National Farmers' Federation

Submission to

Independent review of the EPBC Act Discussion Paper

17 April 2020

NFF Member Organisations

National Farmers Federation

The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental fabric.

Social >

There are approximately 88,000 farm businesses in Australia, 99 per cent of which are wholly Australian owned and operated.

Economic >

In 2018-19, the agricultural sector, at farm-gate, contributed 1.9 per cent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2018-19 is estimated to have reached $62.2 billion.

Workplace >

The agriculture, forestry and fishing sector employs approximately 318,600 people, including full time (239,100) and part time employees (79,500).

Seasonal conditions affect the sector's capacity to employ. Permanent employment is the main form of employment in the sector, but more than 26 per cent of the employed workforce is casual.

Environmental >

Australian farmers are environmental stewards, owning, managing and caring for 51 per cent of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 7.4 million hectares of agricultural land set aside by Australian farmers purely for conservation/protection purposes.

In 1989, the National Farmers' Federation together with the Australian Conservation Foundation was pivotal in ensuring that the emerging Landcare movement became a national programme with bipartisan support.

Contents

1. Executive Summary

The National Farmers' Federation (NFF) welcomes the opportunity to respond to the second independent review of the EPBC Act Discussion Paper as required under Section 522A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

A decade has passed since the first independent statutory review of the EPBC Act (Hawke Review) was commenced in 2009. Little progress has been made to improve the Commonwealth law, and many recommendations are still relevant today. Nevertheless, this review provides an opportunity to incorporate additional learnings from the past 10 years and recast the paradigm with which we approach environmental law in Australia.

The NFF has been actively involved in reform of the EPBC Act, most recently through the Independent review of interactions between the EPBC Act and the agriculture sector led by Dr Wendy Craik (Craik Review) which is expected to be considered in this review.

The NFF welcomes the approach to the discussion paper which reflects on the outcomes and experiences of the Act during its 20-year operation. The agriculture sector too is facing many of the long-term challenges in managing Australia's environment and heritage identified in the discussion paper. Particularly, these relate to increasing changes in land use, habitat fragmentation, climate change, invasive species and managing the need to grow the economy and feed a growing population. This is the reality that must shape how the EPBC Act operates into the future.

It is therefore timely to discuss what the objectives of the Act should be and the role the agriculture sector should play in meeting, and improving, these objectives. Given over half of the Australian landscape is managed by farmers, the role of farmers should not be understated. From the outset, and consistent with previous submissions, the NFF remains critical of how the EPBC Act is applied to the agriculture sector. Governments must recognise that farmers are in the best position to manage the land sustainably and protect the environment on which they produce Australia's food and fibre. This fundamental principle should be reflected in the EPBC Act to facilitate this.

The NFF recognises it is appropriate to not only raise concerns but, where possible, to propose solutions. In this area, the NFF is engaging researchers to consider the current frame of the Act and benchmark it against international practice and current shortcomings. This is intended to make recommendations to the review once we have received and considered the research report.

In its entirety, the EPBC Act is a substantial piece of legislation that regulates a range of activities which may impact matters of national environmental significance (MNES) under nine categories, including:

- Listened threatened species and communities;
- Listed migratory species;
- Ramsar wetlands of international importance;

- Commonwealth marine environment;
- World heritage properties;
- National heritage places;
- The Great Barrier Reef Marine Park;
- Nuclear actions; and
- Water resources, in relation to coal seam gas development and large coal mining development.

The NFF believes that the aim of the EPBC Act should not focus on 'protection', but rather encourage and promote stewardship of the resources such as land and water. Humans, including farmers, have managed the Australian environment for thousands of years and this must be recognised. However, the current approach of the Act appears to simply separate humans from the natural environment rather than recognise their role in sustaining and improving it.

The 2016 State of the Environment report revealed a continuing decline in Australia's biodiversity while the UN report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) highlighted the threat of invasive alien species on Australia's biodiversity. This is evidence that the current approach to the regulation of biodiversity in Australia is not working.

The EPBC Act has delivered poor outcomes for the agricultural sector. Like many environmental legislations, it has been developed around new uses / development, such as conversion of farm land to urban uses or mining. The processes under which the Act operates do not work well for the agriculture sector (an ongoing, existing use of the land), and should be approached differently.

The Act is cumbersome, punitive and does not provide certainty for farmers seeking to understand their obligations, especially for environmental outcomes that have not materialised despite the intrusion of the regulatory regime. The processes under which the Act operates do not work well for the agriculture sector, and should be approached differently.

The NFF reiterates its concerns about how the listing process is applied, interpreted, communicated and reviewed and analyses whether the Act is effective and efficient in identifying and protecting critically endangered species of communities. The NFF is also concerned about how listings are communicated to landholders and how their practical knowledge is sought in recovery action plans and permissions systems.

Farmers manage over half the Australian landscape and have an economic interest in maintaining the health of their natural assets (natural capital) to ensure the sector can carry out its business into the future. These values are reflected within the NFF's 2030 Roadmap for the agricultural sector to become a $100 billion industry by 2030. With this in mind, and the fact that to date the regulation of biodiversity and ecosystems on farmland has not been successful, it is time to consider alternative means of achieving outcomes that are mutually beneficial to be environment and to landholders. For example, there is great potential to achieve improved and measured environmental outcomes and

through commercially viable mechanisms such as the use of on farm biodiversity certification schemes, like the pilot scheme currently being developed by NFF with federal government funding as part of the four-year, $34 million Agriculture Stewardship Package.

The NFF contributed to the 2018 Independent review of the interactions between the agriculture sector and the EPBC Act which provided a series of non-legislative recommendations to improve of the operation of the Act. There are also a range of legislative reform opportunities that have been reserved for implementation to this Samuels review.

Farmers have to be able to participate in the legislated process with confidence. Farmers will participate in a process:

- that is low cost relative to competitors (who may be international competitors who may receive financial support, for example, for protecting biodiversity or if there is a value attributed to it);
- they can have confidence in;
- or a framework of operation that is reasonable, certain and clear;
- that is well-communicated in an easily understood, simple manner; and,
- that is based on objective and repeatable science.

Farmers are interested in protecting environmental assets and will do so given an operating environment as described above. The NFF is of the view that primary producers must be trusted to be competent and reliable resource managers as their livelihood relies on sustainable management of resources to grow food and fibre. However, current arrangements within the Act, and the way it is implemented, do not provide this regime and effectively act as a disincentive despite best intentions.

The first step to improve the EPBC Act is to clarify the purpose and objectives of the Act. At this stage, the purpose is vague with no indication of what the Act intends to achieve or the desired outcome of the Act in respect of environmental outcomes. Having clear objectives would provide greater certainty to coordinate actions that are meaningful and measurable. The NFF is opposed to the addition of triggers and other matters of national environmental significance, including land clearing and climate triggers. Additional triggers in the Act would only add to uncertainty and duplication, creating additional difficulties for farmers to manage the landscape. There is yet to be a compelling case made for what benefits would be created that would not otherwise be captured under separate and existing frameworks nor how they intend to interact with state legislation.

The NFF notes from the outset that the intent of the Act should not be to return to a pre-1788 landscape but rather enable realistic, sensible and proactive land management practices to improve environmental outcomes in a changing landscape. The Australian landscape has undergone considerable environmental change since 1788 and will continue to change into the future. In the NFF's view, the direction of the Act and its regulations focus disproportionately on individual species rather than ecosystems that has resulted in a hands-off approach to environmental management which incidentally is contrary to environmental

management practices by First Nations people. The NFF supports laws that facilitate active management of the landscape which are attuned to both protecting and improving natural assets in the landscape.

The second step to improve the Act would be to improve the regulation and administration of the Act, particularly the way in which it is applied in practice. Current regulations are confusing and unclear for farmers seeking advice on their obligations under the EPBC Act. Part of the confusion arises from the poor integration between Commonwealth and State laws that invariably change over time as new Governments take office. The NFF has previously described this as the pendulum effect where redrafted or replacement legislation, especially at state level, continues to vary the interrelationship between commonwealth and state instruments and refocuses which legislative instrument is most interventionist from a landowner's perspective.

On the ground, this has caused significant stress for farmers, particularly where actions are referred under the Act that applies a one-size fits all approach. The low level of risk from agricultural activities are not recognised in the Act. There is significant capacity to provide greater certainty by improving the efficiency of EPBC Act assessments and approvals. This was identified in the Craik review.

Bilateral arrangements also provide an opportunity to streamline processes and improve the efficiency of assessments and approvals. While efforts have been made to establish these processes in the past, they are not yet complete and require further work. These processes should ensure consistency and coordination between the Commonwealth and states, and also apply to mapping and offsets.

Improving the communication of EPBC Act obligations is imperative but first requires greater cooperation between relevant Commonwealth and state departments. There is scope to improve coordination by developing outreach facilities in regional areas that provides a conduit between the Commonwealth, states and landholders.

Current arrangements are creating perverse outcomes disincentivising landholders from protecting natural capital assets or referring actions for consideration and approval due to the regulatory uncertainty or burden that would follow. Those that currently maintain or improve assets do so at their own cost and thus are inherently punished for stewarding these assets.

In its submission to the Craik review, the NFF advocated the use of innovative approaches including market-based instruments to empower landholders to actively manage their landscapes. Although this extends beyond the legislative reach of an EPBC Act, developing a marketplace with investment from Government, large corporates, philanthropists and consumers would provide a mechanism to appropriately reward landholders for building natural capital and protecting MNES. The Craik review recommendations 19 and 20 reflect this.

Additionally, the NFF supports greater use of strategic approaches to deliver environmental outcomes, particularly from a Commonwealth level. A landscape-scaled, maybe a regionally planned, framework rather than a project-by-project

approach is preferable for both farmers and the Commonwealth, especially considering the resources required in individual processes. Given the national focus of the EPBC Act, strategic approaches are more proactive, practical and cost efficient. While they are enabled in the EPBC framework, they are not used enough, nor well understood.

1.1. List of recommendations

2. Role of the EPBC Act

- That the objectives of the Act are clarified to develop an agreed vision of what the EPBC Act should achieve, in particular for agriculture.
- That the Government reject the inclusion of further triggers in the EPBC Act.

3. More efficient and effective regulation and administration

- That the Government implement recommendation 17 of the Craik review to develop an integrated IT system to support implementation of the EPBC Act.
- The use of maps for environmental regulation is not supported, but if maps are used by government, they must be at a scale that is meaningful on the ground and there must be a right for the landholder to review and ground truth the maps (at the cost of the regulator/government).
- Any maps should be consistent across three jurisdictions through a set of nationally consistent standards to be developed and agreed through a process of public consultation.
- Maps should be accessible only to landholders through an online portal or by other convenient means, but should not be publicly accessible.
- That there be complete transparency about how datasets and mapping, where used for regulatory processes, are influenced by policy decisions.
- The states and local governments (where local government is relevant) to implement recommendation 3 of the Craik review and recommit to establishing bilateral or trilateral processes to ensure that a farmer can get a single set of advice on their particular site and be protected from sanction if the advice is adhered to.
- That the Commonwealth works with the states to implement recommendation 13 of the Craik review to develop an online tool to automate processing of ‘not controlled action’ decisions where there is no significant impact on MNES.
- That the Government implement recommendation 10 of the Craik review to receive advice as to the likely location and extent of the impacts on agriculture sector associated with the listing, and material options to mitigate any likely significant social and economic impacts of a listing decision.
- That the Government implement recommendation 11 of the Craik review to ground-truth conservation advices and recovery plans for listed species and

ecological communities with the involvement of local practitioners and technical experts prior to formalisation of the advice.
- That in developing conservation advice, social equity and economic considerations, consistent with the principles of Ecological Sustainable Development, be applied.
- That the requirement to include individuals with formal qualifications in science and practical experience in productive landscape management be enshrined in the membership of the Threatened Species Scientific Committee, consistent with recommendation 9 of the Craik review.
- Consider options to clarify 43A and 43B of the EPBC Act.
- That the EPBC Act facilitate, or not impede, uptake of fire management activities, including indigenous fire management knowledge and practices.

4. Better environmental outcomes and innovative approaches

- That a mix of policy instruments be implemented that enable change in practices through using information development, extension support and market incentives as well as punitive measures such as legislation and enforcement;
- That the Government implement recommendations 19 and 20 of the Craik review and conduct an appropriate pilot in an agricultural region; and
- A greater focus on regional approaches through strategic assessments is required.
- Reform the regulatory processes within the Commonwealth Department/s to enable consistency between Commonwealth and state approvals processes.
- That the Government consider research priorities identified under recommendation 18 of the Craik review in the broader context of the EPBC Act objectives and allocate sufficient funding through the National Environmental Science Programme to implement them, and ensure engagement with relevant stakeholders in the research process.

2. The role of the EPBC Act

2.1. Role of the EPBC Act

Across Australia, environmental regulations are numerous and overlaps between levels of government, including state, territory and local governments and, under the constitution, states have primary responsibility over environmental protection.

The objects of the EPBC Act are:

> *(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and*
> *(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and*
> *(c) to promote the conservation of biodiversity; and*
> *(ca) to provide for the protection and conservation of heritage; and*

(d) to promote a cooperative approach to the protection and management of the environment involving governments, the community, landholders and Indigenous peoples; and
(e) to assist in the cooperative implementation of Australia's international environmental responsibilities; and
(f) to recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
(g) to promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.

The purpose of the EPBC Act is unclear. The Act is the primary mechanism for the Commonwealth to protect MNES and give effect to Australia's international commitments, particularly through the ecologically sustainable development (ESD) principles, but the Act also focuses on recovery. If the Act intends to protect MNES, then it may be appropriate to have a discussion on whether there should be a focus on species recovery in the Act, how linkages with state and local government can achieve this, or whether it should be separate to the Act as the Discussion Paper alludes to. Evidence has shown that state governments have a poor track record of conserving species, let alone assisting their recovery[1].

One particular shortcoming of the Act is the lack of a clear and agreed vision for what the outcomes should be, in particular what the Act seeks to achieve and what 'good conservation outcomes' look like. Regulatory instruments should be performance-based, that is, they should focus on outcomes rather than inputs. The scale of pressures on the natural environmental, and limited funding available to manage the plethora of issues across the vast Australian landscape renders the task of protection and conservation almost impractical notwithstanding improvements in isolated or unique regions and would ultimately slow the decline of biodiversity rather than improve it. An outcomes-based approach may be a better alternative. Having a clear vision would provide greater certainty for farmers from which actions and activities can be coordinated and measured against, and was identified in recommendation 1 of the Craik review.

Additionally, it is not clear how these objectives should interact with the agriculture sector which have a vastly different set of circumstances compared to urban development or mining activities. in its response to the Craik review, the NFF conducted a survey to canvas farmers' experiences around compliance with the EPBC. Overwhelmingly, the majority of respondents were unaware the EPBC Act existed unless they had been impacted by obligations under the Act themselves.

The NFF attributes the lack of awareness to poor communications by the Commonwealth and the lack of cohesion between Commonwealth and state laws. The NFF is concerned about the increased likelihood of farmers being subject to a referral under the Act due to the inevitable increase in the number of listed species and threatened ecological communities (TECs). It is therefore important that farmers can better understand their obligations under the Act and are able to access information or know where to access information to inform themselves.

[1] See: https://www.qao.qld.gov.au/reports-resources/conserving-threatened-species

This is not a new issue, it remains unresolved. The NFF subscribes to the principles of COAG Best practice regulation[2] that dictate good regulation should attempt to standardise the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce uncertainty and lower compliance costs.

Furthermore, there is specific relevance to seeking where possible, regulatory instruments should be drafted in 'plain language' to improve clarity and simplicity, reduce uncertainty and enable the public to understand better the implications of regulatory measures. This is clearly not the case with the EPBC and must be addressed as a matter of urgency.

The urbanisation of the Australian landscape will inevitably impact the natural environment, reflected in the increasing number of listings since the EPBC Act commenced. The EPBC Act was never intended to stifle economic development but rather promote sustainable development through ESD. Recognising this, the Act is vague and would be improved by a shared vision for the environment in Australia and how the EPBC Act should facilitate this. Proactive actions, including developing markets, that support and reward landholders who take action to improve biodiversity on the landscape scale should be developed and implemented. At the moment these positive and valuable actions are not being accounted for nor taken into consideration when some change is required to maintain production and reduce environmental impacts.

This national vision of environmental protection needs to address the roles of the three levels of Government, as currently the EPBC Act is not clearly aligned with state and local government regulatory frameworks. In some areas of Queensland, for example, landholders need to understand and comply with three levels of regulation — the EPBC Act federally, vegetation management laws at the state level, and meeting strict vegetation management conditions of Regional Planning Schemes. This is a major flaw in the Act and must be addressed.

If the objective of the EPBC Act is to protect MNES, it should be designed to facilitate participation and enable affected landholders to be involved in the process. This would include establishing a set of principles by which programs would be designed. This may also include a broader focus on the use of multiple policy instruments to achieve the desired outcomes, including market-based tools as well as information, education, innovation, extension and capacity building instruments. A separate approach could be taken for environmental restoration, as many programs in the past have sought to do, including the Natural Heritage Trust and the National Landcare Program. Restoration programs separate to the EPBC Act can be targeted and designed around the environmental needs at a particular location(s).

The NFF is engaging researchers to consider the current frame of the Act and benchmark it against international practice and current shortcomings. It is intended to make recommendations to the review once we have received and considered the research report.

[2] See: https://www.pmc.gov.au/sites/default/files/publications/COAG_best_practice_guide_2007.pdf

Recommendation

- That the objectives of the Act are clarified to develop an agreed vision of what the EPBC Act should achieve, in particular for agriculture.

2.2. Agriculture's role in environmental protection

Farmers are, inherently, environmental stewards that use natural resources within the landscape to sustainably grow the food and fibre necessary for the world. They are not separate from the environment despite how it might be framed in public discourse. Landholders recognise the need to protect their natural capital which underpins production systems. However, there has been little acknowledgement of landholders who actively make valuable improvements to their land to enhance the worth of their natural capital. The Australian Government should be encouraging, and facilitating the development of, a marketplace within which the consumer, business and the Government itself can financially reward farmers and land managers for supporting and improving ecosystems and the services they provide.

Underpinning this approach is the principle that good environmental outcomes first require recognition that farmers are environmental stewards and work best when policies facilitate their involvement in managing the ecosystem.

The recent IPBES report[3] recognised the importance of collaborative, participatory and adaptive governance that creates an enabling environment to achieve biodiversity outcomes. This also involves effective management and coordination, inclusive governance and integrating ecosystem management alongside agriculture.

Currently, the EPBC Act is generally not understood, unhelpful, impractical and punitive and disincentivises participation by farmers. The NFF view is that it currently only adds burden from additional regulatory obligations. There is little opportunity for farmers to be involved in the planning process which is a key area that can be improved. Federally, the NFF considers the EPBC Act would be favourable where: there is improved awareness and understanding of the Act amongst farming communities; there are few referrals; and it can facilitate participation in developing plans to achieve good conservation outcomes.

It is timely to consider alternative means of achieving desired outcomes. The potential to achieve good environmental outcomes through commercial mechanisms such as incentives should be explored as an alternative to regulation. For example, there may be opportunity here for the pilot scheme currently being developed by the NFF with federal government funding as part of the $34 million Agriculture Stewardship Package, to replace some of the burden of regulation with incentives for landholders to deliver environmental good.

[3] https://ipbes.net/system/tdf/ipbes_6_15_add.3_spm_asia_english.pdf?file=1&type=node&id=36271

2.3. Matters of national environmental significance

The NFF does not support additional triggers being incorporated into the EPBC Act, including a land clearing trigger. Measures of change in vegetative cover within the Australian Beef Sustainability Framework[4] identify that, despite the vegetation management actions that have been taken by landowners, vegetative cover increased by 2.2 per cent from 1988 until 2019. At the state level, the Queensland Government has been measuring clearing rates only, and only after persistent lobbying they have recently initiated a process to measure the changes on overall vegetative cover. The measured clearing rate was around 0.3 per cent of the averaged total vegetative cover of 140 million hectares, of which over 70 per cent was permitted vegetation management for fodder harvesting and property maintenance. Overwhelmingly, land managers need to control vegetation thickening through fuel reduction burning, chemical and mechanical control to maintain healthy tree-grass balances and prevents dangerous fuel build-up.

The NFF notes a separate proposal to incorporate a climate trigger into the EPBC Act is being considered by the Senate Environment and Communications Legislation Committee. The NFF opposes the proposed Bill.

The Bill proposes to insert a new Subdivision FC—Emissions-intensive actions into the EPBC Act that would introduce civil penalties for an individual or body corporate that will likely have a 'significant impact on the environment'. There is a distinct lack of clarity about what may constitute a 'significant impact on the environment' and would only exacerbate existing problems with the EPBC Act as already outlined in this submission. The Bill defines an *emissions-intensive action* as an action that:

- Involves mining operations; or
- Involves drilling exploration; or
- Involves land clearing; or
- is specified in the regulations for the purposes of this paragraph.

It is highly likely that the activities that would be captured under this Bill are already captured under the current EPBC Act for what may constitute 'significant impacts' and would simply add to regulatory overlap.

The use of regulation to include an *interim* 'greenhouse gas trigger' was a recommendation of the 2009 Hawke review with the intent to ensure that emissions-intensive developments properly considered and implemented low cost abatement solutions in their construction and operation. The trigger was proposed to focus on domestic emissions outside those covered by the then *Carbon Pollution Reduction Scheme* (CPRS) and was only intended to be an interim measure.

Since 2009, there has been significant domestic and international progress in financial and regulatory institutions to account for climate-related risk and implicitly, carbon emissions. While there is no explicit carbon price in Australia, there is significant work underway to reduce emissions, including the Carbon

[4] https://www.sustainableaustralianbeef.com.au/

Solutions Fund (CSF), contributing to the emissions reduction targets committed under the Paris Agreement. The NFF believes a climate trigger would not materially influence the emissions associated with decisions taken on projects and therefore the benefits (or lack thereof) that would be created with the introduction of this proposal would not outweigh the additional regulatory burden that would be imposed.

States and territories have also already committed to emissions reduction targets and pursuing activities that align with their emissions reduction goals. Some sectors of agriculture are already substantially investing in carbon neutral programs, for example, the red meat sector has aspirations to be carbon neutral by 2030.

Additional regulation through the EPBC Act would create further uncertainty and duplication for states and is simply a crude instrument. If the intent is to reduce emissions, there is no explanation for what additional benefits a climate trigger would create that would not otherwise be captured under existing frameworks, or other emissions reduction programmes. The NFF suggests that emissions reduction should continue to be considered separate to the EPBC Act and therefore rejects any climate trigger proposal.

Put plainly, it is an inappropriately targeted gateway contrived to make the EPBC Act even more onerous.

Recommendation

- That the Government reject the inclusion of further triggers in the EPBC Act.

3. More efficient and effective regulation and administration

There are two inherent processes that could be improved under the EPBC Act:

1. The Assessments and approvals process; and
2. The nominations and listings process.

The capacity for governments to communicate obligations under the Act is also critical to provide greater certainty for farmers' and the ability to make decisions in the best interests of their business.

3.1. Assessments and Approvals

The EPBC Act is one of many environmental instruments farmers must comply with, operating in conjunction with various federal, state and local government regulations. In some jurisdictions, local government also has power and can impose environmental requirements through its planning and other local regulatory responsibilities. For instance, broadacre agriculture in Queensland is affected by over 75 Acts and regulations, covering over 17,500 pages at a state level alone. This cumulative burden is exacerbated by the fact that overlapping regulations usually occur at the federal, state and local government levels, usually with little direction or interaction of each other. This adds to the overall drag on small business productivity and profitability. The Productivity Commission in its

review of the Regulation of Australian Agriculture[5] recommended fundamental change in native vegetation and biodiversity conservation regulation, including considering economic and social factors.

The NFF notes that the Federal Minister, rightly, does not have the power to intervene in decisions of state and local governments that are not likely to significantly impact MNES.

However, what this means is that farmers must be across their responsibilities to ensure they are compliant with the law. In what the NFF describes as a pendulum effect, redrafted or replacement legislation, especially at state level, continues to vary the interrelationship between commonwealth and state instruments, meaning that obligations for landholders continue to shift and may be captured and then uncaptured at one level of government, only to be recaptured at another level. The continual shifting of goal posts only magnifies uncertainty and resentment amongst landholders and reduces business confidence from investors and limits credit access with banks.

For example, in May 2019, the Queensland Court of Appeal, in the *Fairmont Group Pty Ltd v Moreton Bay Regional Council [2019] QCA 81*[6] case ruled that a development permit for the carrying out of "exempt clearing work" being the operation works clearing of Category X vegetation on freehold land is not required under the Act. This means that develop of Category X land is subject to local councils' planning schemes, where they exist, and may require a development permit. This lack of clarity and confusion amongst Federal, state and local government jurisdictional powers, resulted in lost investment and significant fines from the Queensland Government.

Another case study of the difficulty in the process where approvals for urban development are gained by environmental protection on agricultural land outside the development area, impacting on ongoing land use, and without landholder consent or compensation has been provided to the Panel.

While the Commonwealth Law has remained reasonably static, there will inevitably be realignments between various tiers of government. Experience has clearly demonstrated that it is observably difficult for governments to understand where each other sits and which requirements are incorporated within, or adequately covered in other legislation, let alone the difficulty the farm sector has in gaining cogent information on its responsibilities.

The frustration of farmers is particularly felt when approvals are given for an activity at one level of government and farmers are then found to be in breach of a set of laws from another jurisdiction. Commonwealth and state regulations overlap where there are species listed under both Commonwealth and state laws and notably include the Monaro grasslands.

Political use of vegetation legislation at different levels of government has been shown to be highly problematic in Queensland. In 2016, referral to the EPBC compliance unit by the newly elected Queensland Government, of landholders

[5] http://www.pc.gov.au/data/assets/pdf file/0005/49235nativevegetation.pdf
[6] https://www.queenslandjudgments.com.au/case/id/323668

who had received High Value Agriculture permits from the previous administration, resulted in a messy and highly politically focussed compliance action. An EPBC compliance team came to Queensland to investigate almost 70 landholders and it found that the vast majority of landowners were fully compliant with the Act, even though they had not investigated it seriously. A small number were charged, even though they had been approved by the Queensland State Government after a rigorous application process to obtain a Government High Value Agriculture permit. The legislation at the three levels of government in Queensland needs to be fundamentally evaluated by the EPBC review and made much simpler and much more coherent than at present.

The NFF has consistently sought a mechanism that would provide farmers with increased certainty. It is understood that advisory structures work differently in different jurisdictions. It is also understood that there are concerns about liability especially where delegated authority or other bilateral regimes are considered for implementation. And it is understood that there are different legislative priorities and scope in different jurisdictions.

To reduce confusion between the Commonwealth and state processes, the NFF believes there is significant scope to improve the use of bilateral processes. This could ensure more efficient listing and delisting, and reduced duplication between state and federal processes could increase efficiency without undermining scientific integrity. While efforts to have a single assessment and approval process between Commonwealth and states have been made, there is yet to be an agreed approvals process, especially for agriculture. For example, Victoria has an Assessment Bilateral Agreement, but no Approvals Bilateral Agreement as yet. Similarly, NSW has an agreed Assessment Bilateral Agreement that streamlines processes for major projects (although it only applies to either state significant developments or infrastructure and would not capture agriculture) but there are still no agreed processes for offsets.

This would require greater consistency for mapping, offsets and other relevant details under the assessment process. Ultimately, this would improve consistency between Commonwealth and states and lead to greater certainty for farmers.

Having a single point of contact from which a farmer can seek authoritative advice would also provide greater clarity and certainty. The NFF considers relevant state authorities to be the best point of contact, if they are regionally based. However, this would require greater cooperation between the Commonwealth and relevant state environment departments to ensure there is consistency — the details of how this should be developed by agreement between the two parties, and in a manner that would not undermine integrity in the process.

The Craik review recommended that:

> **Recommendation 3**
>
> *It is recommended that an outreach facility (with an initial focus on the agriculture sector) be developed to enable face-to-face interaction with farmers on the implementation of the EPBC Act. Options (which should be monitored and evaluated) for establishing this facility include:*

- *assessing the effectiveness of current collaboration between the Department of the Environment and Energy and New South Wales Local Land Services, and considering further expansion of this model in other states and territories if the benefits are found to outweigh the costs.*
- *outposting Department of the Environment and Energy staff.*
- *contracting suitably qualified locally based and trusted agricultural experts.*

The NFF believes all three options should be considered, in the context of providing the most appropriate and valuable service as a conduit between Commonwealth, state departments and local communities. In principle, an outreach facility should have an extension role. The NFF supports having a Commonwealth officer posted in regionally appropriate areas, including non-government natural resource management organisations. The NFF previously had an outposted Department of Environment officer to provide advice on EPBC Act obligations which was useful for the farm sector. Alternatively, the Commonwealth could accredit regional facilitators to serve this function.

However, through a Commonwealth officer, there is potential to expand the function of the officer to other parts of the Act (or amended Act following this review). For example, an outposted officer could have the role of developing bilateral processes, and/or work with relevant regional stakeholders to develop non-statutory regional plans to deliver environmental outcomes (see section 4.2 of this submission).

Thus, the NFF recommends the Commonwealth work with states and local Governments (where local government is relevant) to implement recommendation 3 of the Craik review and recommit to establishing bilateral or trilateral processes to ensure that a farmer can get a single set of advice on their particular site and be protected from sanction if the advice is adhered to.

Mapping

Another common frustration with landholders is the divergence in mapping products and regulatory instruments between jurisdictions. In Queensland, for example, federal Government provides mapping for the EPBC requirements, the state Government provides different vegetation and ecosystem mapping for two pieces of legislation and local Government provides mapping for meeting vegetation management requirements relating to locally specific schemes.

There are also ongoing concerns about how big data and/or other mapping processes are becoming policy tools rather than information systems. Too often we find that poor mapping outcomes are being driven by interpretative policies rather than the actual data itself. Situations that keep arising such as designated Koala habitat in a willow tree need to be stopped. NFF's view is these are a result of policy determination and intervention rather than the fault of the data. That said there is an ongoing underinvestment in quality data and mapping which needs to be addressed. Where data is questionable then the onus and cost is on the department or regulator to have it independently reviewed to the landholder's satisfaction.

If the industry is to promote confidence in data as an indicator for market-based instruments then the data must be trusted, that is yet to be proved to be the case and must be resolved.

Two case studies about mapping have been provided to the Panel.

An example of mismatched and overlapping mapping and regulatory requirements in Queensland involves the mixed and ambiguous signals provided by the three levels of Government. The state level Vegetation Management Act (VMA) has been the subject of significant negotiation with landowners to the point where improved landscapes (that have been subject to clearing) are mapped as Category X and management rights are not restricted. Remnant vegetation is mapped as Category B and is regulated under the VMA. Landowners have the option of signing a negotiated agreement with Queensland Government through a Property Map of Assessable Vegetation (PMAV) which 'locks-in' the mapping boundaries of unregulated Category X land in perpetuity. At Federal level, however, mapping of MNES does not correspond with and can overlap Category X country and at the local Government level, mapping of ecologically significant species is also over Category X country. Increasingly, the Queensland Government is introducing additional mapping layers and restrictions through local planning schemes over Category X land. This rolling cascade of overlapping legislative change and complicated mapping is creating a high level of uncertainty for land managers. The prevailing high levels of complexity are ultimately seeing many unsure of their rights, with property development plans shelved, fuel reduction burning de-prioritised and regrowth management actions halted. The risk that is slowly emerging is high levels of unmanaged vegetation that continues to thicken with no possibility of proactively managing for MNES conservation, healthy tree-grass balances or sustainable fire regimes.

The Craik review also noted that the federal Department did not have a consistent ability to collect data in forms that can be easily manipulated, shared and integrated into larger datasets, limiting their capacity to compare changes in datasets over time and examine cumulative conditions on approvals or environmental offset locations. Research from CSIRO acknowledged that the value of proponent data had not been quantified nor well described to date, and the degree to which proponent data was captured by state or territory governments were no well documented. This means that there is no effective 'learning mechanism' by which to improve the efficiency of referrals, and equally little capacity to have detailed information or consistency of maps that could be applied multi-jurisdictionally. If, for example, Regional Ecosystem (RE) mapping as conducted in Queensland was equally applied across State borders, then a coherent picture of MNES conservation needs and risks would be possible.

The Government must commit funding to improve their datasets and create an integrated IT system to support obligations under the EPBC Act. The data should also be publicly accessible. The NFF believes this would deliver numerous benefits including: greater consistency, costs savings, improved efficiency and enable more reliable communications between the federal Department and other stakeholders.

Once developed, there must be a mechanism by which the Federal, state and local governments can share information that can then be incorporated into a single dataset that displays relevant features. This would require formal bilateral or trilateral (where local government is in play) agreements to resolve what data should be shared and how it should be presented and made accessible to landholders. Further, this may involve the Council of Australian Governments (COAG) to ensure this process is has an agreed set of nationally consistent standards for biodiversity.

While the NFF recognises the challenges associated with data collection and access, business-as-usual will only continue to exacerbate frustrations and inefficiencies of the EPBC Act. The NFF believes the efficiencies that would be created by having a nationally consistent and clear method would exceed the cost of the investment and deliver more certainty to farmers on-ground and support the building of trust between farmers and regulators.

Therefore, the NFF strongly recommends the Government implement recommendation 17 of the Craik review.

> ***Recommendation 17***
> *It is recommended that datasets developed in support of referrals and assessments be conditioned to Commonwealth standards to enable relevant data to be incorporated into national datasets in a timely fashion and made publicly discoverable, accessible and reusable. Where there is an unacceptable risk that revealing the location of these species or ecological communities may result in their collection or destruction, the Department of the Environment and Energy's sensitive data policy should apply.*

Isolated paddock trees

The EPBC Act is a major barrier to farmers adopting precision agriculture practices, such as controlled traffic farming, in many cropping zones. This is because of the way the EPBC Act seeks to protect isolated paddock trees that have debatable conservation value. A new way of considering isolated paddock trees, with reasonable offsets that protect areas of higher conservation value, is required. Isolated paddock trees have the effect of obstructing farming practices, including controlled traffic farming and spraying, and can potentially result in damage to farming equipment.

The NFF notes that the Department of Environment and Energy (DoEE) has been working to develop a 'communications guide' for farmers such as the 'guide to nationally protected species significantly impacted by paddock tree removal'. This appears to be useful product that gives landholders information about multijurisdictional species, as well as species endemic to States and under what circumstance an approval would be required[7]. However, the need for a guide(s) itself reflects poorly on the legislation if it is confusing enough to warrant a guide. The threshold for what constitutes 'significant impact' is vague and could be

[7] https://www.environment.gov.au/biodiversity/threatened/publications/draft-guide-protected-species-impacted-paddock-tree-removal

applied to almost any activity, leading to inefficiencies and wasted time and resources and providing little confidence in Commonwealth law.

The NFF has provided a case study of EPBC Act paddock tree processes in a Victorian context.

Referral process

For farmers to be confident that they are not breaching the law, they must go through a cumbersome and costly referral process. The process is one-size fits all – regardless of whether the action is undertaking a small farm activity or a large development such as a new suburb or mine. The issue is that some projects are quite small, others worth billions, yet broadly the same requirements apply. A simpler assessment and approval process is required that properly and adequately reflects the lower risks that are often associated with agricultural activities. This process needs to be well communicated and in language that can be sensibly interpreted on ground preferably without the need of external consultants. The NFF expects this the process to be made more efficient if recommendation 17 of the Craik review (as above) is implemented.

A case study of the uncertainty of the referral process has been provided to the review panel.

One simple improvement would be to remove the influence of Commonwealth processes from activities that have low levels of risk, that are, 'not controlled actions'. There is a significant scope for greater online capacity and machine learning to improve the efficiency of the referral and approvals process. The Craik review recommended establishing a process to enable a quick, codified and automated referral decision for no/low-risk proponents.

> ***Recommendation 13***
>
> *It is recommended that an online tool be established under the EPBC Act to enable individual landholders, or Commonwealth officers or authorised individuals working with landholders, to access automated processing of 'not controlled action' decisions where there is no significant impact on matters of national environmental significance. This tool should be formalised through an amendment to the Act.*

<u>Recommendations</u>

- That the Government implement recommendation 17 of the Craik review to develop an integrated IT system to support implementation of the EPBC Act.
- The use of maps for environmental regulation is not supported, but if maps are used by government, they must be at a scale that is meaningful on the ground and there must be a right for the landholder to review and ground truth the maps (at the cost of the regulator/government).
- Any maps should be consistent across three jurisdictions through a set of nationally consistent standards to be developed and agreed through a process of public consultation.

- Maps should be accessible only to landholders through an online portal or by other convenient means, but should not be publicly accessible.
- That there be complete transparency about how datasets and mapping, where used for regulatory processes, are influenced by policy decisions.
- That the Commonwealth work with states and local governments (where local government is relevant) to implement recommendation 3 of the Craik review and recommit to establishing bilateral or trilateral processes to ensure that a farmer can get a single set of advice on their particular site and be protected from sanction if the advice is adhered to.
- That the Commonwealth works with the states to implement recommendation 13 of the Craik review to develop an online tool to automate processing of 'not controlled action' decisions where there is no significant impact on MNES.

3.2. Nominations and Conservation advice and listings

The farm sector would be better placed to positively participate if the level of confidence in the listing process, in all its parts, could be enhanced. While these proposed improvements are unlikely to be an immediate panacea, they are likely to set the basis for a more rational and respected regime. Critically, if the conservation advice is practical, regionally applicable and designed to only meet the target for the best interests of the species or community being protected, then it is likely less concern will be expressed.

Ecologically Sustainable Development principles

The principles of Ecologically Sustainable Development (ESD) are sound and provide a framework to improve inter-generational and intra-generational equity. Under the EPBC Act, ESD principles are not considered during the development of conservation advice following the listing process, preventing advice from being practically applied to the landscape which ultimately hinders conservation outcomes. The NFF has little confidence sufficient weighting is being given to clauses a), c) and e) of the Ecologically Sustainable Development Principles.

> ***Ecologically Sustainable Development***
>
> *The National Strategy for Ecologically Sustainable Development, endorsed by all Australian jurisdictions in 1992, defines the goal of ESD as: 'development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.'*
>
> *The following ESD principles are outlined in Section 3A of the EPBC Act:*
>
> > *a) Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations (the 'integration principle').*
> >
> > *b) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (the 'precautionary principle').*

c) The principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations (the 'intergenerational principle').

d) The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making (the 'biodiversity principle').

e) Improved valuation, pricing and incentive mechanisms should be promoted (the 'valuation principle').

The NFF is concerned about how the ESD principles are applied to the development of conservation advice, where environmental considerations are the dominant factors in the decision-making process by the Minister, outweighing the mandatory considerations of 'social and economic matters'. As conservation advice is prepared with little consideration of social and economic factors, it may not identify options that have lesser social and economic impacts, nor be designed adequately to ensure it can coexist with a farm business.

It is evident that failing to consider and address social and economic impacts associated with listings decisions can impact community confidence in and support for the listing process. If an individual proposes species for listing, the Department prepares a report to the Minister with advice from the TSSC. If the Minister then seeks a review, it would then go back to the TSSC, and then Minister is bound to accept the advice.

The NFF notes the criteria under which the TSSC operate that takes a mandatory scientific approach. However, given the material impacts listings having on farmers, there must be a process where affected landholders can participate in the formalisation of conservation advice. Recommendations 10 and 11 address this issue. The Minister should also receive advice about the social and economic impacts of a potential listing.

There must be a mechanism available to ensure conservation advice(s) can be communicated and practically applied by farmers, whether that be through the conservation advice itself or through trusted networks that can disseminate information on-ground. Further, they need to be fit for purpose and take relevant account of the respective landscape scale they address and potentially impede. The Craik review extensively highlights the impracticalities of conservation advice.

The NFF notes that the Craik review made two recommendations to improve the listing process, noting in particular:

Recommendation 10
It is recommended that the Minister receive advice, concurrently with the listing brief on the relevant species or ecological community, as to the likely location and extent of impacts on the agriculture sector associated with the listing, and, where these might be viewed as material, options available to mitigate any likely significant social and economic impacts of a listing decision.

Recommendation 11
It is recommended that risk-based ground-truthing of conservation advices and recovery plans for listed species and ecological communities be undertaken, with

the involvement of local practitioners and technical experts, prior to the formalisation of that advice.

In the absence of a market mechanism to incentivise environmental protection and compensate for the loss of productive potential due to a listing or potential listing, an enduring financial burden or opportunity cost for the farmer is created. If not a market mechanism, then a compensation fund where impacts of ongoing use / other regulatory appliance could be a compromise. The NFF is seeking, in a case study process, to demonstrate the opportunity cost of impeding a particular development. It is anticipated this will demonstrate the unrecognised burden of the regulation and better inform the necessity for a mature market-based approach.

The NFF therefore proposes that ESD considerations be applied at the point of developing conservation advice. Coupled with practical input from agricultural expertise to develop pragmatic solutions, this would provide a more robust process for the development of sound conservation advice.

Recommendations

- That the Government implement recommendation 10 of the Craik review to receive advice as to the likely location and extent of the impacts on agriculture sector associated with the listing, and material options to mitigate any likely significant social and economic impacts of a listing decision.
- That the Government implement recommendation 11 of the Craik review to ground-truth conservation advices and recovery plans for listed species and ecological communities with the involvement of local practitioners and technical experts prior to formalisation of the advice.
- That in developing conservation advice, social equity and economic considerations, consistent with the principles of Ecological Sustainable Development, be applied.

3.3. Improving communication of EPBC Act obligations

The NFF has extensively noted the importance of communicating the EPBC Act requirements to farmers and suggests that failures have occurred when:

1. Farmers are not aware of the Act.
2. What actions may trigger assessment.
3. When government has not adequately advised farmers in affected regions new listings of species and ecological communities.

The difficulty is in getting the farmer to identify and recognise the issue, compounded by the difficulty in getting departmental staff to identify and recognise and then articulate the issue. As farmers use different methods of obtaining information, the approach must be multi-faceted.

There should be no doubt that better communication of the Act, its objectives and application and interaction with state-based legislation is urgently required. The NFF suggests a contributing factor to poor understanding is the lack of

ownership and participation by landholders in the EPBC Act processes where they are directly relevant to farmers, that is, the development of relevant and timely conservation advice. As noted, the Craik review highlighted the frustrations created by conservation advice that is often not easily understood or impractical to implement — often advice is technically written and not suitable for the typical audience, and at times does not reflect the reality of farming businesses, making it impractical and difficult to implement[8]. When conservation advice is poorly defined, it creates confusion, mistrust and concern. The difficulties in interpreting much conservation advice ultimately prevent conservation outcomes from being achieved.

The NFF proposed in its submission to the Craik review two recommendations to address issues specific to the development of conservation advice and how it should interact with farmers:

- Expanding the membership of the Threatened Species Scientific Committee (TSSC) to include individuals with formal qualifications and practical experience in productive landscape management, consistent with recommendation 9 of the Craik review (below); and
- That a formal agriculture-specific consultative mechanism be constituted and made available to consult with the Threatened Species Scientific Committee in the development of conservation advice. Otherwise, a mechanism by which landholders can participate in the development and/or ground truthing of conservation advice that can feedback into the process. Recommendation 11 of the Craik review is relevant here.

  Recommendation 9

  It is recommended that the EPBC Act be amended, and appropriate resourcing provided, to expand the membership of the Threatened Species Scientific Committee to include an individual with formal qualifications in science and practical experience in productive landscape management. It is recommended that this be implemented immediately, prior to the change being formalised through an amendment to the Act.

Since the Craik review, there have been changes to the membership of the TSSC which have included individuals with formal qualifications and practical experience in productive landscape management and has recently expanded from 10 to 12 members. This is a welcome development. Now, the NFF strongly urges the government ensure this be codified in legislation.

In general, the issues and challenges presented by the nature of agriculture warrant an agriculture-specific approach, involving experts with an acute understanding of local environmental issues and those familiar with the landscape. Trusted networks that can disseminate information and provide advice, such as NRM Regional Bodies and agricultural industry organisations would be invaluable to ensure landholders are able understand their obligations under the EPBC Act.

[8] See https://www.pmc.gov.au/sites/default/files/publications/COAG_best_practice_guide_2007.pdf

The NFF notes two recommendations from the Craik review relevant to this task:

> ***Recommendation 5***
>
> *It is recommended that individual case officers, including from among outposted officers (if applicable), are appointed within the Department of the Environment and Energy to manage referrals from the agriculture sector.*
>
> ***Recommendation 6***
>
> *It is recommended that relevant existing information on farmers' obligations under the EPBC Act is organised on a single webpage (or collection of pages) on the website of the Department of the Environment and Energy. Content for this webpage should be drafted by an individual with experience communicating with farmers, and the webpage should be promoted through hyperlinks on the websites of the Department of Agriculture and Water Resources, the National Farmers' Federation and other government agencies and peak bodies as necessary.*

Recommendation

- That the requirement to include individuals with formal qualifications in science and practical experience in productive landscape management be enshrined in the membership of the Threatened Species Scientific Committee, consistent with recommendation 9 of the Craik review.

3.4. Continuing use provisions

The NFF seeks clarification on the continuing use provisions under Sections 43A and 43B of the EPBC Act, particularly on the phrase *neither of the following is a continuation of a use of land, sea or seabed (a) an enlargement, expansion or intensification of use* contained within section 43B(3) of the Act.

The purpose of sections 43A and 43B is to allow action(s) without an approval if the action(s) is a lawful continuation of land, sea or seabed use prior to the commencement of the Act. A major concern for farmers is intensification. It is acknowledged that variations in stocking rates in the ebb and flow of variable seasonal conditions is not considered intensification. Farmers are also naturally limited by the carrying capacity of the landscape, as well as financial considerations, particularly when seasonal conditions are optimal. Currently, there is no clarity for what farmers can and cannot do despite best efforts by the Federal Department to prepare advice for the farm sector. Inevitably, this adds an additional layer of regulation limiting the capacity of the farm to change farm practices or even adopt new farm practices upon assessment of their business circumstances and what is in his best interest. For the most part the EPBC Act applies limitations to landuse variation or change, limitations of permissible activities around target habitats and seeks to force a dynamic landscape into a static set of rules. The NFF strongly believes the rigidity created by the current provisions stifles innovation and is not in the best interest of both the farm sector nor the environment.

Additionally, it is the responsibility of the proponent to determine whether or not a proposed action constitutes continuing use. In the absence of clarity, this only creates uncertainty for the farmer. If it is determined that an action is not

'continuing use', the farmer must meet obligations under the referral process which requires additional time and cost — the onus is on the farmer to present his case. For example, VicForest invested more than $2 million over the past four years on work associated with research and conservation for the Leadbeater's Possum in order to inform the case for its current review.

In NFF's experience, there has been consideration given to seeking a review of the Natural Temperate Grassland of the South Eastern Highlands (NTG-SEH) escalation to critically endangered. The two key impediments to progressing the seeking of a review have been the unclear cost and likelihood of success coupled with an underlying doubt about whether the listing recommendation was well made in the first place, so it's a question of where the cost of the review should be borne (government or applicant).

At the bare minimum, the government must clarify Sections 43A and 43B of the EPBC Act to better indicate what is considered 'continuing use'.

Recommendation

- Consider options to clarify 43A and 43B of the EPBC Act.

3.5. Bushfires

The classification of fire regimes (including fuel reduction burning) as a key threatening process to Australian biodiversity under the EPBC Act (1999) is a concern. While frequent fire regimes can alter vegetation structure and compositions, it is also well understood that fire and associated smoke are important for regeneration, and germination of certain plant species and landscapes in Australia. Fire also clears thick understorey, encourages new growth that provides food for animal and can create hollows in logs and trees that are used for nesting.

The concept that planned use of mild intensity fire is a substantial threat to biodiversity is a significant contributor to the decline in the level of fuel management and fire preparedness in Australia. This also ignores the counter argument that appropriately managed fuel loads can significantly reduce catastrophic fire events that have a much greater deleterious impact on biological communities (threatened or otherwise). If appropriately managed, fires will not pose a significant threat to biodiversity and ecosystem values. The NFF believes that part of the problem is the narrow-minded approach reflected in the EPBC Act that attempts to conserve every species in a landscape instead of a more practical and landscape-scaled view.

The environment and the landscape will continue to change into the future, particularly with greater development and climate change, meaning that plants and animals will continually move and adapt to the conditions. Conservation outcomes are not and will not remain static and it is impossible to return to a pre-1788 state of the environment. As alluded to, the NFF supports laws that facilitate active management of the landscape which are attuned to both protecting and improving natural assets in the landscape.

Indigenous knowledge can play a key role in both improving biodiversity and managing fire risk in Australia. Australia's history indicate that Indigenous Australians disrupted the previous balances of nature and extinguished many species, including megafauna. Over a few millennia after the arrival of Indigenous communities to Australia, a new balance which included human-induced fire was established. Indigenous Australians introduced the firestick, which replaced a regime of infrequent high-intensity lightning fires, or megafires. They rearranged the vegetation composition at a landscape level and terminated succession of many plants along with their associated megafauna herbivores. Indigenous Australians maintained a newly established balance for more than 40,000 years, which included large environmental and climatic fluctuations. The distribution, extent and condition of regional ecosystems that exist in Australia today are fundamentally changed from vegetation communities that were found by European settlers when they explored and 'began' agricultural production just over two centuries ago. It is therefore not realistic to manage the Australian landscape to achieve a 1788 outcome without severe impacts.

In a separate paradigm, the framework of vegetation management laws, increasingly prevalent since the 1970, seeks to preserve a vegetative mix that has evolved, not one that was 'here' at European settlement. There is abundant evidence of this, including in *A Million Wild Acres* by Eric Rolls. Great care therefore needs to be taken when making policy that seeks to 'protect' our heritage in a landscape or vegetative sense when in many cases it is protecting a new cohort heavily influenced by European landscape management and preservationist laws.

Government must recognise that if fuel reduction burning does not occur, intense fires inevitably do, and in a drier and hotter climate, this poses a far greater threat to biodiversity and ecosystems. Although broader than the EPBC Act, the cumulative weight of environmental legislation has diminished landholder's ability to manage fire risk on their properties. The impacts of bushfires over the 2019-20 period is a strong example of the destruction of 'conservation' parks and 'preserved' ecosystems, where poor management of fuel loads has negated the protection of these natural assets. In a changing climate with greater predicted extreme temperatures and frequency of fires, and without the ability to change the climate, the only pragmatic solution is to manage risk through land management practices. The EPBC Act should neither prevent nor hinder effective bushfire mitigation from taking place, but indeed promote the use of controlled burns to conserve MNES.

As state and territory governments have primary responsibility for vegetation management, fuel management activities such as maintaining fire tracks and clearing fire breaks should be exempt from federal obligations and left to state devices. Otherwise, there must be a clear, quick and simple process where proponents can identify the as a significant impact and, if so, have it resolved quickly. The NFF suggests this is where having local bodies would be useful in providing on-ground advice.

This is a key example of where regulatory overreach is aided and abetted by contrived community outrage (for example mild smoke emission) to burden

regulatory authorities with more interference in their capacity to undertake critical mitigation measures. This impacts variously across jurisdictions, and arguably within jurisdictions depending on the interference levels of individuals who are more concerned with their current amenity (mild smoke in the atmosphere) than the medium-term strategic outcome of early managed intervention. Hazard reduction measures must be implemented. Any intrusion by the EPBC Act must be reviewed.

Recommendation

- That the EPBC Act facilitate, or not impede, uptake of fire management activities, which include indigenous fire management knowledge and practices.

4. Better environmental outcomes and innovative approaches

4.1. Market-based approaches

The NFF has strongly advocated for transitioning the framework of the EPBC Act from 'command and control' to a 'market-based' approach. The traditional regulatory approach in the past 20 years — one that imposes rules through legislation on individuals to achieve environmental protection — has been inflexible and has not arrested the decline in Australia's environmental assets. The continual increase in listed species reflects this. However, there is now an opportunity to drive a new approach including a market-based approach.

The current approach continues to perplex and distress landholders, and inherently does not create an environment where they can participate and contribute to environmental outcomes. Rather, they are left with the burden of protecting environmental assets at their own cost and rendering portions of land unusable and subsequently lowering their land values. This is a perverse outcome and places even greater responsibility on landholders, further disincentivising them from protecting environmental assets or referring agricultural actions for consideration and approval due to the punitive nature of the Act. Landholders should not be inherently punished for harbouring these assets.

Since the Craik review, there has been significant progress and support for establishing market-based instruments to protect natural capital. The Craik review separately recommended the following:

> ***Recommendation 21***
>
> *It is recommended that an initial allocation of $1 billion over four years be provided to establish a National Biodiversity Conservation Trust fund explicitly tied to the EPBC Act to support the public benefits of protection, including by farmers, of matters of national environmental significance through the adoption of a market-based approach that incentivises farmers (and others) to protect and actively manage matters of national environmental significance outside of legislated requirements. Where there is a public benefit, the Fund should have the capacity and authority to, inter alia:*
>
> *– support the purchase of private land management agreements acquired under Australian Government environmental offsetting programs.*

– directly purchase environment protection and biodiversity conservation outcomes through the acquisition and active management of land, based on a strategic and proactive long-term investment plan.

– make payments to accredited state and territory Trusts that deliver actions in the long-term investment plan.

– compensate landholders affected by the influx of a mobile threatened species into an area causing significant financial burden.

It is further recommended that the Department undertake some preliminary work to develop an approach to assessing public benefits and regularly monitoring, evaluating and publishing the results of the Trust's activities.

The NFF believes this a crucial step in advancing participatory environmental protection. As noted, the IPBES recognised the importance of collaborative, participatory and adaptive governance that creates an enabling environment to achieve biodiversity outcomes which the current framework does not provide.

The previous Productivity Commission report into the Regulation of Australia Agriculture[9] also recognised farmers have a clear incentive to preserve and care for the land, its native vegetation and biodiversity, where this maintains or improves productivity or delivers private benefits in terms of environmental amenity. However, the current regime means that farmers carry the cost of conservation despite it providing broader public good benefits, including visual amenity, prevention of soil and water degradation, carbon sequestration, and others. Without any financial mechanism of capturing these benefits, farmers will underinvest in conservation from the perspective of the community as a whole.

Until farmers are able to capture the benefits provided through the provision of public good conservation outcomes, the government has a role to play to ensure farmers are not left worse off for their efforts. In this respect, the NFF continues to advocate for the government to invest in the development of market-based instruments to protect endangered and critically endangered species, including by actioning recommendation 21 of the Craik review.

There are domestic and international precedents for using market-based instruments to protect environmental assets. They include the former Environmental Stewardship Program for the Box Gum Grassy Woodland under the National Landcare Program, water buybacks under the Murray-Darling Basin Plan (albeit contentious), the NSW Biodiversity Conservation Trust, and Queensland's Land Restoration Fund.

The Climate Solutions Fund (incorporating the Emissions Reduction Fund) is one maturing market that engages landholders in commercial activities to deliver public good outcomes, that is, carbon sequestration. Many methodologies have been created to facilitate opportunities for businesses to participate and they continue to improve.

While there are still scale problems with these schemes, they provide a foundation to build upon. The commercialisation of the environmental

[9] https://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture.pdf

enhancement, where they are properly made financially attractive, then becomes a compelling option for landholders. Commercialisation can create an industry that provides sales, marketing and technical advice as a precursor to entering agreements, and management and technical input during the term of the contract. In many ways, this process is more user friendly and engaging for landholders and cooperative environmental outcomes are the result. Landholder participants can have feelings of ownership, partnership and reward rather than of obligation, as well as the disproportional burden of environmental protection and confusion under the EPBC Act and other state laws.

In valuing the protection of high conservation value flora and fauna that may exist in the listing process as endangered or critically endangered, and supporting it is accurately mapped, a landholder can the volunteer to enter into a commercial agreement which would negotiate a management regime and return a stewardship payment. Vesting this obligation by contract and payment, rather than by decree and enforcement, changes a subordinate relationship to a partnership. Such a mechanism will have a complementary outcome of creating an industry with a value that will encourage technical and management advice on a bilateral basis and go a considerable way to resolving the current communications difficulties from which current arrangements suffer.

While there has been some work from within the DoEE to support farmers and landholder action towards conservation efforts, there is generally little acknowledgement of landholders who actively make improvements to their landscapes and protect natural capital. Without a new approach to protecting natural capital, the NFF believes environmental protection will continue to be sporadic and cyclical, and risks competing for what are increasingly scarce government funds and resources which will ultimately not provide the long-term certainty required to improve environmental outcomes.

The NFF strongly believes the EPBC Act can be better designed to facilitate these outcomes, rather than being punitive. The NFF acknowledges there will be also be a role of regulation to ensure a market system is robust and does not create perverse outcomes.

Recommendations

- That a mix of policy instruments be implemented that enable change in practices through using information development, extension support and market incentives that can gradually offset punitive measures such as legislation and enforcement.

Agricultural Stewardship Program

The NFF has been advocating for natural capital approaches through the Craik review and in the context of the NFF's 2030 Roadmap for the agricultural sector to be $100 billion by 2030. Through natural capital approaches, the agriculture sector is looking to derive a net benefit of $5 billion by 2030 — the net benefit of ecosystem service is equal to 5 per cent of farm revenue. Full detail is in the roadmap available here. Another informative on natural capital was released by

ClimateWorks as part of the Land Use Futures project which the NFF collaborated on. The natural capital roadmap is available here for consideration.

The NFF's natural capital policy was developed to progress the development of a natural capital marketplace in Australia, in which landowners are rewarded financially for building natural capital and preserving MNES and have greater access to rural finance due to decreased lending risk. The policy is available at **Appendix A.**

In late 2019, the NFF, in partnership with KPMG, launched the *Report on Nature* report, an informative document on natural capital. The paper discusses market-based and sustainable finance approaches with a key focus on ecosystem services that combine capital raising for sustainable land use and management with yield generation linked to defined on-farm outcomes. These outcomes are environmental; social and cultural; better livelihoods and community cohesion; or economic. The report may prove informative for this review and is available here for the Expert Panel's consideration.

The NFF has maintained an ongoing dialogue with the Department of Agricultural Water Resources (now the Department of Agriculture, Water and the Environment) office on the value and return on investment in allocating a significant portion of the $34 million Agriculture Stewardship Fund. The funding was initially announced in 2019 and comprises a $30 million Agriculture Biodiversity Stewardship Pilot Program and a $4 million Australia Farm Biodiversity Certification Scheme. The program is intended to showcase a mechanism to deliver financial rewards for improving biodiversity by recognising farmers' role as environmental stewards.

The NFF has been working with CSIRO to demonstrate the opportunities that a natural capital market can provide for farmers. Through the fund, and in collaboration with CSIRO, the NFF seeks to:

- lead a collaboration of interested parties to deliver a digitally enabled set of metrics for sustainable farm practices and biodiversity indicators that are presented in a reliable and useable way to allow a market to be designed around them.
- conduct a project to design market rules to provide the finance sector with an understandable and trusted framework to invest in these outcomes.
- collaborate with the Department to develop a grants program that would be consistent and also provide parallel feedback to this research project on priority areas for initial investment from the farmer perspective.

The Farm Biodiversity Certification scheme will analyse, evaluate and develop a trial system of verification/certification for agricultural biodiversity and sustainability. Given the diversity of industries and differing priorities, a consultative approach is being adopted in all phases. The project will run from December 2019 until mid-2022 and will be delivered in three phases. It will also aid in informing the federal government on most effective capital, market-based incentive and market access approaches.

This investment could deliver real outcomes and a sustainable market that would ultimately deliver: real financial returns to farmers, improve risk management and resilience, and improve environmental outcomes.

4.2. Strategic approaches

One difficulty the EPBC Act presents to the farm sector is that it is applied across the landscape under a broad range of circumstances. The Act predominantly focuses on geographically confined proposals that may include mining or urban development, or even proposed land use change in agriculture.

Generally, the Act intersects with broad scale landscape issues, in particularly land use intensification and as noted above, there is a disincentive for farmers to intensify or change land use practices due to obligations under the Act. Given the size of the farming landscape in Australia, the current requirements are impractical and not conducive to delivering good conservation outcomes.

The NFF recommends a greater focus on landscape approaches rather than a project-by-project approach (particularly for agriculture) which is typically more stressful, time-consuming, resource-intensive, and unlikely to deliver meaningful environmental outcomes. Given the national focus, it would be more practical and cost-efficient for the Commonwealth to take a proactive approach through strategic assessments rather than smaller project-by-project assessments. While strategic approaches are embedded into the EPBC framework, they are not used enough, expensive and time consuming.

Strategic assessments (part 10 of the EPBC Act) offer the opportunity to consider the biodiversity impacts of development over large geographies and long timeframes (even if the proponent of the development is currently not known). Provisions of the EPBC Act provide for the Commonwealth to assess and approve a 'plan, policy or program' proposed by a proponent or other entity such as a state or local government authority, and the actions (or classes of actions) that are associated with that plan, policy or program.

Strategic, or landscape scale, approaches to conservation have been shown to achieve better conservation outcomes while providing proponents with increased certainty and decreased regulatory burden and costs, compared to site by site assessment processes. However, the current regulatory framework in the EPBC Act that provides for strategic conservation planning lacks certainty and clear objectives and provides for wide administrative discretions that significantly increase the costs and complexity to both proponents and the DoEE. There needs to be much more statutory recognition of the superior conservation outcomes that can be achieved by strategic conservation planning, including rehabilitation and protection of a bioregionally functional landscape by protecting large connected areas of habitat, ensuring habitat and ecological diversity, and ensuring that important landscape elements such as riparian corridors and karst systems are able to contribute to ecological function.

In the context of a developing market, prioritising regional scale natural infrastructure and providing commensurate funding pathways will greatly enhance enthusiasm for engagement from private landowners.

There is significant scope to simplify processes for strategic assessments to incentivise its uptake and make it more accessible to proponents and the states. This would require several improvements and changes to the EPBC Act.

Firstly, clarity on what constitutes 'good' or 'acceptable' conservation outcomes. There is a lack of statutory guidance about what in fact constitutes the instrument to be assessed and approved, the lack of clear impact thresholds which enliven regulation under the Act, and the lack of statutory guidance for determining an 'acceptable' conservation outcome.

This also requires clarifying how conservation measures achieved by the Act's processes will be more equitably funded. The current funding approach adopted by the Commonwealth under the EPBC Act and by the States (such as the NSW Biodiversity Conservation Act 2016) requires proponents to shoulder the burden of the cost of conservation measures. This approach is not sustainable nor equitable for the agricultural sector, which cannot pass this cost up the value chain (unlike property developers).

Existing DoEE policies and processes are designed for site by site assessments and are generally not scalable for assessments at a bioregional or landscape scale. For example, DoEE continues to require quadrant by quadrant biodiversity assessments and will not accept macro scale desktop biodiversity assessments, despite scientific literature that supports desktop assessment and macro scale approaches for strategic conservation planning. This requirement is often simply not feasible, and in all cases unduly increases costs and time for preparing impact assessment reports – often to such an extent that the strategic approach is abandoned.

Lack of coherent policy guidance around the objectives for mitigation measures and offsets has led to demands by DoEE for unreasonable and unaffordable obligations that are the subject of continuous negotiations that undermine the collaboration and cooperation that is meant to be a feature of the conservation planning approach (according to DoEE policy documents).

The Craik review expressed strong support for strategic conservation/land management approaches in the agricultural context, noting that:

> *There is a need for a new approach to planning that involves local communities and is targeted toward regions where interactions between agriculture and MNES are most likely.*
>
> *To provide a "carrot" to balance the "stick" approach, there appear to be no strategic approaches with appropriate incentives to enable the agriculture sector to grow and develop (as often encouraged by government policy) while maintaining national environmental standards. The Department should adopt a non statutory regional planning approach with natural resource management organisations in areas where interactions between agriculture and MNES are likely and/or significant to identify priority MNES and develop statutory or non statutory means of protecting them prior to development occurring. In this respect the New South Wales government has made a well resourced offer for their Local Land Services to work with the Department in the two areas suggested to pilot this regional planning approach – the Monaro grasslands and Walgett. While the precise details of such an exercise remain to be decided between the two organisations, this offer*

provides a real opportunity to test the notions of working with the states on the ground and identifying how the requirements of both jurisdictions can be met in the most efficient and effective manner. I strongly recommend the acceptance of this offer.

The NFF suggests that the Independent Panel examine the NSW Cumberland Plain Conservation Plan, enabled through the NSW strategic conservation planning process, as a useful case study to improve Commonwealth and State bilateral processes. The framework used under this conservation plan is now being trialled at both north western NSW and the Monaro.

Governments must recognise there is a clear need for a different approach to the farm sector due its size and diversity. A strategic innovative and contemporary approach as proposed would be aided by having a robust natural capital market with clear price signals that could support the protection of environmental values.

Importantly, this process should seek cooperation and participation from the community and other local stakeholders. The NFF believes this would deliver better environmental outcomes by fostering a sense of ownership. Additionally, this would also foster communication between different stakeholders so they can better understand their obligations under the EPBC Act and other relevant state or local laws.

There are lessons that could be drawn from the management of water resources in Australia, particularly the Murray-Darling Basin. While there are issues with implementation, the Plan itself is generally accepted and provides a clear plan for how water should be managed, particularly in supporting social, economic and environmental values.

Underpinning this would be a set of environmental management principles agreed by the Commonwealth and state and territory governments to ensure there is a nationally consistent approach at Federal, state and local government levels. This would provide a useful avenue to streamline assessments and approvals and determine clear roles and responsibilities between the Commonwealth and states, and may lead to greater efficiencies. States would then be primarily responsible for vegetation management with limited intervention by the Commonwealth.

As states and territories have their own set of environmental standards and principles, there is merit in having a consistent set of principles on the environment. The NFF suggests the current 1992 Intergovernmental Agreement on the Environment be updated to be more contemporaneous.

The NFF recommends the Government implement recommendations 19 and 20 of the Craik review and conduct an appropriate pilot in an agricultural region.

The NFF notes that strategic assessments would necessarily be accompanied by reliable datasets and other land use information, and supports this use provided data sets and policy decisions that go into the use and development of these data sets are clear and transparent. They include the criteria for using data sets, and assumptions made about the validity of the data.

In the currently regulatory environment, there is little transparency about the data and policy that goes into maps, although local knowledge indicates that data is highly unreliable and not designed for a regulatory purpose. The current approach imposes regulation through predictive maps and then challenges landholders to pay for better data gathering which can then be used for further regulation. This is not acceptable.

One option, and there may be several, the Review Panel may wish to consider is a linear infrastructure approach to development — data could be used to identify the environmental characteristics of a particular landscape and then progressively ground truthed to ensure accuracy and narrow the focus of development to minimise impacts. After determining the scope of impact, then compensation and mitigation frameworks should be factored in. Big data could be used to identify conservation outcomes at a bioregional scale, using agreed good quality datasets and assumption sets, and inform strategic development. Once focus areas are developed, these could be ground truthed at public expense and where land is identified for conservation there needs to be compensation framework (acquisition or market instrument) that adequately compensates for loss of production and other impacts.

Recommendations

- Government implement recommendations 19 and 20 of the Craik review and conduct an appropriate pilot in an agricultural region.
- A greater focus on regional approaches through strategic assessments is required.
- Reform the regulatory processes within the Commonwealth Department/s to enable consistency between Commonwealth and state approvals processes.

4.3. New Environmental Act and Commonwealth Environment Protection Authority

The NFF notes proposals to introduce a new Commonwealth Environment Act, consistent with recommendation 1 of the Hawke Review. While there is a case to repeal the current EPBC Act in favour of a new law, the NFF is concerned that, without addressing fundamental limitations and flaws in the current Act, a new law will simply repeat similar problems. If a new law were to be considered, it should take a different approach reflecting the learned experiences of the past 20 years and is future-oriented and which promotes innovation in environmental management.

The 2009 Hawke review argued the need to repeal the current EPBC Act in favour of a new Act that would:

- make it clear that environmental considerations would be given primacy over social and economic considerations;
- incorporate the ESD principle of integrating both long-term and short-term environmental, social, economic and equitable considerations effectively.
- facilitate positive biodiversity and environmental outcomes at an ecosystems level. This means that the Commonwealth's role in

environmental protection should focus on key ecosystem services and functions as well as individual species, but notes '*Species and ecological communities are pivotal points of value that often drive the community's level of engagement in environmental issues'*

- simply the following by creating unified approaches:
    - public consultation processes and timeframes
    - application processes
    - publication requirements
    - processes for developing and approving management plans
    - arrangements for issuing permits

The NFF supports elements of the new laws where it can be simpler and more efficient but is concerned about broader changes that could be incorporated into a new Act. For example, the 'Next Generation Biodiversity Laws' prepared by EDO NSW and in collaboration with Humane Society International Australia includes the following ideas:

- The Act Elevates the importance of environmental protection and restoration in the object of the Act
- Seeks to expand Commonwealth responsibility with oversight of the National Reserve System, Ecosystems of National Importance, greenhouse gas emissions, significant land clearing activities and significant water resources.
- Commonwealth would have a greater role in coordinating NRM planning and integrating conservation goals and programs.
- Establish a 'National Sustainability Commission' to coordinate national plans and actions, and a new National EPA for assessment and enforcing compliance
- Simpler, faster nomination and listing processes for assessments across different governments
- Greater powers [for the EPA] to refuse projects that impact on significant MNES.
- More triggers and increased clarity, particularly on 'significant' land-clearing proposals, water resources and greenhouse gases.
- A greater focus on strategic environmental outcomes, particularly through bioregional plans (building on the Regional Natural Resource Management Planning approach as used by State and Territory Governments as founded through the Australian Intergovernmental Agreement on the Environment 1992)
- Introducing 'merit reviews' of key decisions
- Greater public participation, transparency across all key stages of the EPBC Act.
- Greater monitoring and mapping through a National Ecosystems Assessment and a national environmental data and monitoring program.

While there is merit in some of their ideas, the NFF is concerned its implementation might suffer from similar issues presented in the current EPBC

Act. Lack of resources are unlikely to be met and there is a risk expanded powers would create further delays and uncertainties.

However, there is merit in having clear statutory obligations between Commonwealth, state and local governments, and the direction towards strategic approaches are well-supported. As has been evidenced in some jurisdictions however (such as in Queensland), the principles of subsidiarity are flawed, particularly if localised decision-making bodies are ideologically biased and motivated.

Greater community involvement is also welcome, and there should be greater engagement in key areas. The NFF would add that greater community participation in relevant communities should be given greater emphasis, particularly where there may be affected landowners. This would involve a range of stakeholders and clear communications of the process, potential impacts, timeframe and expectations and should emphasise working in partnership with communities and landholders to achieve outcomes.

The NFF also notes a proposal to establish a Commonwealth Environment Protection Authority (EPA). The NFF is opposed to this for the following reasons:

- The NFF supports accountability through rigorous, transparent and inclusive assessment and approval processes.
- The NFF believes the Minister for the Environment should maintain responsibility for approvals and should not cede authority to a separate body. If assessment and approvals bilateral agreements are in place and operating effectively, a Commonwealth body would not serve any meaningful purpose.

Should a new independent agency be established, the following principles should apply:

- An advisory body only, not a decision maker body
- Operating within the boundaries of science and evidence
- A scope explicitly limited to EPBC Act matters
- Bound by government policy.

4.4. Feral pests

The IPBES itself recognised that feral pests and alien species were detrimental to Australia's biodiversity. Feral cats are one example. While the numbers vary, feral cats were estimated to kill over 2 billion wild animals each year. The Australian Wildlife Conservancy (AWC) estimated that feral cats number approximately 4 million and can consume 2000 individuals per minute or more than 1 million birds, more than 1 million reptiles and more than 1 million mammals in Australia every day.

For example, the introduction of cats and foxes into the Mulga lands of inland eastern Australia have resulted in the decimation of Bettong and Bilbie populations to the point of extinction. The Bettong and Bilbie are natural controls for the regrowth of Mulga and maintenance of healthy ecosystem function[10] and

[10] https://pdfs.semanticscholar.org/90ab/42844f83bde421c5eb6b2c70410acc07ffc9.pdf

tree-grass balance. Therefore, the EPBC Act needs to place emphasis (and commensurate public investment) on pest animal and weed control in order to restore ecosystem function and thereby MNES protection.

The AWC model property that has protected and excluded predators from some 8,000ha at the Scotia Wildlife Sanctuary is already showing signs of species recovery and greater outcomes are expected. Further information is available in the link here.

Serious investment in cat management/eradication programs are likely to have more positive effect on endangered fauna than many of the habitat protection regimes currently applied by the EPBC Act. While maintaining the habitat is an important goal, preventing species destruction through predation is also critical.

The NFF suggests that feral pests may well be considered in non-statutory regional plans proposed in the Craik. Non-statutory plans (section 4.2 of this submission) can provide direction on what can be achieved for MNES, offering opportunities for collaborative objective-setting among different sectors of the community and enhanced consideration of cumulative impacts.

However, it is clear that serious investment into research and management programs is necessary to implement the EPBC Act in the future. This first requires clear direction that should be reflected in the objectives of the Act; second, it requires clear research priorities against these objectives; and third, sufficient funding. There are opportunities through which to implement these legislative and non-legislative changes in the Act.

The National Environmental Science Programme (NESP) is the body for long-term research that can drive priorities under this review. The Craik review identified research priorities specific to the EPBC Act that could be funded through the NESP:

> **Recommendation 18**
> *It is recommended that a priority area for funding in the next round of the National Environmental Science Program or its successor be aimed at providing advice regarding the implementation of the EPBC Act. In addition to providing the Department of the Environment and Energy with responses to specific questions related to the EPBC Act, research priorities could include:*
> *– a national review of approaches to EPBC Act environmental offsets and advice on their effectiveness in achieving stated objectives.*
> *– development of a common assessment method for EPBC Act environmental offsets (see Recommendation 16 in this Review).*
> *– development of a coordinated regional approach to conservation management of MNES and, in particular, threatened species and ecological communities.*
> *– assessment of approaches to long-term monitoring of threatened species and ecological community health in regions where interactions between environment protection objectives and agricultural development activities already occur or are likely to occur in future.*
> *– best-practice approaches for assessment of cumulative impacts on MNES.*

Recommendations

- That the Government consider research priorities identified under recommendation 18 of the Craik review in the broader context of the EPBC

Act objectives and allocate sufficient funding through the National Environmental Science Programme to implement them, and ensure engagement with relevant stakeholders in the research process.

Appendix A – NFF Natural Capital Policy

Natural Capital

Issue

For over two centuries, Australian landholders have invested in and managed properties for production and sale of agricultural commodities within various market arrangements that have ultimately focussed on production with less consideration of the value of natural capital used in producing those goods, and, unfortunately, this natural capital has depreciated over time. As awareness and concern for the environment and social expectation on the services it provides has elevated, it is prudent to consider how the value of natural capital can be meaningfully incorporated into the wider market-based framework to ensure social, environmental and economic benefits can be formally recognised and rewarded.

Landholders recognise the need to protect the natural capital that underpins their production systems; however, there is little recompense for the services the natural systems on their properties deliver to society. Furthermore, there is little acknowledgement of landholders who actively make improvement to their land to increase the value of their natural capital. While there is a private benefit, natural capital has been providing public good conservation outcomes on private land which, without a new paradigm, is set to continue indefinitely and should be acknowledged. As such, the benefits of lower food and fibre prices due to open competition within a free trade environment are enjoyed by all consumers. This is, at its worst, to the determinant of landholders who are struggling to cover the costs of environmental stewardship. The long-term outcome of this problem is the degradation of our natural capital. To continue with the current approach to agricultural supply chains is not in the best interests of farmers or Australian consumers.

Therefore, there is a logical imperative to capture the value of natural capital in a market-based framework that governs decision making on farm. In the absence of a market-based system that assigns value to natural capital and the various services provided by the environment, there is little ability for farmers to pursue the protection of natural assets within the current agricultural market framework without incurring significant cost or loss of income. Landcare has been a key transitional tool and needs to be built on. To date, national and state legislative instruments to protect the environment have been prescriptive, inefficient, and do little to recognise the potential role of farmers in sustaining, and enhancing, their natural and agricultural landscapes. This policy seeks to complement existing legislative frameworks, but also to empower landholders to quantify and manage their natural capital.

Research into the cost externalities for agriculture in Australia is inadequate, including assessment of production value, environmental benefits, and social benefits in balance with environmental costs such as nutrient rundown, degradation or biodiversity loss. There has not been sufficient quantification of the natural capital value and ecosystem functions in the assistance they provide in supporting a healthy environment.

As farmers manage 51 per cent of Australia's land mass, they are in the best position to manage the land sustainably and protect the environment, and should be encouraged to do so. Farmers need to be paid fair and equitable returns for the products and services their properties provide. This policy addresses the need to capture the value of natural capital in a market-based system that is integrated with the Australian economy and recognises that the best environmental outcomes are achieved by empowering and incentivising landholders to manage their landscapes.

Background

Natural capital is the world's stock of natural resources which includes geology, soils, air, water and all living organisms. Many natural capital assets provide people with free goods and services, often called ecosystems services. Features of our environment that directly or indirectly produce value to people including ecosystems, species, freshwater, land, minerals, the air and oceans, as well as natural processes and functions are all elements of natural capital.

The world is trending towards a market-based system for valuing natural capital. Recent decades have shown an increase in Payments for Ecosystem Services (PES) programmes and the introduction of natural capital accounting standards to measure natural capital. Internationally, this includes the United Nation's System for Environmental-Economic Accounting (UN SEEA). The international experience has provided a robust foundation with which to build a policy that is unique to the Australian landscape.

Valuing Natural Capital

The measurement and valuation of natural capital is essential for recognising and building the strengths of Australian landscapes in financial, environmental, community, cultural and spiritual terms. The measurement, restoration and building of natural capital introduces new economic threads into the canvas that maps rural communities across Australia and can help agricultural businesses grow and thrive.

The concept of natural capital has the potential to reconcile economic and environmental interests by integrating the value of natural capital in decision-making. Valuing natural capital makes it possible, for example, to test a cost-benefit analysis of building a new municipal water treatment plant, against restoration or preservation of catchments and wetlands for the clean water filtration services they provide.

This policy builds on extensive research and existing international policies for valuing natural capital. There are five pillars required to progress natural capital policy:

- Government recognition on the need for a natural capital policy;
- Development of a process for valuing biophysical assets and ecosystem services;
- Development of a process to publicly monetise biophysical assets and ecosystem services;
- Establishment of a private market; and
- Mechanism for policy review to inform future policy.

Policy Position

The NFF recognises the importance of the environment in the services it provides for agriculture and for the broader public. In order to sustain these assets into the future, an economic framework that recognises the value of these assets may be desirable.

Australia needs a natural capital policy that can drive industry valuation of natural capital and its incorporation into the national environmental economic accounts. The policy will help establish a marketplace that enables natural capital to be valued through crediting payments for derived ecosystems services. Valuing natural capital will also facilitate direct measurement and tracking of land condition and provide landholders with incentives to improve the value of these assets.

What the industry needs

The policy must:

- Recognise that 51 per cent of Australia's land mass is managed by farmers and they are best placed to manage their natural assets;
- Recognise that those in agriculture need to be paid fair and equitable returns for the products and services their properties provide;
- Recognise that a market driven system is the most efficient way to incentivise farmers to manage the landscape without incurring significant cost and potential loss of income;
- Develop a robust process for valuing natural capital and ecosystem services;
- Develop a robust process for monetising biophysical assets and ecosystem services;
- Recognise that regulatory control only of vegetation management is not the best pathway to committed outcomes. Pragmatic measurement of natural asset condition and incentivising landholders to improve it will provide more robust outcomes and remove the need for ongoing political intervention;
- Register of natural assets values on the National Environmental Economic Accounts and payments from the services these assets provide;
- Establish a marketplace that enables transaction of natural capital value through banking and commercial sectors at an individual landholder level;
- Recognise that, in the absence of valuation and a robust market for biophysical assets, just terms will need to be expanded to cover the loss of use rights;
- Have the ability to attract support and investment from external sources to deliver on industry and community needs;
- Distinguish public and private benefit in the publicly funded acquisition, measurement, collection and consolidation of reliable and valid data;

- Encourage and facilitate the sharing of data between organisations linked to agricultural industries who are interested in valuing and measuring changes in natural capital; and

- Establish a Natural Capital Commission, under NFF stewardship, to elevate the challenge of developing market and dimensions, oversee the key political, legal, economic, and social aspects of introducing a natural capital component to the Australian economy and investigate Australia's positioning within the international marketplace as a market provider of significant ecosystem services as well as environmentally and sustainably produced commodities.