



Nature Conservation Council

The voice for nature in NSW



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

By email: agreview@aither.com.au

Exploring ways to improve farmers' interaction with the Environment Protection and Biodiversity Conservation Act 1999

Dear Dr Craik,

The Nature Conservation Council of New South Wales (**NCC**) is the state's peak environment organisation. We represent over 150 environment groups and thousands of supporters across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

The National Parks Association of NSW (**NPA**) is a community-based organisation with over 20,000 supporters from rural, remote and urban areas across the state. The NPA promotes nature conservation and evidence-based natural resource management.

We welcome the opportunity to provide input into the review of interactions between the *Environment Protection and Biodiversity Conservation Act* (1999) (**EPBC Act**) and the agricultural sector. However we approach the review with a level of caution. We see the review as yet another attempt by certain stakeholders within the agricultural sector to weaken important environmental laws in order to facilitate land clearing.

We recognise legitimate concerns of farmers, particularly in relation to understanding obligations under the EPBC Act, and we would support measures that would assist farmers in better understanding those obligations and make their interaction with the EPBC Act more efficient. However we would strongly oppose any attempts to weaken or remove protections for matters of national environmental significance.

Our **enclosed** submission outlines in more detail our concerns and addresses a number of issues raised in the Review Briefing Paper.

Yours sincerely,

Kate Smolski
Chief Executive Officer
Nature Conservation Council of NSW

Alix Goodwin
Chief Executive Officer
National Parks Association of NSW

EXPLORING WAYS TO IMPROVE FARMERS' INTERACTION WITH THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

Introduction

The background to this review is set out in the *Briefing Paper – An independent review of interactions between the EPBC Act and the agriculture sector (Briefing Paper)*. It indicates that the review has been commissioned to identify regulatory and non-regulatory improvements to assist the agricultural sector while maintaining environmental standards. A number of issues, based on initial conversations and a desktop review, are set out in the Briefing Paper.

We are concerned however that the real driver behind the review is lobbying by certain stakeholders in the agricultural sector seeking to have regulations weakened or removed in order to facilitate broad-scale land clearing and expand agricultural activity. These interests were successful in having native vegetation laws repealed in Queensland and New South Wales¹, and have now set their sights on Federal laws. We note that these interests do not represent those of the entire farming community, as demonstrated through the campaign activities of farmers who opposed changes to native vegetation laws in NSW².

We strongly oppose any attempts to weaken or remove protections for matters of national environmental significance to facilitate land clearing. Land clearing is a Key Threatening Process, and was identified in the 2016 Commonwealth State of the Environment Report as one of the greatest threats to biodiversity. Agricultural activities, including land clearing, can have significant environmental impacts, and it is therefore appropriate that the EPBC Act applies to activities carried out by the agricultural sector that impact on matters of national environmental significance (**MNES**).

Further, land clearing is undermining national efforts to reduce carbon emissions. The Emissions Reduction Fund had spent \$1.2 billion purchasing emissions via avoided clearing and revegetation. Yet emissions from the land sector are increasing more rapidly than any other sector³. For example, in Queensland land clearing has meant that emissions from deforestation will average 46 million tonnes per annum between 2014 and 2020 - 24% higher than 2013 levels⁴. This is a clear example of contradictory policy settings, and state-based legislation acting contrary to the national interest.

Federal environment laws play an important role in protecting matters of national environmental significance, including threatened ecological communities, and must be maintained.

¹ The NSW *Native Vegetation Act* 2003 was repealed on 25 August 2017, and replaced by the *Biodiversity Conservation Act* 2016 and new provisions in the *Local Land Services Act* 2013. The new laws have been criticised for reducing environmental protections and facilitating broad-scale land clearing (see, for example, Sydney Morning Herald, 3 November 2016, [Scientist Hugh Possingham quits over Baird government's land-clearing plan](#)). In Queensland, the relaxation of land clearing laws in 2013 led to high rates of land clearing (see ABC News, 22 May 2017, [Tree clearing debate re-emerges as conservationists accuse farmers of bulldozing one million hectares of trees](#)). Laws reintroducing restrictions were passed by the Qld Parliament in May 2018.

² See, for example, The Land, [Native Veg stoush sees Josh Gilbert resign as NSW Young Farmers chairman](#), 26 January 2016; ABC News, [Farmers divided over changes to NSW land-clearing laws](#), 17 July 2016; Central Western Daily, [Clearing the air, not the land: grape growers give opinions to Restoring Earth](#), 19 February 2016

³ Commonwealth of Australia. [Australia's emissions projections 2014-2015](#),

⁴ Bulinski J, Enright R, Tomsett N. *Tree clearing in Australia: Its Contribution to Climate Change*, 2016

Interaction between the EPBC Act and agriculture sector

We challenge the assumption that the EPBC Act creates a significant regulatory burden for farmers.

For example, the *Agricultural Competitiveness Green Paper*⁵, published in 2014, indicated that in the 15 years since the commencement of the EPBC Act, there had only been 54 agriculture-related projects referred for assessment, and of those only 8 projects have been subject to conditions. This indicates that the EPBC Act has only applied to low numbers of agricultural proposals, and would therefore not appear to be overly restrictive with respect to agricultural activities.

More alarmingly however is research undertaken from WWF indicating that clearing of Federally listed threatened species habitat and ecological communities has been occurring in Queensland, for which there was no evidence of referral under the EPBC Act. That is, clearing has occurred without necessary referral under the EPBC Act.

In *Pervasive inaction on national conservation law over tree-clearing in Queensland*⁶, WWF reported that there was 742,858ha on 7,917 properties with actual or intended clearing of threatened species habitats, threatened ecological communities or in Reef Catchments, but for which there was no evidence of referral under the EPBC Act. This suggests that agricultural developers are ignoring (deliberately or otherwise) their obligations under the EPBC Act. Further there is no commensurate record of prosecution for breaches of the EPBC Act, suggesting that the EPBC Act is not being adequately enforced.

This suggests that rather than being a regulatory burden on farmers, poor monitoring and enforcement of the EPBC Act has allowed agricultural developers to clear significant amounts of land without consequence. We would assert that EPBC processes must be strengthened, not weakened.

Protecting native vegetation is not only important for its conservation values, but also for the long term ecological sustainability of the agriculture industry. The NSW State of Environment Report 2015 reported on soil condition in NSW and cited the *Native Vegetation Act* (now repealed) as key to facilitating sustainable agriculture⁷. Agriculture has had and continues to have significant negative impacts on the unique Australian natural environment⁸. These impacts must be recognised, addressed and appropriately regulated.

Despite this, we do acknowledge the legitimate concerns of some farmers particularly in relation to understanding their obligations under the EPBC Act and we would support measures that would assist farmers in understanding those obligations and improve interaction with the EPBC Act. We believe that farmers can be better supported to work within the framework of the EPBC Act, improving their interaction with the laws, reducing incidences of non-compliant clearing and achieving improved environmental outcomes.

⁵ Commonwealth of Australia, [Agricultural Competitiveness Green Paper](#), 2014

⁶ WWF, [Pervasive inaction on national conservation law over tree-clearing in Queensland](#) December 2017

⁷ NSW Environment Protection Authority, [New South Wales State of the Environment](#), 2015.

⁸ Environmental impacts of agriculture include: clearing of native vegetation resulting in the loss of biodiversity and increased carbon emissions; salination, aridification, erosion and loss of topsoil also caused by over clearing of native vegetation; acidification; sodicity; depletion of aquifers; over-extraction of water from other water bodies leading to unhealthy river and wetland ecosystems; nutrification, pollution and salination of waterways; the escape of species such as pigs, goats, deer and buffalo which have become feral pests; and introduction of some weed species.

Interaction between NSW laws and the EPBC Act

While we recognise that changes or proposed amendments to state and territory vegetation management legislation are outside the scope of this review, the interaction between state and territory vegetation management legislation and the EPBC Act are relevant.

In our view, recent changes to NSW native vegetation laws are likely to have complicated the interaction between state and federal laws.

For example:

- **Changes to NSW laws have given the impression that clearing is allowed**

The repeal of the *Native Vegetation Act 2003* in NSW could be perceived by farmers as removing restrictions on land clearing. Without a proper understanding of how the new laws work, farmers may be under the false impression that they are now able to clear vegetation without approval. Many may be unaware that approval may be required under the EPBC Act.

- **The removal of property vegetation plans has removed important expert assistance and oversight**

The former NSW *Native Vegetation Act 2003* allowed clearing to be undertaken in accordance with a property vegetation plan that was prepared in consultation with expert land management officers. This collaboration and oversight allowed farmers to draw on the knowledge of experts to understand the environmental value of species on their land and plan clearing activities accordingly. Engagement with experts was at no cost to the farmer.

- **The expansion of code-based clearing has increased responsibilities and liabilities of farmers**

In NSW, the expansion of 'code-based' clearing has placed an increased responsibility on farmers to 'self-assess' clearing activities that are carried out in accordance with the codes. This often requires expert knowledge to accurately identify vegetation, and knowledge of threatened species listings to determine whether clearing is allowed. There is a risk that codes are misused to carry out significant clearing of protected vegetation. The requirement to notify the Local Land Service (LLS) of clearing does not provide adequate oversight. In cases where certification by the LLS is required, lack of expertise and capacity within the LLS means this risk still exists, particularly where there is a lack of knowledge about the operation of the EPBC Act.

During the NSW reform process our organisations anticipated these problems and raised concerns with both the state and federal governments (see Letters to Minister Hunt - Attachments 1-3). We were particularly concerned NSW farmers would be caught out unaware that despite relaxed land clearing rules, activities may still require Commonwealth approval for clearing that could have a significant impact on a matter of national environmental significance.

We were also concerned that the Commonwealth would be left to intervene to protect matters of national environmental significance. It is unfortunate that these issues are only now under review given that there was an opportunity to address some of these during the NSW reform process. Submissions and reports provided by our organisations during the NSW land management reform process are available online⁹.

⁹ See www.standupfornature.org.au/resources

Unfortunately the NSW Government ignored repeated calls from environment groups in regards impact of the proposed changes on EPBC issues and the need to provide clarity for farmers.

Role of Environment Protection and Biodiversity Conservation Act 1999

Given recent changes to land clearing laws in NSW and Queensland, we are concerned that the Commonwealth may be pressured into lowering federal standards in order to facilitate land clearing under state laws. This would be a significant mistake. If anything, it is the exact role of the EPBC Act to protect MNES when state laws fail to do so.

The EPBC Act provides protection for Australia's natural landscapes and resources. The laws protect our most fragile landscapes, including wetlands, water resources, and threatened species and ecological endangered communities.

In NSW 40% of the landscape has been cleared, and only 9% of the existing vegetation is considered to be in close to natural condition. Much of what is left is endangered and protected under the EPBC Act, including:

- More than 12,000 hectares of critically endangered *Cumberland Plain Shale Woodlands and Shale-Gravel Transition Forest* within the Cumberland subregion of the Sydney Basin bioregion, in and around Western Sydney;
- Approximately 330,000 hectares of endangered *Grey Box (Eucalyptus microcarpa) Grassy Woodlands and Derived Native Grasslands of South-eastern Australia* which occurs from central NSW, through northern/central Victoria into eastern South Australia; and
- More than 900,000 hectares of endangered *Coolibah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions*, situated in northern NSW and southern Queensland within the upper reaches of the Murray-Darling Basin and southern part of the Fitzroy River system.

Increased clearing will also impact on EPBC listed threatened species including (but not limited to) Malleefowl, Superb Parrot, Koala and Plains Wanderer. With numbers of threatened plant and animal species and endangered ecological communities increasing, national environmental laws are becoming increasingly necessary.

Our organisations would strongly oppose any attempts to weaken or remove protections for matters of national environmental significance under the EPBC Act. This would include proposals to establish a 'one stop shop' that would hand Federal powers to the states and territories¹⁰.

Further, given the significant environmental impacts of land clearing, and evidence that Federal laws are failing to prevent the clearing of threatened ecological communities, we would welcome changes to Federal laws that would strengthen environmental protections and improve monitoring and enforcement¹¹.

¹⁰ Our concerns are further detailed in our 2014 submission to the [Senate inquiry into streamlining environmental regulation, 'green tape', and one stop shops](#)

¹¹ See, for example, The Australian Panel of Experts on Environmental Laws, [Blueprint for the Next Generation of Australian Environmental Laws](#), August 2017

Options for assisting farmers

We acknowledge the legitimate concerns of some farmers, particularly in relation to understanding their obligations under the EPBC Act. However we do not see this as a reason to weaken or remove important regulation designed to manage environmental impacts and protect the environment. We believe that farmers can be better supported to work within the framework of the EPBC Act, improving their interaction with the laws, reducing incidences of non-compliant clearing and achieving improved environmental outcomes. We also support incentives for supporting farmers to retain and conserve vegetation on their land, but this should occur alongside adequate regulation, not in place of it.

In particular, we encourage this review to consider the following options:

- **Advocate for states to strengthen land clearing laws**

As discussed, in NSW changes to state land clearing laws have expanded 'code-based' clearing and removed provisions for Property Vegetation Plans. These changes have increased responsibilities for farmers, and put them at risk of breaching of land clearing restrictions, including breaches of the EPBC Act. Advocating for these safeguards to be reinstated would reduce risks to farmers.

- **Increase capacity for on-ground land management staff**

Appropriately skilled land management staff should be available to provide expert advice and collaborate on-ground with farmers to develop appropriate native vegetation plans for their properties.

- **Provide incentives for farmers to retain native vegetation and protect Australia's reputation as a clean, green source of food**

Government supported initiatives can provide farmers with financially viable alternatives for conserving native vegetation on their land. These could include:

- Carbon sequestration and land management projects: Opportunities exist to restore woodlands on many areas of agricultural land in order to sequester carbon, reverse regional climate change and benefit wildlife. Funding can be allocated to support farmers to protect trees and support revegetation, creating new jobs in regional and rural areas. However, it is important to note that land clearing in Queensland has entirely wiped out any emissions reductions through Direct Action. This highlights the need to retain regulatory controls on clearing if taxpayer money is to be spent retaining vegetation.
- Certified production schemes: The Government could develop a voluntary product certification scheme to reward farmers who produce food in a sustainable way. This scheme could be designed and monitored much like organic food schemes and would likely provide access to premium markets. The alternative is the gradual erosion of Australia's reputation and consumer backlash against, for example, deforestation driven by beef production.
- Biodiversity offsetting schemes: Existing offsetting schemes provide an opportunity for farmers to secure payment for managing land as offset sites. These opportunities could be better promoted to farmers.