



## **NSW Farmers Association**

**Submission to  
The independent review of interactions between the EPBC Act  
and the agriculture sector**

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### **NSW Farmers' Association Background**

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

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## **Introduction**

NSW Farmers Association (NSWFA) is Australia's largest state farming body, representing the majority of commercial farm businesses in NSW, ranging from broad acre, meat, dairy, wool and grain producers, to more specialised producers in the horticulture, egg, pork, oyster and goat industries.

There are more than 48,266 farm businesses in NSW, employing 65,716 people and contributing \$24,563 million to the NSW economy per annum. The ability to perform land management activities and use land productively is fundamental to the success of NSW farming enterprises, and the families who own and operate them.

Farmers manage a substantial portion of Australia's land mass and are key stakeholders in the environmental legislation that governs the protection of native flora and fauna. NSWFA welcomes this agriculture specific review of the EPBC Act and appreciates the opportunity to provide comment. We hope this process can inform an understanding of where impracticalities can be minimized and how environmental law can be made more compatible with productive agriculture. As a member of the National Farmers Federation (NFF) NSW Farmers endorses the NFF submission to this independent review.

The EPBC Act presents a considerable hindrance to productive farming for reasons ranging from poorly managed listings and poorly communicated requirements, to a complete lack of compensation for liabilities placed on landholders. Many listings make it illegal to perform basic agricultural land management, or stop invasive native species from spreading. It would be rare to find a landholder who is confident in understanding their obligations and there are many who are simply not aware of the Act at all. Furthermore, the different layers of state and commonwealth environmental law bring added confusion to an already complex system.

NSW Farmers calls for-

- A complete cost-benefit analysis of the current policy settings, with a view to implementing a model that compensates farmers for conservation
- Rationalisation of state and federal legislation
- Recognition of the differences between farmers and other developers and accommodate for these in the legislation
- Implementation of a listing and review process that involves meaningful engagement from landholders

## **1. Compensation for conservation**

In 2017, NSWFA passed policy that no regulation on agricultural land be supported until commercially competitive incentives are provided by the regulating authority. It is with this mindset that we call for a major shift in policy approach to recognize the burden landholders assume in protecting the environment and provide them with appropriate recompense.

Landholders in NSW and throughout Australia have been forced to provide a range of environmental services for free on account of both the state and federal legislation. Government must recognize the public benefits that private landholders are delivering and provide payments or incentives.

As part of a shift towards this policy it is absolutely necessary that a cost benefit analysis of the EPBC system be undertaken. It is essential that all levels of Government understand the costs of environmental legislation to government and landholders. Once these costs are determined, a review of possible alternatives can be performed, with an underlying principle of compensation. Without adequately knowing the cost of the regulation/legislation, government have no idea if the current system is being cost effective nor if the resources could be better spent working with landholders to deliver positive environmental outcomes. The Government's focus must be on preventing breaches of the environmental legislation, but also working with landholders to deliver a cost effective conservation strategy.

If the Government does not know the cost of administering the EPBC Act, it is impossible to offer alternatives. NSWFA strongly believes that the resources currently being used to administer the EPBC Act could be better spent with a much greater emphasis on working with private landholders and State Governments to deliver improved environmental outcomes. Stewardship payments for landholders with high conservation value vegetation and increased funding for weed and feral animal control within public lands are two examples of ways to address the inequity.

## **2. Rationalization of state and federal legislation**

The existence of several layers of environmental legislation (local, state, federal) undoubtedly complicates the process of navigating ones obligations. The EPBC Act and the NSW biodiversity conservation legislation have been described as conflicting at worst and duplicative at best, and there is significant opportunity for rationalization and streamlining of state and Commonwealth regulatory systems. Listings that can be delegated to the states (or are already protected through the states) should be identified and removed from EPBC. The remaining listings, which can only be managed through Commonwealth legislation, should then be subject to a bilateral agreement which allows the state agencies to deliver the administration for the purposes of agricultural activity.

The EPBC Act caused, and continues to cause, significant problems for the roll out of the recent reforms to NSW biodiversity legislation. This has ranged from causing significant delays to LLS not being able to progress the issuing of a Land Management Code certificate. This is because there is no assessment pathway for farmers. Despite department staff insisting that navigation of the EPBC assessment has improved, we are still not in a position to advise farmers exactly how their regulatory responsibilities are met. Furthermore, the Department of Environment are unable to provide any clear guidance on how farmers are required to meet their EPBC obligations. It appears that the Department are only able to enforce their own legislation after a breach occurs.

We need a one-stop-shop for farmers so they are not given conflicting advice from state and federal agencies. We believe the best way to do this in NSW is to delegate the on ground administration of EPBC matters to the LLS.

## **3. Understanding obligations**

Awareness of the EPBC Act itself is low amongst farmers, and actual understanding of the obligations pertaining to the act is even lower. The former can perhaps be attributed to a lack of clarity and subsequent communication of, the requirements of the legislation, while the latter more likely relates to its complex nature.

Currently, it seems as though many farmers are not aware of EPBC until compliance action is taken out against them. This is an obvious sign of legislation that is not fit for purpose, as well as poor communication. Even if farmers are aware of the Act, there is no federal 'shop-front' for farmers to seek information. We maintain that the best way to remedy this in NSW would be to delegate the administration to the LLS.

The objectives of the EPBC Act should be clearly conveyed to the farming community. Where Commonwealth environmental legislation exists and impacts on agriculture, the Department should be regularly and continually communicating with the 'regulated community' as a means of ensuring that the legislation is reasonable and relevant. Importantly, landholders and relevant industry groups should be involved in the listing process, not just consulted after.

Large developers, such as mining and gas companies will likely have staff equipped to deal with the different legal responsibilities their organization has. However, most farming enterprises in NSW do not have the capacity to hire such expertise. The complex nature of the Act is a major barrier for farmers in understanding their obligations and confidently navigating the legislation.

#### **4. Listing and Review process**

The listing process is far too precautionary, leading to overreach of targeted species and communities. Landholders and relevant industry groups should be involved in the development of new listings. This would allow practical concerns to be aired from the outset, rather than in a reactionary way after the listings have been established.

Also alarming is the lack of linkage between the EPBC process for listing and the Federal Government targets for biodiversity and conservation. New listings must relate to specific targets and fit within a broader strategy.

We continue to oppose the review mechanism whereby landholders must pay for a site-based assessment. Most farming enterprises in NSW are not operating at a scale such that this would be considered a routine outlay. The cost of acquiring the services of ecologists or agronomists to confirm determinations would in many cases be prohibitive.

Earlier this year, NSWFA commissioned a review of the Natural Temperate Grassland of the South Eastern Highlands ecological community at our, and the affected landholders', own expense. Findings from this piece of work will be discussed in a later section of this submission, but the purpose of the review was to provide a body of evidence on the impracticalities of the listing. The mechanisms in place to challenge a listing are not accessible to individual or small groups of farmers, due to the level of expense and scientific rigor involved. Aside from rare reviews such as this, there is no meaningful way for the agricultural community to engage with and address perverse outcomes of the listings.

## **5. Secondary or derived grasslands**

NSWFA has major concerns about the presence of 'secondary or derived grasslands' content in recovery plans for many different listings and the restriction this places on the productive potential of previously pastured land. Secondary grasslands occur or may be derived from previously timbered areas in the years after clearing has occurred. In many instances scattered timber such as white or yellow box has been left and now contain native grassland species or "secondary grasslands" containing listed ecological communities that are currently deemed protected.

There are many situations where previously pastured areas have declined or reverted to native grasslands due to low commodity prices and lack of pasture maintenance. For example in much of the NSW tablelands suited and utilised for wool growing, with a downturn in wool prices over the last two decades, this type of scenario is not uncommon. Farmers face significant uncertainty season to season and need latitude to adapt based on a wide variety of variables. They need flexibility in managing their land, not the risk that a previously productive parcel can transition into protected land if native grasses regenerate. This restriction is a seriously unfair, inequitable imposition placed on farmers and their land and should be deleted from recovery plans.

## **6. Findings from the review of the Natural Temperate Grassland of the South Eastern Highlands ecological community**

Earlier this year, NSWFA commissioned a review of the Natural Temperate Grassland of the South Eastern Highlands ecological community by Stuart Burge and Associates. The entire piece of work can be distributed upon request, however the main findings will be discussed now in brief.

Natural Temperate Grassland of the South Eastern Highlands ecological community was listed as critically endangered under the EPBC Act in April 2016. There was a concerning lack of communication and engagement with farmers whose land harbours the majority of high conservation value grassland.

The report identifies the greatest risk to the preservation of the Natural Temperate Grassland of the South Eastern Highlands ecological community as invasion of perennial grass weeds such as Serrated Tussock, African Lovegrass and Chilean Needlegrass. However action on controlling these weeds has been prohibited due to the legislation. In one case, a farmer in the Monaro experienced an encroachment of African lovegrass on his property. As this land was listed as a national significant ecological community, the farmer cannot practically control the weed (i.e broadacre spraying) until it reaches 50% of the perennial population of the grassland. It is widely acknowledged that an infestation of 25% is the threshold at which broadacre control strategies need to be implemented in order to prevent continued spread of such weeds across the landscape. Given that the minimum condition threshold for the EC includes a patch as small as 0.1 ha in size, the consequence is particularly troublesome at the scale at which farms in the region operate and is totally impractical to comply with in a broadacre context. Where effective management strategies are not implemented in a timely fashion, the ecological asset is put at risk. This is a perverse outcome of the EPBC Act which is not only acting to the detriment of productive land use but also the detriment of the critically endangered ecological community.

The report also critiques the thresholds set to determine what is low and high condition conservation categories. The thresholds are set too low, capturing and locking up far too much land that could be used productively with little trade-off. Only the patches of the highest conservation value should be protected in this way.



## **Conclusion**

The nature and administration of the EPBC Act produces many impracticalities for landholders and also perverse outcomes for the environment. These need to be remedied, but in doing so we call for a broader shift in policy approach. Legislation must recognise the differences between farmers and large developers. It must also recognise the conservation burden placed on farmers and compensate them for the public benefits they have been forced to generate. There is significant room to rationalise the overlapping layers of environmental law and delegate the on ground administration to state based agencies such as LLS in NSW. Importantly, the agricultural community also needs on-going opportunity to meaningfully engage in the listing and delisting process.