as socio-economic factors must not come into play during the listing process, whereas their consideration is amply provided for during the assessment of development applications. Matters are either threatened or not, and listings are important for their ongoing management and long-term sustainability.

#### **Retrospective Changes Must Not Be Considered**

HSI does not support any weakening of the EPBC Act or its processes in response to this review. If changes are considered, it is important that they are not applied retrospectively for both listing and compliance purposes. Some matters that are currently awaiting a decision from the Minister have been in the assessment process for more than six years with Conservation Advice prepared under current guidelines. All matters under assessment should be allowed to continue through the process as it was at the time of their prioritisation for efficiency.

Just as importantly any active EPBC Act agricultural compliance cases must be completed as the law currently applies. Media reports suggest that in some instances high profile farmers have lobbied the Nationals over their concerns at being investigated under the EPBC Act, and that the Nationals urged Minister Frydenberg to intervene – potentially a factor in this review being initiated. It would be highly concerning if outcomes from the Review could influence these investigations.

#### **Areas for Potential Improvement**

Along with MNES being properly protected in agricultural regions, stewardship funding should be provided to property owners with MNES present on their land to assist with management actions to deliver increased productivity and public good through the provision of ecosystem services. This Government investment could be relatively modest and provide very high value biodiversity conservation, and is a vital step to halt the decline of ecosystems on the brink. A good model for such funding already exists through the successful but now halted Environmental Stewardship Programme, which provided long-term support for private landholders to maintain and improve the condition of MNES.

Increased funding must also be provided to complete the list of the most threatened ecosystems in Australia before they are lost to development, and allow for significant post-listing action. This would include ensuring recovery plans are developed and implemented in a timely fashion, and newly and already listed TECs are mapped in more detail following listing. This mapping would

identify the community's regions of highest condition and connectivity, as well as areas that overlap with habitat of threatened species - those areas most important to retain.

By providing resources for the Department to map communities and threatened species habitats in detail, more certainty will be given to the agriculture sector as to what matters they are required to consider when considering a development action. At present the EPBC Act Protected Matters Search Tool provides information on what MNES may potentially be present, though the broad scale 'range' mapping leads to it picking up other matters unlikely to occur. If only relevant MNES were required to be considered by a farmer, understanding obligations would be far more straightforward.

In summary, it is HSI's view that publicity of issues between the interaction of the EPBC Act and agriculture sector are disproportionate with their true impacts, with listed MNES providing rural communities with financial support for management and increased resilience through encouraging the retention of natural capital. Independent scientific processes must remain so for credibility and good management of biodiversity and development planning. If any further information is required regarding this submission, please contact me on 1800 333 737 or at [evan@hsi.org.au](mailto:evan@hsi.org.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Evan Quartermain', written in a cursive style.

Evan Quartermain  
Head of Programs