

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

Thank you for the opportunity to make a submission to this Review. I would like to make comments with regards to the Following Terms of Reference in a private capacity informed by my role as Chair of the Threatened Species Scientific Committee (TSSC) since late 2011.

My submission refers to a subset of the Terms of Reference as outlined 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**

Comment:

As required by the EPBC Act, the TSSC makes scientific recommendations to the Minister with regard to the listing and delisting of species and ecological communities under the Act. The Act is prescriptive about the categories and criteria to be used and the TSSC scrupulously follows those requirements in their assessment using a rigorous, scientific, evidentiary approach.

The Committee typically meets four times each year. The official meetings run for three days in each February/March, June and September plus a two day meeting in November. The three-day meetings are typically preceded by an 'informal meeting' of either half a day or a full day. These 'informal meetings' enable the Committee to hold workshops relevant to their Terms of Reference and to discuss complex and strategic issues. For example, the February 2018 meeting was preceded by a one-day, independently-facilitated, expert workshop to review the latest scientific evidence on the conservation status of Leadbeater's possum. The workshop comprised a series of panel discussions with the key scientific researchers (ANU, the Arthur Rylah Institute, University of Melbourne, VicForests etc) on the questions that the Committee must answer in preparing its Listing Advice. The meeting was also attended the Chair of the Victorian Scientific Advisory Committee, Professor Emeritus Barbara Evans. After the panel discussions, the TSSC met with the Professor Evans and relevant Australian Government Departmental staff to summarise its learnings from the day.

One of the Committee's primary roles is to provide rigorous scientific review and input to the draft Listing /Delisting Advices prepared by the specialist Departmental Officers. The Committee also takes into account the public submissions resulting from the consultation processes to identify and incorporate relevant additional evidence from those sources. The Committee's annual priorities and work plans are determined through a nomination and prioritisation process prescribed by the EPBC Act. The Committee provides the Minister with an annual Proposed Priority Assessment List which the Minister may amend before it becomes the Finalised Priority Assessment List. These commitments are increasingly constrained by the capacity of the Biodiversity Conservation Division, which has suffered budgetary cuts and consequential significant staff losses in recent years, a situation that I understand is about to get worse.

The Committee and Departmental staff have been active in looking for, and implementing, approaches to enhance the efficiency of the listing process (within the constraints prescribed by the Act).

Two examples are:

1. **The Intergovernmental Memorandum of Understanding that has now been signed by the Commonwealth and most of the states (CAM MOU).** This MOU is gradually leading to a consistent scientific approach to the assessment and listing of nationally threatened species across the Australian jurisdictions and to the legislative changes required for the harmonisation of listing categories and criteria based on the best practice standard developed by the International Union for Conservation of Nature (IUCN) with some relatively minor amendments to suit the Australian context e.g. potential for a Conservation Dependent listing.

I understand that only South Australia has not signed the CANM MOU but is participating in the cross-jurisdictional meetings.

Using the Common Assessment Method, species are assessed using the EPBC-relevant IUCN criteria, categories and thresholds. In addition, species of fish may also be assessed and listed as Conservation Dependent, according to the use and definition of this category under the EPBC Act. A Conservation Dependent Listing requires considerable negotiation with the relevant Commonwealth and/or state fisheries management agencies and GBRMPA for species occurring in the GBR. Members of the Committee with marine expertise inform these negotiations.

When an Australian jurisdiction undertakes an assessment using the Common Assessment Method, the outcome of that assessment may be adopted by other states and territories where the species occurs, as well as the Australian Government (under the EPBC Act). This approach means that a species is only assessed once and is listed in the same 'nationally threatened' category across all relevant jurisdictions. In collaboration with the various state committees, the Committee is adapting its processes to achieve the efficiencies enabled by the CAM MOU. There are still a few teething problems but these issues are being resolved. A significant backlog of species remains to be so-assessed.

The CAM makes a substantial contribution towards aligning state and commonwealth listings, and removes double (or even triple) assessment processes, and thus reduces the regulatory burden for agriculture and other sectors of the community. However, the speed with which this process can be rolled out is affected by budgetary constraints.

2. **The Species Expert Assessment Plan (SEAP) process.** Prompted by the Bird Action Plan developed by Birdlife Australia for IUCN, the SEAP process was developed by the Committee in association with the Department to encourage and support expert groups to undertake status review assessments of a particular taxon or group of species and submit a status report to the Committee for consideration that may result in recommendations to amend the EPBC list of threatened species.

A status review by a group of scientific experts of a particular taxon or group of species can help to ensure that advice for those species are the most current and accurate available, and provide for collective expert discussion and decisions regarding any uncertainties. The development of a status report by such groups is an efficient method of maintaining the accuracy of the list of threatened species under the EPBC Act and ensures that protection through listing is afforded to the correct species. The SEAP process speeds up listing assessments considerably, partly because the review is carried out external to the department and also because expert opinion is collected comprehensively (a step normally carried out during the public consultation process, but much less comprehensively), reducing the need for iterative drafting of listing assessments.

Areas for further efficiencies currently under discussion include:

1. **Listing Reviews.** Knowledge of species and their status improves continuously, yet many of the species listed under the EPBC Act do not regularly have their status reviewed. Government resources are not generally available to carry out regular and comprehensive reviews of all listed species and some listings are inevitably out of date. An on-going concern to the Committee is that the list is also extremely biased to higher vertebrates and plants. The Committee is working with the NESP Threatened Species Recovery Hub to consider ways in which this bias might be addressed.
2. **Ecological Communities.** The CAM MOU can also include ecological communities but only NSW and the ACT have signed onto this aspect. Both these jurisdictions recently updated their legislation regarding ecological communities. Other jurisdictions would require legislative change to adopt the CAM for ecological communities

It is worth noting that unlike the Commonwealth, NSW has already adopted the international standard for listing ecological communities in legislation.

As TSSC member Professor David Keith (who played a leading role in developing the relevant IUCN standards) has pointed out: *'Progressing the adoption of international standards in ecosystem risk assessment would do much to strengthen the link between policy and ecosystem science. The many benefits include:*

1. *A more rigorous connection with risk assessment theory will make listings more robust to new information and challenge;*
2. *Ecosystem-specific diagnosis, which the international standard promotes, overcoming limitations of one-size-fits all approaches to assessing the 'condition' or 'integrity' across ecosystems with diverse functions and traits;*
3. *Consistent environmental reporting across Australian jurisdictions and internationally;*
4. *Leveraging support infrastructure including application guidelines, analytical tools, expert networks, typological frameworks for ecosystems, etc.'*

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

I think that it could be appropriate to propose an intergovernmental MOU for harmonisation between at least some aspects of the EPBC Act and each state and territories' native vegetation management regimes. In fact, part of the apparatus required for this is already in place under the current MoU, with opt-in clauses to promote harmonisation of listing methods for ecological communities, many of which equate with vegetation types. I expect that comprehensive harmonisation would be much harder to achieve than for species listing because of the associated constitutional and legislative complexities. The constitutional factors will provide a significant impediment to full integration of Commonwealth and state processes. I understand that the 1997 Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment restricts the Commonwealth's role with regard to the environment to Matters of National Environmental Significance, leaving land management issues to the states. There is some cross-jurisdictional, officer-level coordination with respect to information exchange at present. Perhaps an Intergovernmental MOU could be drafted to ensure increased collaboration with information and outreach with specific emphasis on the agricultural sector.

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.

I think that the best opportunity for statutory change will be as part of the comprehensive and coordinated changes that are likely occur as a result of the regular decadal review cycle for the EPBC Act, which comes up by October 2019. Meanwhile, the major problem of effective engagement between the Department and the agricultural sector and politicians in rural electorates could be addressed without changing the Act.

Listing ecological communities can result in positive benefits for affected landholders. Listing can improve access to Commonwealth natural resource management funding to address threats that impact on both threatened biodiversity and agriculture. I understand that the continuing use provisions of the EPBC Act mean that listed ecological communities typically have no negative impact on the day-to-day operations of the agricultural sector. However, some in the agricultural sector clearly see this situation very differently and I expect it is difficult to disentangle their concerns about the perceived impacts of the EPBC Act from their concerns about the perceived impacts of state legislation.

I understand that very few EPBC referrals are received for actions in agricultural operations and that almost all referrals for ecological communities are due to urban development and major infrastructure projects rather than agricultural activities *per se*. I am not convinced that these statistics have been adequately promoted by the Department and note that the Department currently has limited capacity (both expertise and financial) for such extension. The Department currently produces information about ecological communities specifically targeted to the agricultural sector, but I believe that such materials are largely developed in a regulatory context and promulgated by the department's Environmental Standards Division. Biodiversity Conservation Division staff are not extension officers but they work *ad hoc* with the Environmental Standards Division and/or Office of Compliance to undertake consultation in targeted farming areas (e.g. information sessions in the Victorian Volcanic Plains and Western Australian Wheatbelt coinciding with ecological community listings).

I understand that funding for a joint position between the Department and the National Farmers' Federation (NFF) was withdrawn several years ago, despite the NFF asking for a second such position. I think that reinstating such position(s) could go a long way towards overcoming the present problems, especially if combined with an intergovernmental MOU that enabled increased collaboration with state government extension with the agricultural sector. This approach could help stakeholders differentiate the EPBC Act's requirements and opportunities with those resulting from state legislation. Explaining these complexities could also form part of the expanded role for the Threatened Species Commissioner discussed below.

In addition, I would like to suggest that a compensation scheme be considered for agricultural stakeholders whose business is unexpectedly and suddenly impacted by mobile threatened species as a result of factors beyond the landholder's control. e.g. the impact of flying foxes moving into an area as a result of the clearing of their food trees in other areas. I understand that there are some state subsidies for protective netting but such netting would presumably be useful for chronic impacts only.

The TSSC has suggested that the Department consider whether more should be done to provide information to local members of parliament and to liaise with state Ministers. In designing communication materials, the TSSC has suggested that the Department use stories of farmers involved in stewardship programs, who could advocate the increased economic performance and

quality of life associated with their engagement in the stewardship program e.g., the economic benefits of controlling weeds, which affect grazing, as well as impacting on native species.

4) In making recommendations and advising on new initiatives, take into account the objects of the EPBC Act.

See my suggestions on expanded extension and engagement coordinated with the states above.

In addition, I suggest that a **new approach to recovery planning** be considered, developed and legislated, perhaps in the context of the upcoming review of the EPBC Act. I think the present system of recovery planning is broken due to the shortage of funding for implementation and the limited human capacity (both internal and external to the Department) to address the backlog associated with making and reviewing recovery plans.

A statutory approach based on the coordinated conservation management of threatened species and ecological communities in each bioregion with bioregions prioritised by an agreed transparent process could be worth scoping. This approach would enable the economic benefits (especially jobs) for each priority bioregion to be estimated and advice provided to the relevant policy makers and could also facilitate coordinated outreach to the agricultural sector.

The EPBC Act currently enables bioregional plans to be made for bioregions that are within Commonwealth Areas and allows for the Minister on behalf of the Commonwealth to cooperate with a state or self-governing territory or any other person to prepare a bioregional plan for an area that is not wholly within a Commonwealth Area. A bioregional plan is not a legislative instrument at present (but presumably could be made so). Currently, the Minister must have regard to a bioregional plan in making any decision under the EPBC Act to which the plan is relevant. The Hawke Review recommended expansion of the role of bioregional plans so that they are used more often and strengthening the process for creating these plans, so they are more substantial and robust. That Review further recommended that the Act be amended to (i) change the terminology from 'bioregional plans' to 'regional plans'; (ii) allow the Commonwealth to unilaterally develop regional plans; and (iii) ensure that the process for delineating a region for the purpose of the Act is flexible. It is important that such plans are sufficiently flexible to enable the incorporation of new information on threatened species and ecological communities to accommodate the realities of changes in status and distributional information. Such plans would be further strengthened if they were made statutory instruments although this change was not suggested by the Hawke Review. However, Hawke did suggest that the EPBC Act be amended to: (1) allow greater flexibility in the development of recovery plans particularly to allow for their development at regional scales; and (2) create opportunities for better linkages to funding initiatives.

Another approach for coordinated, high impact conservation management would be to invest much more in listing Key Threatening Processes (KTPs), and preparing and implementing Threat Abatement Plans (TAPs) and to reconsider the status of these instruments under the EPBC Act. As pointed out by the Hawke Review, in order for this approach to be effective the EPBC Act would need to be amended to: (1) better define KTPs; (2) allow greater flexibility in the criteria for eligibility for listing a KTP; and (3) allow strategic identification of KTPs at a range of scales. Similarly the EPBC Act could be amended to provide for greater flexibility in the development and implementation of TAPs and to allow transition to regional planning approaches and strategic threat management and create opportunities for better linkages of TAPS to funding initiatives.

I think all the Hawke recommendations for biodiversity conservation (and the government response to them) are worth revisiting in the context of this review.

Helene Marsh

May 28 2018

Notes on the TSSC

The current TSSC has 10 members and little redundancy of scientific expertise (see table below and <http://www.environment.gov.au/biodiversity/threatened/tssc/committee-members>). Appointments are currently of varying length with staggered but un-coordinated end dates. Thus appointments with specific expertise (rural landholder, Indigenous) additional to their core scientific expertise would probably require additional members in the first instance until a new system is devised. When the EPBC Act is reviewed and consideration may be given to the Hawke Review recommendation of replacing the TSSC with a more broadly-based statutory Biodiversity Scientific Advisory Committee with formal links to the Indigenous Advisory Committee. However, if such a committee were to be established, I think it would need to have a sub-committee with statutory functions much like those of the TSSC.

	Biome		Taxa	Species	ECS	Other expertise	State
Professor Helene Marsh	Marine	Zoologist	Marine wildlife	X		Chair IUCN ¹ World Heritage Indigenous community interactions	Qld
Professor Stuart Bunn	Freshwater	Zoologist	Freshwater fauna	X		Water management	Qld
Dr Hamish Campbell	Terrestrial and marine	Zoologist	Wildlife	X		Modelling Animal movement Landscape Ecology	NT
Professor Kingsley Dixon ⁵	Terrestrial	Botanist	Orchids, many plants, especially from WA	X	X	Restoration ecology	WA
Louise Gilfedder ⁵	Terrestrial	Botanist	Plants, ECs		X		Tas
Professor David Keith ⁵	Terrestrial	Botanist	Many (most) territorial ECs		X	IUCN processes ² for species and ECs	NSW
Dr Dave Kendal ⁴	Terrestrial	Botanist	Plants	X		Human dimensions Urban Ecology	Vic and Tas
Dr Sarah Legge	Terrestrial	Zoologist	Mammals, birds	X		Indigenous community interactions Private sector funded conservation	NSW and WA
Dr Nicola Mitchell ⁵	Terrestrial	Zoologist	Reptiles and amphibians	X		IUCN processes for reptiles ³	WA
Professor Colin Simpfendorfer	Marine	Zoologist	Fish and sharks	X		CITES IUCN ¹	Qld

¹Chair or member of IUCN Species Specialist Group

² Professor Keith led the team that developed IUCN categories and criteria for ECs and won a Eureka Prize for this initiative. Keith is also an expert on IUCN processes, expertise that is invaluable for difficult listings.

³ Dr Mitchell was centrally involved in the recent IUCN assessments of Australian reptiles

⁴ Dr Kendal is working on a longitudinal study on changing attitudes in relation to the public's awareness of the EPBC Act, and associated penalties and opportunities.

⁵Member state threatened species scientific committee

Scientific expertise is an essential pre-requisite for TSSC membership and in my opinion must remain so if the Committee is to perform its statutory functions effectively. The technical workload is formidable (typically ~ 2000 pages of technical material for a three day meeting). The Committee

cannot afford to carry anyone. Meeting attendance by Committee members is exceptionally good. Members rarely miss meetings and if a member has to miss a meeting, they typically offer to review and provide comments on the documents in their area of expertise.

When there is a hiatus in appointments (as at present), the members whose terms have expired typically attend TSSC meetings as paid scientific expert advisors as we need a full complement of members to ensure rigorous assessment of the material. I appoint an expert lead at least a week before each meeting for every item to ensure that the associated documentation is read in depth and all members take these responsibilities very seriously.

The Act is largely silent on the outreach role of Committee members and I am concerned about the unintended consequences of compromising the Committee members' primary role of providing scientific advice to the Minister with increased outreach responsibilities. I have found the clear distinction between the scientific role of the Committee and the outreach role of the Threatened Species Commissioner very useful, and essential to public confidence in the process.

At present, TSSC members are involved in technical workshops with stakeholders e.g. defining ecological communities, negotiating with fisheries agencies about the management arrangements required for the Committee to recommend a Conservation Dependent Listing to the Minister.

I agree that stakeholder trust in the Committee needs to be strengthened. I think that trust could be improved if the TSSC appointment process were made more transparent, perhaps as part of the regulatory reform associated with the upcoming review of the EPBC Act. I favour a transparent appointment process with key stakeholders on the selection committee. I have seen this approach work well in other contexts. I suggest a system of five-year staggered terms with the appropriate number of members being replaced /considered for replacement simultaneously each year and members being appointed for a maximum total of 10 years.

I think clarity is also required regarding the expectations surrounding the role of the Threatened Species Commissioner with regard to outreach concerning the stakeholder consequences of the Minister's decisions about listing species and Ecological Communities, Recovery Plans etc. I would like to see the Threatened Species Commissioner's responsibilities explicitly include addressing the human consequences and concerns resulting from ministerial decisions in association with the other outreach efforts suggested above.

Helene Marsh
May 28 2018