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Dr Wendy Craik
Independent reviewer
c/o Agriculture Review (Aither)
Level 2, 45 Exhibition Street
Melbourne
Victoria 3000

Thursday 21 June 2018

Re: Submission to the independent review of interactions between the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the agriculture sector

Dear Dr Craik,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to provide a submission to your independent review of interactions between the EPBC Act and the agriculture sector. Since 1962, the NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and management of protected areas.

We support the identification of practical ways to help farmers fulfil their obligations under the EPBC Act. We note that referrals under the EPBC Act from the agriculture sector have been consistently low over the life of the EPBC Act and that almost all controlled actions have ultimately been approved. We also note that many of the issues raised in the Briefing Paper for this review also apply to other sectors, including the need for an understanding of the application of the EPBC Act, the need to keep abreast of changes to threatened species and ecological community lists and the need to address both state and federal environmental obligations, including state-based native vegetation protections.

Many of these issues were explored in the 2009 independent review of EPBC Act and, where relevant, we reiterate the recommendations that were made to address them. Going forward, NCSSA supports pursuing stronger national environmental laws, based on the recommendations of the Australian Panel of Experts on Environmental Law¹. Finally, NCSSA is concerned about the characterisation of some of the issues raised in the Briefing Paper, including describing paddock tree removal as 'low impact'. Please refer to the following pages for our specific comments on these issues. If you would like to clarify or discuss any of the points raised please contact me on (08) 7127 4633 or via email at julia.peacock@ncssa.asn.au.

Yours sincerely,

Julia Peacock
Nature Advocate

¹<http://apeel.org.au/>

NCSSA comments on the independent review of interactions between the EPBC Act and the agriculture sector

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 South Australia's primary nature conservation advocacy organisation, NCSSA has interacted with the EPBC Act in many ways across the past 19 years, including:

- Making a submission to the 2016 review of the water trigger,
- Involvement in discussions on the adoption by South Australia of the Common Assessment Method for the listing of threatened species and ecological communities,
- Making a submission on the assessment bilateral renegotiation with South Australia in 2014,
- Making comments on a number of threatened species nominations and draft recovery plans, and
- Making comments on a number of referrals for controlled actions in South Australia.

NCSSA also made a submission to the 2009 independent review of the EPBC Act, in which we affirmed that the intent of the legalisation is appropriate and responsible but we highlighted concerns about its implementation, including regarding:

- the process and manner for determining the significance of an action,
- the lack of consideration of the cumulative impact of many individual actions, and
- risks associated with state-level assessments and approvals for impacts on matters of national environmental significance.

These concerns are elaborated on under questions 9 and 10 for this review (below), where relevant.

NCSSA has no additional information to add in relation to the following questions posed by the review, as they are targeted towards farmers:

2. *Do you feel that you have an adequate understanding of your obligations under the EPBC Act?*
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?*
4. *Ideally, how would you like to receive information about the EPBC Act and your obligations under it?*
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?*
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)?*
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?*

As mentioned above, NCSSA made a submission to the 2009 independent review of the EPBC Act. This review found that a lack of awareness amongst all key sectors, including farmers, of their obligations under the EPBC Act was a concern (Hawke 2009). NCSSA believes, unfortunately, this remains the case. In terms of the agricultural sector specifically, The National Farmers' Federation submission to the Hawke Review included that it supported the assistance provided by the federal environment department to the agricultural sector in the form of an out-placed officer with their organisation. Your review may wish to consider if this model has continued to be successful and if it could be expanded upon.

‘Significant impact’ and ‘continuing use’

The Briefing Paper for this review highlighted that making important determinations under the EPBC Act can be difficult for farmers, including deciding if their action is likely to have a ‘significant impact’ on a matter of national environmental significance (pages 7-8). The Hawke Review (2009) identified that ‘all sides of the debate were concerned that the concept of ‘significant impact’ is inexact and therefore makes application of the Act uncertain’. It also concluded that, unfortunately, no better test is available for determining when an impact moves from the realm of a local or state or territory issue to one that demands national intervention and that further work is necessary to interpret the concept for the different matters of national environmental significance. We note that the federal government ‘agreed in substance’ to this recommendation and committed to producing further guidelines in its response to the Hawke Review (DSEWPaC 2011), but we are not aware the extent to which that has been achieved. We remain concerned, however, about the process and manner for determining the significance of an action, as per our submission to the 2009 review. In theory, the criteria for determining significant impact are comprehensive and allow for the indirect impacts of an action to be considered. In practice, however, our experience has been that the interpretation of these criteria has not been sufficiently rigorous and their application has not always been consistent with the precautionary principle.

Similarly, the Briefing Paper raises the issue of determining whether farmers’ actions would be considered ‘continuing use’ and therefore exempt from the EPBC Act (page 5). The Hawke Review (2009) recommended that guidelines should be developed to outline what constitutes a continuing use, including a clear definition of ‘use’ and criteria for determining if an action is a ‘continuing use’. Again, DSEWPaC (2011) ‘agreed in substance’ to this recommendation but we are not aware the extent to which that has been achieved.

Future directions

Going forward, NCSSA does not support the One-Stop Shop policy for environmental assessment and approval, mentioned on page 8 of the Briefing Paper, because this hands over the important task of protecting matters of national environmental significance to states and territories. Rather, we believe it is critical for the federal government to extend and strengthen its role in the protection and conservation of Australia’s environment. We therefore support the Australian Panel of Experts on Environmental Law recommendations for the creation of a new generation of environmental laws in Australia wherein the federal government retains responsibility for matters of national environmental significance, with expanded oversight encompassing land clearing, biodiversity and ecosystems, water resources, climate change, air pollution and protected areas. Key to achieving this would be the establishment of two independent institutions:

- a National Sustainability Commission to set national environmental standards, undertake strategic regional planning, address complex and cumulative pressures, coordinate regulation and policy across jurisdictions, and report on national environmental performance, and
- a National Environmental Protection Authority to conduct transparent environmental assessments and inquiries, and undertake monitoring, compliance and enforcement actions.

Further information about these proposed changes is available at the Places You Love Alliance website: <http://www.placesyoulove.org/australiawelove/naturelaws/>

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

NCSSA is concerned with a number of statements made in the Briefing Paper for this review and provides the following responses.

2.2 Time and cost implications for farmers

NCSSA understands that some farmers may be wary of the time and costs that may be associated with ensuring compliance under the EPBC Act, and that they might not be aware of the potential financial benefit of having a matter of national environmental significance on their property. In principle, NCSSA supports farmers covenanting high-conservation value sections of their property as part of an offset scheme where this produces a financial benefit for the farmer as well as a positive conservation outcome, as per the example in the Briefing Paper on page 6. However, we note that offsetting is an inexact “science” and that there is no documented evidence that it actually benefits the environment. Indeed, Lindenmayer *et al.* (2017) detail a specific case where it failed to deliver the promised environmental gain, and other authors question whether the concept of offsetting ‘locks in loss’ because decisions about ‘improvements’ are made against a background of assumed decline (Maron *et al.* 2015).

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

NCSSA is concerned by the statement in the briefing paper that *‘industry groups seem concerned by the entity reviewing the listing being the same as the entity which made the initial listing or upgrade recommendation’* (page 8). We believe this demonstrates a misunderstanding of the process and the roles of the parties involved in the listing process for threatened species and ecological communities, and more worryingly implies ‘the entity’ (which is presumably the Threatened Species Scientific Committee) has a vested interest in whether and how a species or ecological community is listed.

The Threatened Species Scientific Committee is an independent committee of eminent conservation scientists responsible for providing advice to the Minister for the Environment on the listing of species and ecological communities under the EPBC Act (among other duties). The process is that nominations for listing of species or communities are prepared by individuals or organisations, based on the scientific evidence available. The Threatened Species Scientific Committee considers this information against the criteria for listing outlined in the EPBC Act. The Minister then makes a decision whether or not to list, taking into account this advice. It is wholly appropriate for the Threatened Species Scientific Committee to review the status of all entities (listed or unlisted) when there is evidence that their status has changed, or the information available on which to judge their status has improved (as was the case for the Natural Temperate Grasslands of the South Eastern Highlands, the revision of which was based on new data collected after the original listing was made in 2000).

It may be true that the implications of listing changes are not easily understood by farmers, and it is unfortunate if ‘condition thresholds’ designed to provide more certainty about when listed ecological communities are present have been confused with ‘thresholds for significant impact’, as suggested on page 7 of the Briefing Paper. Both ‘condition’ and ‘significance’ threshold measures have been developed to improve clarity on the application of the EPBC Act. We do not support the statement that ‘Conservation advice [for a listed ecological community] is difficult to apply and may not advance the objectives of the listing itself’ (page 7). It may be true that resources are not available to undertake the actions necessary to improve the condition of (in this case) listed grasslands, and that the ideal regime for conservation may not be completely compatible with the preferred agricultural regime, however we believe that identifying these differences is a sign of the EPBC Act working, i.e. ensuring changes are made that improve the condition of our environment. We also note that regulation is a normal and long-accepted practice across all sectors including in relation to private and leasehold land use, and that landholders have both rights and responsibilities (legal and/or ethical) to avoid harm and to leave a healthy environment for future generations. Given the profound and ongoing effects of land clearance since European settlement, enforcement of regulations to ensure maintenance of natural systems is critical (Lindenmayer *et al.* 2014).

2.4 Determining how 'significant' an impact is as part of a risk-based approach

Paddock trees

NCSSA is also concerned by the statement in the briefing paper 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*' (page 8).

The felling of individual paddock trees may appear low-impact to a farmer, but scattered trees are very important from a conservation perspective. Their continued removal is an example of the EPBC Act (as well as other environmental legislation) failing to consider cumulative impact. Scattered trees provide important habitat for wildlife, many of which are beneficial to agriculture e.g. pollinators, and provide 'stop-over' shelter for fauna moving across a largely open agricultural landscape. Recent research concluded that greater management effort and targeted, long-term policies are needed to retain or re-establish scattered trees in many farming landscapes (Prevedello *et al.* 2018). This is particularly true where trees are older and hollow bearing, as hollows provide important nesting and resting sites for many animals. 'Loss of hollow bearing trees' is listed as a key threatening process under the NSW *Biodiversity Conservation Act 2016*, the listing advice for which states:

'In agricultural landscapes hollow-bearing trees typically persist as isolated mature individuals in cleared paddocks or in small fragmented vegetation remnants (Bennett *et al.* 1994, Gibbons & Boak 2002). Such trees frequently suffer from poor health (e.g. 'dieback') and have a shorter lifespan than in forested landscapes (Yates & Hobbs 1997, Saunders *et al.* 2003, Reid & Landsberg 2000). Eventual loss of current hollow-bearing trees, and a lack of recruitment of younger trees to replace them, will result in a large decrease in the hollow resource over the wide geographic area covered by agricultural landscapes in the medium term (Saunders *et al.* 2003, Vesk & Mac Nally 2006)².

Similarly, the 'Loss of hollow bearing trees from Victorian native forests' is listed as a Potentially Threatening Process under the Victorian *Flora and Fauna Guarantee Act 1988*. Although this listing is primarily focussed on forested areas, the Action Statement acknowledges that 'changes to farming practices may lead to a loss of scattered trees on farms, including live or dead hollow-bearing trees'³. The key threatening process 'Loss of native hollow bearing trees' is also under consideration for listing in the ACT⁴.

Scattered paddock trees are so important, both to nature conservation but also for their productive benefits, that in the Mount Lofty Ranges of South Australia, Trees for Life has partnered with the Adelaide and Mount Lofty Ranges Natural Resources Management Board on the Paddock Tree Project⁵, which is working with landholders to establish the next generation of paddock trees. NCSSA is involved with this project by assessing how beneficial it is for species of woodland birds that have declined throughout the Ranges.

NCSSA therefore welcomes the DoEE work on improving clarity on the issue of paddock tree management, noting that as well as providing guidance on where clearing of paddock trees would not trigger the EPBC Act, it should also emphasise the value of retaining these trees and the importance of establishing a new generation of paddock trees as the existing ones age and die.

² <http://www.environment.nsw.gov.au/determinations/lossofhollowtreesktpt.htm>

³ https://www.environment.vic.gov.au/__data/assets/pdf_file/0025/32488/Loss_of_hollow-bearing_trees_from_Victorian_native_forests.pdf

⁴ https://www.environment.act.gov.au/__data/assets/pdf_file/0011/1055648/Loss-of-Hollow-bearing-Trees-Nomination-for-Key-Threatening-Pro....pdf

⁵ <https://www.treesforlife.org.au/trees/paddock-tree-project>

References

- Bennett AF, Lumsden LF & Nicholls AO (1994). Tree hollows as a resource for wildlife in remnant woodlands: spatial and temporal patterns across the northern plains of Victoria, Australia. *Pacific Conservation Biology* 1, 222-235.
- DSEWPac (2011). Australian Government response to the report of the independent review of the *Environment Protection and Biodiversity Conservation Act 1999*, Canberra.
- Gibbons P & Boak M (2002). The value of paddock trees for regional conservation in an agricultural landscape. *Ecological Management and Restoration* 3, 207-212.
- Hawke A (2009). The Australian Environment Act: Report of the independent review of the *Environment Protection and Biodiversity Conservation Act 1999*, Canberra.
- Lindenmayer D, Burns E, Thurgate N & Lowe A 2014 (eds) *Biodiversity and environmental change: monitoring, challenges and direction*. CSIRO Publishing, Victoria.
- Lindenmayer D, Mason C, Evans MC, Maron M, Gibbons P, Bekessy S & Blanchard, W (2017). The anatomy of a failed offset. *Biological Conservation* 210A, 286-292.
- Maron M, Bull J, Evans MC & Gordon A (2015). Locking in loss: baselines of decline in Australian biodiversity offset policies. *Biological Conservation* 192, 504–512.
- Prevedello J, Almeida-Gomes M & Lindenmayer D (2018). The importance of scattered trees for biodiversity conservation: A global meta-analysis. *Journal of Applied Ecology* 55, 205–214.
- Reid N & Landsberg J (2000). Tree decline in agricultural landscapes: what we stand to lose. Pp 127-166 in (Eds. RJ Hobbs, CJ Yates) *Temperate eucalypt woodlands in Australia: biology, conservation, management and restoration* (Surrey Beatty & Sons: Chipping Norton).
- Saunders DA, Smith GT, Ingram JA & Forrester RI (2003). Changes to a remnant of salmon gum *Eucalyptus salmonophloia* and York gum *E. loxophleba* woodland, 1978 to 1997. Implications for woodland conservation in the wheat-sheep belt of Australia. *Biological Conservation* 110, 245-256.
- Vesk PA & Mac Nally R (2006). The clock is ticking – Revegetation and habitat for birds and arboreal mammals in rural landscapes of southern Australia. *Agriculture Ecosystems and Environment* 112, 356-366.
- Yates CJ & Hobbs RJ (1997). Temperate eucalypt woodlands: a review of their status, processes threatening their persistence and techniques for restoration. *Australian Journal of Botany* 45, 949-973.