

Please attach the following **one-page summary** to your submission.

Comments on the Interim Report for the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)

Summary

Name of author/organisation:

NATIONAL FARMERS' FEDERATION

Contact details:

Deborah Kerr

NRM Manager

Phone: 02 6273 3855

Email: Dkerr@Nff.Org.Au

Date:

10 August 2009

Which chapter(s) of the interim report are you commenting on?

The NFF is commenting on most chapters

Key points of submission

- The NFF supports streamlining of Australia's environmental law across all jurisdictions;
- Any changes must be based on credible and substantial justification for change, and not be because of perceptions of an inability to influence decisions/direction/outcomes; and
- Regulation does not deliver real environmental benefits on the ground – market based instruments such as the Environmental Stewardship Program has a proven track record in enhancing biodiversity outcomes.

References

A bibliography is included in the document.

Confidentiality statement:

Note that all submissions unless otherwise indicated will be published on this website. You **MUST** indicate on your submission if you wish for your submission not to be published. If you wish for your submission to not be published please mark your submission as 'Confidential'. You should note that even if your submission is not published, the title of your submission and the name of the submitting organisation or individual will be published on the web site. If you wish to not have your details published please contact the Secretariat before making a submission. Contact details from of individuals making submissions will be limited to name, suburb and State/Territory.

Do you want this submission to be treated as confidential?

No

These comments contain personal information of third party individuals. The third party individual consents/does not consent (delete or strike out that which is not applicable) to the publication of their information.

Not applicable.



National Farmers' Federation

Submission to the

**Interim Report for the Independent Review of
the Environment Protection and Biodiversity
Conservation Act 1999 (EPBC Act)**

10 August 2009



Member Organisations



Contents

The National Farmers' Federation	5
Introduction & General Comments.....	5
Chapter 2: Commonwealth Role and EPBC Act Objectives	7
Chapter 3: Scope of Environmental Impact Assessment	10
Chapter 4: Environmental Impact Assessment.....	12
Chapter 5: Prior Authorisation and Continuing Use Provisions	15
Chapter 7: Land Clearance	17
Chapter 8: Climate Change.....	18
Chapter 9: Water Issues	19
Chapter 10: Strategic Assessments and Bioregional Planning.....	23
Chapter 12: Threatened Species and Ecological Communities.....	24
Chapter 13: Biodiversity Conservation, Recovery Planning and Threats Management.....	25
Chapter 18: Wildlife Trade, Live Imports & Biosecurity	25
Chapter 19: Governance and Decision Making	26
Chapter 20: Review Mechanisms under the EPBC Act.....	26
Chapter 21: Enforcement, Compliance, Monitoring and Audit	28
Chapter 22: Administration under the EPBC Act	28
Chapter 23: Reducing Regulatory Burden and Streamlining Processes.....	28
Chapter 24: Cost Recovery	28
Conclusion	29
NFF Contact.....	29
Bibliography.....	31
Attachment 1	32

The National Farmers' Federation

The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly agriculture across Australia.

The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations collectively form the NFF.

Each of these state farm organisations and commodity council's deal with state-based 'grass roots' issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

Introduction & General Comments

The NFF welcomes the opportunity to make a submission to the Interim Report for the Independent Review of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) ("Interim Report"). The Independent Review is a legislated 10 year review of the Act and is timely as well as important. NFF notes that the Interim Report did not state any preferred recommendation, however is structured so as to *imply* the current thinking of the Independent Review. In some respects, this has limited the usefulness of the Interim Report as no clear position has been enunciated. Consequently, respondents have had to "guess" the current thinking and respond to all issues in lieu of targeted responses.

NFF notes that the Independent Review Final Report will be submitted to Government for consideration. The Government will then make an assessment of the recommendations, which may include legislative changes to the EPBC Act or other policy changes.

To all intents and purposes, the good recommendations from the Independent Review will then be subject to Government assessment, legislative drafting of accepted amendments and then the Parliamentary process. The end result may be an amended Act that is more unworkable and/or result in perverse outcomes.

NFF suggests that the Independent Review recommendations must be consistent with the following principles:

1. Add value by improving the outcome that would have been achieved by addressing the issue through existing state or territory legislation or regulation.
2. Deliver real environmental outcomes.
3. Effectively reduce overly complex, expensive and time consuming regulatory requirements, including duplication with State/Territory Governments.
4. Focus on protection of matter of *truly* national significance and must not be used to resolve perceptions or frustrations with state based regimes – or because individual stakeholders perceive their biodiversity as nationally significant.
5. Be backed by demonstrated need for change – not because someone thinks it might be good. Previously attempts to pander to particular interest groups undoubtedly result in perverse outcomes.

6. Not result in perverse outcomes for the environment – or for other stakeholders.

NFF submits that the timeframe for comments on the Interim Report have constrained the ability for a comprehensive submission. Such an important review should have allowed sufficient time, in the order of at least two months, to enable sufficient time for analysis of nearly 400 pages of report, drafting of submissions and consultation with members. Consequently, this submission is far from complete and falls far short of the manner in which NFF would like to engage the Independent Review.

NFF questions whether Australia's environmental laws (both Federal and State/Territory) have resulted in real outcomes for the environment. If the State of Environment Reports are any barometer, then there has been little gain but significant cost burdens and red tape.

NFF notes that the 2006 EPBC Act amendments sought to reduce some of this red tape in an effort to streamline operation of the Act (Productivity Commission, 2007, p. 35). In reviewing the Interim Report, it appears that many of the changes requested and discussed seek to increase the regulatory burden primarily to deal with "perceptions" or the need for some sectors of the community to feel ownership and improve the transparency of the operation of the Act. This points to a need for perhaps improved communication, education and awareness of the EPBC Act rather than legislative amendments to deal with perceptions.

As a broad generalisation, the Interim Report appears to be setting up a more draconian implementation framework for the Act. However, this may result in perverse outcomes for the agricultural sector (see Attachment 1). NFF endorses an incentives based approach to biodiversity management on private land. This delivers better outcomes than the use of regulation.

NFF remain extremely concerned that the current construct of the EPBC Act will limit the ability for farmers to be productive and financially viable. Constraining the ability for farmers to maximise their production, be efficient and adopt current technology and innovation, will lead to perverse outcomes for the sector. For example, there are very few monocultures in agriculture – constraining the ability for farmers to swap and change enterprises mixes (e.g. grazing intensity and cropping) will lead to less viable farms, less ability to adopt technology, less ability to innovate – and more importantly, less ability to continue to invest in biodiversity conservation. NFF urges the Independent Review to consider these issues.

It should be noted that NFF does not condone the actions of farmers who deliberately seek to contravene the EPBC Act. However, NFF genuinely believes that farmers simply do not know about the EPBC Act or if they do, they do not understand that the Commonwealth legislation is *different* from the States (i.e. requiring separate referral and approval). This position is borne out by ad hoc surveys in 2008 that clearly show around 10% of farmers know about the EPBC Act and a similar number know that they have matters of national environmental significance (NES) on their property. A further consideration is that typically when farmers are told about the existence of the EPBC Act this third tier of regulation (in addition to local and State regulation) makes no sense to them. In other words, it seems to them like simply more incomprehensible and needless red tape.

A more recent 2009 survey showed that around 39% of farmers know of the EPBC Act, 58% did not know and 3% were not sure. Of the 39% that did know about the EPBC Act, there may be a real possibility of confusion with state legislation, e.g. confusing "environment" to state Environment Protection Agencies or state based vegetation legislation (encompassed by the word "environment").

In the same 2009 survey, farmers were asked whether they knew how national environmental law applied to their property (e.g. activities requiring approval, opportunities for assistance etc). Only 2 % responded affirmatively, 60% said no and 37% did not know.

These surveys substantiate the NFF's claims that the communications of the EPBC Act to the farm sector is poor and understanding of the requirements of the EPBC Act is consequently poor. This is the primary reason of the perception (e.g. Minerals Council of Australia as quoted in the Interim Report) of the low number of referrals from this sector. Alternatively, it may be that those farmers implementing development or changing land use may simply not have any NES matter on their property and hence the EPBC Act does not apply.

The NFF, in its first submission to the Independent Review and submissions to various Parliamentary Inquiries, along with representations to the Department of the Environment, Water, Heritage and the Arts (DEWHA) and Government have consistently raised a number of issues:

- Ambiguity over continuous use provisions;
- Alignment of multi-jurisdictional processes;
- EPBC Act communications to farmers;
- Peri-urban issues; and
- NRM/Landcare Facilitators.

Yet these issues continue to be set aside, ignored, blamed as being the responsibility of others, or deemed to be too hard (NFF acknowledges the recent announcement by Minister Burke of funding for Landcare Facilitators is the exception to this list). Yet the Interim Report also appears to have not addressed these concerns.

The following sections outline the current position of NFF regarding issues NFF believes were raised by the Independent Review in the Interim Report.

Chapter 2: Commonwealth Role and EPBC Act Objectives

Constitutional Powers

NFF does not have any objection to suggestions to renegotiate Heads of Agreement – it would seem commonsense to revisit such agreements from time to time for relevance, new information or even as suggested, to determine what natural resource management (NRM) issues require a nationally coordinated response and what would be better resolved by other options.

International Obligations

NFF notes that there are many different and widely varying views on the wider community on many aspects of NRM. For example, some people are adamant that there is sufficient water upstream to resolve the critical issues of the Lower Lakes – and that is simply borne out by dam storages and irrigation (and other) allocations. Despite this, governments are unwillingly to jeopardise water required for human health to deliver a short term and short sighted solution to the Lower Lakes.

NFF believes that there is a role for Governments to assist communities in better understanding exactly what the EPBC Act can do and where it does not apply. This would assist aligning community expectations with the legal limitations of the Act.

National Environmental Policies

Along with revisiting Heads of Agreement and updating national environmental policies to reflect current knowledge and emerging issues, NFF submits that Governments should examine the myriad of policies, strategies, regulations and so on, in an endeavour to streamline and simplify these. NFF are confused, let alone a land manager trying to cope with a whole raft of managerial responsibilities. Many of these are targeted at the broader community (for implementation) as well as Governments. Many also do not seek realistic short term (two to three years) deliverables.

Indigenous Issues

NFF notes that this week, the Federal Government announced a review of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and consequently has released a discussion paper. NFF looks forward to participating in this review with recommendations from the Independent Review to be included as part of this process.

Purpose of Act

NFF notes that it may be useful to include a statement of Commonwealth duties. This may assist in clarifying where and when the Act applies. NFF is not convinced that the purpose of the Act is a relevant place to include specific outcomes with measureable targets.

As per comments above, some stakeholders are convinced that the EPBC Act should resolve all environmental problems and issues. However, other jurisdictions also have responsibilities. The confusion that arises as a result is unhelpful. Clarification of the role and responsibilities of the Commonwealth would assist in reducing the unrealistic expectations of the wider community.

Prioritisation of Objects

NFF has no objection to the suggestion to change object (ca) to (d). However, NFF questions why every concern or perception of every stakeholder ought to be included. There must be some prioritisation by the Independent Review and a focus on the substantive issues. This appears to be a “picky” whim

Ecologically Sustainable Development (ESD)

The suggestion to include ESD in the forefront of the objects again appears to be a symbolic gesture. NFF notes previous comments regarding substantive issues that should and ought to be the focus of the Independent Review. Importantly, ESD principles seek to include social outcomes as well as economic and environmental. The EPBC Act does not currently consider these. The usefulness of the suggestion is questionable.

Role of Jurisdictions

NFF supports recommendations to standardise EIA processes, however, this should not be at the risk of subsuming state responsibilities.

NFF does not support oversight by the Minister of State/Territory approved projects. If bilateral agreements and standardised processes are correctly established, there should be no further need for such “big brother” tactics. After all, both Commonwealth and State/Territory Governments place a high priority on protection of the environment.

NFF supports removal of duplication. Reduction in red-tape and its associated costs must be a priority for the Independent Review.

Role of Local Government

NFF understands that many local governments are constrained in their ability to undertake a number of processes due to resources (both human and financial). In saying this, NFF supports clarification of the role of Local Government in referring actions, particularly where these are intrinsically linked to local environmental plans administered by Local Governments.

In terms of the integration of NES matters into Local Government, the NFF does not support this for reasons stated above, i.e. capacity and resourcing. If the Independent Review recommends otherwise, any Local Government role and responsibility must be fully funded by the Commonwealth, as the EPBC Act is for national good and all costs should be spread across the national population. In the main it will be the poor rural shires that will bear the brunt as there are not many matters of EPBC in the major cities.

Interaction with State and Territory Governments

NFF supports better integration and streamlining of the various government processes. However, clarification of the roles and responsibilities must be made clear. If all Commonwealth concerns were to also be addressed and replicated in State/Territory process (and vice versa), this will undoubtedly duplicate and exacerbate confusion.

There is some merit (as suggest at paragraph 2.133) for the Commonwealth to have regard for State and Territory legislation, schemes and policies. The decision by the Commonwealth Minister to list the Tasmania Grasslands highlights this issue. There was no regard for Tasmanian legislation. Despite the Grasslands now being technically eligible for Commonwealth funding under the Caring for Our Country program, this is not guaranteed. An application under the 2009-10 business plan by the Tasmanian Farmers & Graziers Association was unsuccessful. With Commonwealth listing, Tasmanian farmers are now also ineligible for assistance under State legislation and program.

Commonwealth Role in EIA

As stated earlier, some stakeholders appear to wish that the Federal Government pick up all and any environmental issues. NFF notes that the Commonwealth's role ought to be restricted to matters of national significance. This means that the matter must have truly national significance. Such a role is clear when it comes to World Heritage, places of national significance (icons if you like), Ramsar listed wetlands, migratory species and cetaceans, nuclear activities and management and protection of marine and coastal environments.

However, nationally endangered or vulnerable species and communities has become the catchall solution to what many stakeholders see as perhaps the failure of state/territory legislation.

With 1750 species listed under the Act (accessed 6 August 2009), it is little wonder that the Department of Environment, Water, Heritage and the Arts (DEWHA) is struggling (and perceived to be inadequately administering the Act) to implement and administer the Act. It may be appropriate to revisit what is "nationally significant" in terms of these species. Some determining parameter might be that these species must be icons, marine, located in more than one jurisdiction or listed as say critically endangered (and as such would benefit from Federal intervention).

There are 125 critically endangered flora and fauna listed under the EPBC Act (around 7% of species listed). NFF has not yet analysed how many endangered, vulnerable or conservation dependant species are mapped across multiple jurisdictions, but suspect this might be only a few of the remaining listed species.

A likewise parameter might also be imposed on ecological communities. If the above parameters were applied to ecological communities, this would reduce the Federal Government responsibility for implementation from 42 to 22 ecological communities. The remaining 20 ecological communities might be referred to State jurisdictions for protection under State legislation.

An alternative model may be to accept all recommended listings (i.e. that have been recommended by the Scientific Committee and accepted by the Minister) but that these are then listed on State/Territory threatened species lists rather than the Commonwealth. This would effectively then refer the species or ecological community to the respective jurisdiction for administration, including recovery planning.

The Interim Report (at paragraph 2.136) notes that it is “*appropriate that the Commonwealth continues to focus on matters that are truly of national significance*”. It is NFF’s preference that where there is no clear identification of national significance, existing listings ought to be referred to jurisdictions for management.

Framework of the Act

NFF notes that the Interim Report (at paragraph 2.144) states that the current framework of the EPBC Act is likely to have the capacity to deal with future environmental challenges. As such, the EPBC Act should not be changed just because some stakeholders deem otherwise. There is a wider question of whether community attitudes and culture need to understand the meaning of certain terms (e.g. resilient may mean to protect existing habitat unchanged but in other cases may mean that current habitat will change to cope with future challenges), and that there ought to be acceptance that not all species and ecological communities may be “saved”. The future (as demonstrated by significant history) shows that climate and the environment leads to change. This change may be seen with the extinction of some species (e.g. dinosaurs) and the establishment of new species via evolution. There is no static environment but evolution.

As an overall principle, the EPBC Act should not be changed for change’s sake or because of perceptions or because of rare circumstances. There must be real and substantiated reasons to justify amendments to the EPBC Act. There is a real and present danger putting legislation through a parliamentary process. Again, interest groups (and Members of Parliament and Senators) will seek to incorporate amendments that seek to deal with particular issues. The result is perverse outcomes for wider environmental issues.

NFF does not support ad hoc amendments but amendments that are based on real and substantiated concerns where a change of legislation will deliver better environmental, social and economic outcomes.

Chapter 3: Scope of Environmental Impact Assessment

Matters of NES

See previous discussion outlining concern regarding whether the 1750 species listed under the Act are of truly national significance. NFF suggests that the establishment of some parameters which would define what species and ecological communities are nationally significant and hence should be protected under Federal legislation rather than State/Territory legislation.

New matters of NES

NFF does not support listing of new NES matters unless it can be clearly substantiated that these matters are not dealt with under other legislation (State/Territory or Federal), that the matters are clearly of national significance (not listing for listing sake or because an individual or group believes in their importance). To do so will be to increase duplication and red-tape as well as create confusion over roles and responsibilities. A good example is noted in the Interim Report regarding Biosecurity issues.

NFF does not support listing of national-level policies and planning as a new NES matter for reasons state previously. As noted by the Independent Review, it may be more effective to encourage better cooperation between the three tiers of Government.

Neither does NFF support listing of “area specific” matters such as important ecosystems, where these are not currently protected (e.g. Ramsar wetlands). There is a real risk of increasing confusion and creating chaos. There is no demonstration that this would lead to good environmental outcomes beyond the current NES matters.

Definition of Action

NFF supports the position expressed in the Interim Report that the definition of action ought to stand and that concerns about proactive protection of the environment be enhanced through behavioural change such as increased compliance and recovery planning.

NFF broadly supports the concept of Strategic Assessments and notes that the relative use of this tool has been limited to date. NFF has been working with DEWHA to look at the use of this tool for the agricultural sector. Strategic Assessments will usually be negotiated between jurisdictions and various other parties (e.g. farming organisations, mining industry, environmental groups etc). As such, these are negotiated outcomes using good will to deliver environmental outcomes.

Using such an important tool in a perverse way (such as including land use plans and other strategic planning tools in the definition of action), will negatively impact the goodwill required for a strategic assessment process.

For the same reasons, NFF does not support the expansion of the Minister’s powers to call in a strategic assessment on such a plan.

Significant Impact

NFF supports the retention of the existing definition, and its use, to ensure that the Act remains a workable piece of legislation.

Effect of Triggering the Act

NFF notes the discussion points raised, including that the current provisions restrict the Minister from considering adverse impacts on protected matters only (not all the environment). While there is merit in considering impacts on the entire environment, this would create unnecessary

duplication with state processes and approvals. Furthermore, there is the ability for listing of ecological communities (and this tool is being increasingly used). In such instances, NFF understands that the Minister must consider impacts on the entire environment within the ecological community.

It would seem that where the wider community feels that an entire “environment” is protected, then the matter should be targeted for ecological community listing (given previous comments regarding “nationally significance test”).

Chapter 4: Environmental Impact Assessment

Number of Referrals

NFF notes the criticisms in the Interim Report of the number of agricultural referrals. NFF reiterates its comments in the introduction to this submission, particularly the survey work undertaken of farmers regarding their knowledge of the EPBC Act, identification of matters of NES or whether they know to seek approvals. The survey supports NFF comments that many farmers are unaware of the EPBC Act and consequently the need to refer actions.

There is also confusion about whether knowledge is about Commonwealth legislation or State/Territory legislation. NFF suspects that many farmers think approval from one state agency is approval from all state agencies and the Commonwealth.

This was borne out by a recent A Current Affair story of clearing of swamp tea-tree (protected under both State and Federal legislation) at Lower Mt Walker (Queensland) owned by Steven Doyle and Brandie-Lee Jones. Despite a letter from Queensland Department of Primary Industries & Fisheries stating that no approval was required but that EPA approval may be required, and the investigators report indicating that neighbours warned against clearing, the owners relied on the letter. While this is most likely a peri-urban property, it highlights the concerns of NFF.

In January 2009, the NFF has undertaken an analysis of agricultural referrals and approvals under the EPBC Act. There have been 51 referrals since 2000, of which 67% were deemed not to require approval. This decision took an average of 34 days. Of the remaining referrals, some were withdrawn or refused approval. The average approval time was 112 days and there remain a number of outstanding approvals with an average time taken to date 1679 days (or 902 days if one excludes those perceived as not being actioned).¹

NFF notes claims that if more agricultural actions were referred, then approvals would be required. NFF has analysed data for the mining industry. Over the period of the implementation of the EPBC Act, 400 referrals have been made by the mining industry – certainly significantly more than the agricultural industry. During the period 1 January 2008 to date (NFF does not have sufficient time to analyse all mining referrals), there were 84 referrals. Of these, 47 (or 56%) required approval and 24 (or 29%) were assessed as not requiring approval. The remainder of referrals were either still being assessed or were withdrawn and one was deemed to be clearly unacceptable.

This data would suggest that claims that the agricultural sector might be contravening the Act by “avoiding” or “evading” referral are incorrect – as 67% of agricultural referrals to date did NOT

¹ Approval times were to January 2009.

require approval against the mining industry's 29%. In fact, the data suggests that there is more risk of significant impacts to matters of NES from mining than from agriculture. The mining industry is also 2.5 times more likely to require approval when compared to all referred actions (with only 23% of all referrals under the Act requiring approval – or 603 actions out of a total of 2568 decisions, paragraph 4.14).

The data suggests that even if there were an increase in the number of referrals from agriculture, there are around two thirds of applicants for whom approval would not be required. This must be assessed in terms of cost and time implications for the agricultural sector – against the relative size of the impact.

Furthermore, claims that the mining industry are using referrals as a risk management approach are not borne out by the data – as clearly the majority require approval. This claim is more likely to be relevant to the agricultural sector.

The NFF supports any and all efforts to increase awareness of the EPBC Act. There is no protection under the Act for “not knowing” about it. Therefore, farmers who may be well versed in their local and State Government provisions, have little understanding of the Federal environmental requirements. To make a referral, a farmer first has to know about the Act.

Significance Test

NFF would support, in principle, measures to improve understanding and coverage of the significance test, including simplification by prescribing mandatory considerations or the use of additional/more prescriptive guidelines.

Third Party Referrals

The NFF has supplied data which suggests that the reason of non-referral is in fact a lack of awareness – it does not support the notion that self-referral is actually encouraging non-compliance. As such, there is no substantive evidence to change the current process of self-referral by including third party referrals (including individuals, NGOs, local and state governments). This can only lead to vexatious and frivolous referrals and lead to unnecessary burdens for what will then become unwilling proponents. There are examples in other sectors (such as Industrial Relations) where this can be shown to be the case.

There is currently sufficient safeguard for community concerns, as noted, which includes complaints.

Moreover, NFF suggests that better community understanding of the EPBC Act, its administrative processes and the parameters of the Act would assist (i.e. what the EPBC Act does and does not do).

Quality of Referrals

While NFF generally supports an improvement in the quality of referrals, the standards requirement must also be cognisant of the quantum of the referral and the cost effectiveness of the approach from this perspective. A referral for a significant mining action would necessarily be different to that for a dairy effluent dam. More importantly, the referral documentation should be sufficient on which to base a decision for approval. It is this that is the critical issue – and the critical process is the approval process.

Nature of Referral Decision

NFF supports the consideration of beneficial and negotiated resolutions, including offset provisions when making a decision on a controlled action. However, as stated above, the referral process is a type of triage. The main assessment must necessarily occur if and when a referral is assessed as requiring approval.

Quality of Assessments

NFF supports efforts to improve the skills, development and training of DEWHA assessment staff. Suggestions at paragraph 4.82 warrant in principle support. However, if such suggestions are meant to improve DEWHA service delivery, as opposed to the proponent delivering quality approvals documents, then this cost ought to be borne by DEWHA and not the proponent as part of the costs of administering the Act. This includes suggestions for the use of accredited consultants to make approval decisions.

Assessment Methods

The NFF supports, in principle, further investigation of the use of independent panels for assessment.

Bilateral Agreement Assessments

NFF supports, in principle the standardisation of assessments under bilateral arrangements and the development under COAG of standard EIA processes.

Assessment flexibility

NFF supports, in principle, the introduction of more flexible approval processes providing appropriate mechanisms are retained to avoid adverse consequence or the abuse of such provisions.

Consultants & Expert Reports

Suggestions to use experts to make referrals are not supported by NFF and particularly if this was to be mandated – this is a soft option for Government and would create too many areas of uncertainty. Consultants and experts have a service delivery role in supporting proponents, where it is seen fit to use this expertise. Again, referrals are the top of the “triage” tree and are used to determine if an approval is required. Use of experts at this stage of the process would result in unnecessary cost burdens.

NFF would expect that considerable impact action proponents (e.g. mining) would employ the use of experts to prepare all material relevant to the approval, including the referral documentation.

NFF does not support the mandatory public recording of all information pertaining to applications. Where the proponent can substantiate that information is commercial-in-confidence or sensitive, then this must be respected. There is no justifiable reason to set up a new process for environmental law as against other Commonwealth law. Perhaps the Independent Review ought to consider the requirements of the ACCC when assessing such information in the determination of water charge, market and trade rules.

Public Participation in EIA

While NFF remain concerned about the awareness by farmers of the EPBC Act and their responsibilities under the Act, submissions to this review underscore the lack of understanding by the wider community and in particular environmental groups. NFF supports the adequate allocation of resources to resolve these issues, and on numerous other occasions, made representations to the Minister and DEWHA about how this might be achieved.

The Interim Report states that agricultural referrals have not improved over the last five years. However, as stated earlier, of those actions that were referred, the majority did not require approval. The concerns of NFF are underscored by the mere fact that 50% of the major compliance incidents under the Act relate to agriculture. This is a statistic which requires significant urgent resolution.

As recently as last week, the Federal Court handed down a \$220,000 fine (Rocky Lamattina case) for the clearing of 170 trees. The trees per se were not protected. However, it was found that the trees could/might have been a nesting site for the red tailed black cockatoo. Hence, why there is confusion for many farmers who are simply trying to manage their properties within a myriad of state and federal legislation covering the whole depth and breadth of their business.

NFF strongly endorses the out posted Environment Liaison Officer. However, for this position to be fully effective, farmers must know about the EPBC Act and how it may affect their property.

Therefore, NFF does not support the view expressed (and implied that this is deliberate) in the Interim Report that there is a “failure to comply” attitude among the agriculture sector.

While calls for more transparency in the EIA process are to be commended, the NFF is less convinced there should be substantial changes to the current EIA process to improve access or allow the public to have a greater say in decisions. While some may have merit, a decision to recommend changes ought not to occur without substantive reasons. NFF agrees that proponents must be accorded a due, fair and timely process. As borne out by an analysis of agricultural approvals, this can take substantial time – so much that the circumstances may have changed sufficient as to make the proposal unworkable (e.g. commodity prices that justified the project have plummeted now making the project unviable). The agricultural sector generally has fewer resources than other proponents to go through an entire approvals process. This must be weighted with calls for greater community participation. After all, it is DEWHA’s job to administer the Act. There is no evidence to say that the EIA process has been poorly administered.

NFF does not support amendment of the objects of the Act to expand the influence of the current public participation process.

Cumulative Impacts

As noted in the Interim Report, experience in other countries shows that moving towards a CI assessment (rather than EIA) increases uncertainty and expense in decision making. This results in unfair consequences for third parties – as well as proponents. On this basis, NFF cannot support a move toward CI assessments.

Chapter 5: Prior Authorisation and Continuing Use Provisions

Prior Authorisation

NFF notes the issues raised, and particularly the 2006 amendments that this section is to be referenced to “specific” environmental authorisation. NFF notes that this amendment originally sought to avoid retrospective application of the Act. NFF is of the view that this area is of little significance to agriculture. References to land clearing are more likely to apply, for example, to residential or mining development. For agriculture, land clearing is either prohibited by state legislation or under review (e.g. Western Australia and Northern Territory).

NFF supports the implied position that further changes are unlikely to provide clarity or lead to better environmental outcomes.

Continuing Use

Continuing use has created significant confusion for the agriculture industry, particularly as this now encompasses enlargement, expansion or intensification of use and whether the effect is a substantial impact. NFF concurs that the exemptions outlined in 5.25 apply to agriculture.

NFF has previously stated that the low number of referrals under the Act is likely to be a lack of awareness of the Act. Furthermore, the data supports the opinion that farmers are more likely to not require approval for actions under the Act, i.e. are likely to be referring out of a risk management strategy. The data might also support that the farm sector is likely to be not having a *significant* impact on matters of NES or are occurring in areas where there are no matters of NES on the property (despite perhaps being located within the boundaries of an ecological community or species).

What is important is that many landholders are protecting the environment on their land, mostly voluntarily, with or without payments and/or covenanting. This is substantiated through numerous surveys (for further discussion see National Farmers' Federation, 2009). These show that the primary focus for protecting on farm biodiversity is for conservation, secondly for aesthetic value and third in line is the beneficial effects on primary production.

A further explanation therefore, is that the action is not on an *area* of the property that is protected privately for biodiversity conservation, is of high conservation value or more importantly, holds matters of NES.

The NFF submits that the continuing use provisions should not prevent the ordinary operation of the farm's enterprises. While DEWHA has made the clarification as to the exemptions, farmers may deem that swapping between grazing and cropping or intensification as normal business. In that respect, it follows that such changes occur in relation to commodity prices. For example, a collapse of the wool market has seen an increase in cropping activities. This might occur on a two year cycle, but also may apply once every ten years. The first would be covered by the exemption but not the latter.

The ability to adopt technology and innovation may also not be covered by the exemption. For example, purchasing an air seeder when a combine was previously used or a larger tractor may not be covered by the exemption.

The reality from the agriculture sector's perspective is that there must be a practical application of this provision. The provision must enable the farmer to adapt farming systems to current commodity prices and to adopt technology. To do otherwise is to freeze Australia's world leading agricultural industry on the affected farms to an unviable future.. This is not in the best

interests of a sustainable, profitable farm sector. It is also not in the best interests of the environment – profitable farms are able to invest in environmental outcomes. Unprofitable farms inevitably cut all discretionary spending, including the environmental outcomes.

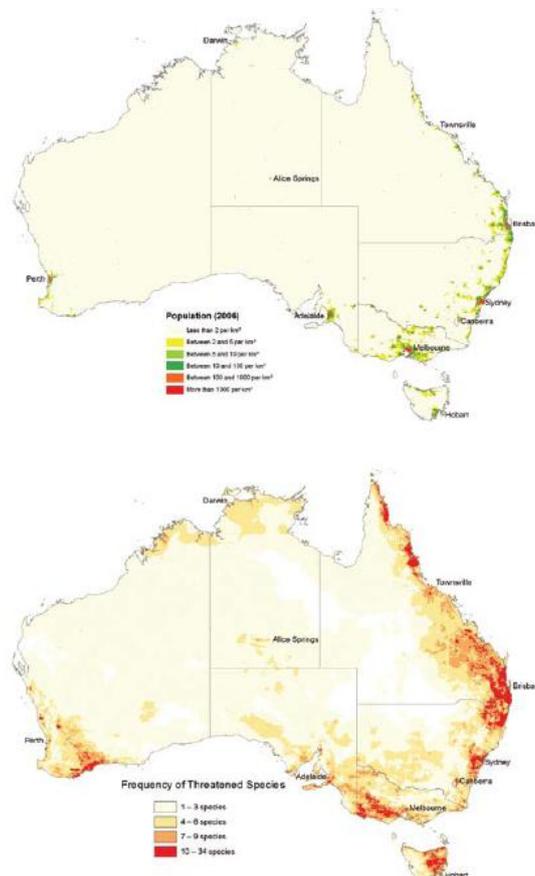
It could be said that the continuing use provisions may lead to perverse outcome and may lead to major compliance incidences if a there is not practical application.

NFF reiterates its previous statements that it supports further endeavours by the Government to better enunciate the EPBC Act and its provisions to the agricultural sector. This request has been made in an endeavour to prevent farmers from getting into a situation where there is a compliance incident.

Chapter 7: Land Clearance

The Interim Report identifies land clearing as a significant threat to biodiversity. It is also a major issue for urban and peri-urban environments – and these are the most degraded environs in Australia today. Figure 1 below clearly shows the highest density of threatened species occurs around Australia’s coastal fringe, where most of the population occurs. In 1991, 86% of Australia’s population was located within the coastal environs (Finnigan, 1994). Since this time, there has been a significant shift towards coastal or mega-urban areas (away from rural and city). Despite concerns about agriculture land clearing, it is a bigger issue for these coastal environments due to the much bigger and significant impact to species in the coastal area. This is acknowledge in the Interim Report (paragraph 7.24)

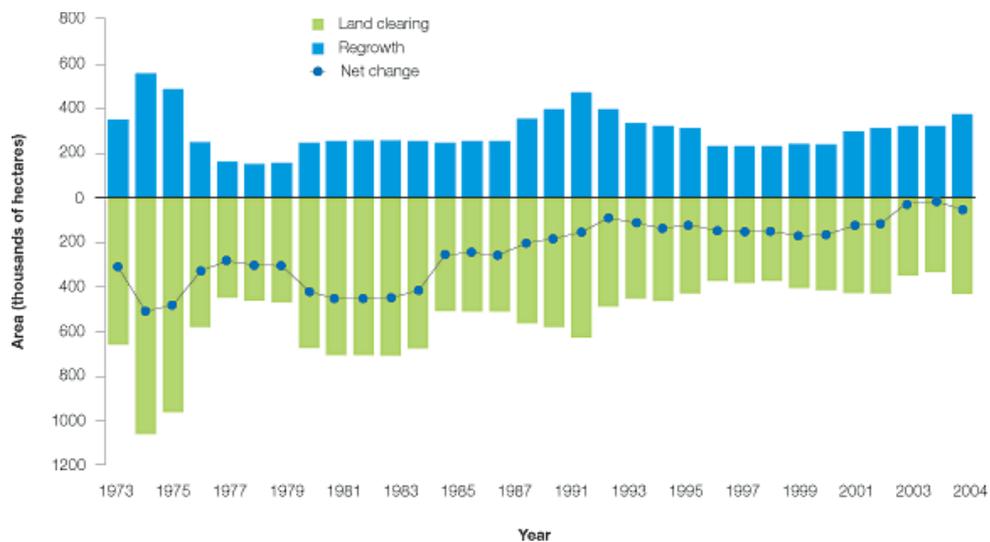
Figure 1 Human Population Density and geographical spread of threatened species (as listed under the EPBC Act) (National Biodiversity Strategy Review Taskforce, 2009, Figure A9.3, p. 87)



Importantly, the 2006 State of Environment report notes that there have been positive steps across jurisdictions to reduce land clearing (see Figure 2), and where this has occurred so has biodiversity decline slowed (Beeton, Buckley, Jones, Morgan, Reichelt, & Trewin, Australia State of Environment 2006, 2006a). However the SOE also noted there is also a legacy effect (Beeton, Buckley, Jones, Morgan, Reichelt, & Trewin, Australia State of Environment 2006 - At A Glance, 2006b).

Also important is that the statistics relating to land clearing may also be misleading. NFF understands that in Queensland, the area classified as being cleared is the entire area of a property, even if only a small area was cleared. This obviously leads to a gross overstatement of land clearing.

Figure 2 Net forest change in Australia (using forest re-growth and deforestation data) 1973-2004 (Beeton, Buckley, Jones, Morgan, Reichelt, & Trewin, Australia State of Environment 2006 - At A Glance, 2006b)



In summary, there have been improvements in terms of land clearing but the legacy effects will continue to result in a lag effect and continuing impact to biodiversity. The major areas of concern and the highest impact to biodiversity occur within the coastal fringe of Australia. While agriculture does occur within these confines, the most notable impacts are from urban and peri-urban populations.

Land clearing is predominantly managed under state legislation. NFF does not support suggestions for a land clearing trigger and actions that would consequently require referral and approval. This would only result in additional confusion (e.g. would current farm vegetation plans that allow certain clearing be a prior authorisation or be set aside) and duplication of state based administration of legislation.

Concerns regarding the cumulative impact might be better managed through other processes such as strategic assessments for agriculture. NFF would support a dialogue between Governments with the aim to ensure that land clearing processes are uniform across jurisdictions.

Chapter 8: Climate Change

Greenhouse Gas Trigger

NFF supports the position expressed in the Interim Report that there should **not** be a broad based greenhouse gas (GHG) trigger included in the EPBC Act.

The draft Carbon Pollution Reduction Scheme or CPRS legislation is seeking to minimise Australia's GHG emissions through market mechanisms. This was determined as the most appropriate policy instrument after a significant (at least decade) policy analysis and consultation period. NFF strongly supports the CPRS as the mechanism to adjust emissions – not the use of ad hoc policy instruments such as a climate change trigger in the EPBC Act.

Moreover, Australia's GHG emissions represent only a small percentage of global emissions (albeit Australia has one of the highest per capita emissions). While Australia's efforts to reduce GHG emissions are to be supported, in reality, it is the emissions from other countries that will continue to impact on Australia's biodiversity. The most appropriate policy mechanism for all policy areas, including biodiversity, is through the CPRS legislation. An ad hoc approach in other legislation is likely to lead to perverse outcomes.

Other Proposals

Development of the CPRS is likely to lead to opportunities for Australia's farm sector to contribute to reducing GHG emissions by sequestration. This is likely to have a beneficial impact on biodiversity (providing this does not result in monoculture plantations). Again, voluntary approaches are likely to improve agricultural outcomes to biodiversity than regulated.

Chapter 9: Water Issues

EPBC and Water Acts

Water management in Australia has been an evolving matter since 1993-04 COAG water reform agreement. More recently, Governments have agreed to the National Water Initiative (NWI). With the exception the Murray-Darling Basin, Commonwealth involvement in water management commenced in 2007 with the *Water Act 2007*. The intent is to better balance water between the environmental and other water users. With Commonwealth investment via the Water for the Future program, there is likely to be a significant return of water to the environment.

The Water Act mainly provides a framework for the management of the Murray-Darling Basin (e.g. establishing the Authority, a Commonwealth Environmental Water Holder and the Basin Plan). Its focus is water management, information, and appropriate water charge, trading and market rules. There is a linkage between the Water Act and the EPBC Act via Ramsar wetlands and other wetlands of national importance.

Moreover, the Federal legislation does not cover water management outside the Basin, including those areas of the Basin states outside the Basin.

The issue of water management in the Basin has been somewhat clouded by the current drought – whether this is a function of climate change is yet to be determined. The current drought is similar to its effect as the Federation Drought and that of the 1940s. For the southern Basin, however, the CSIRO Sustainable Yields Audit shows that current drought is the worst in 300 years. As a result, there will be significant impacts to rural communities, irrigators and the environment.

Governments have made decisions not to jeopardise human needs. This has come at the cost of both agriculture and the environment. Water has been retained to ensure that there is sufficient water to supply next year's human needs. This has undoubtedly frustrated many environmentalists (noting the significant impacts to the Coorong and Lower Lakes) and downstream communities.

The Murray-Darling Basin Authority (the Authority) and its predecessor the Murray-Darling Basin Commission, released reports each year against the MDB Cap (e.g. Murray-Darling Basin Authority, 2009). These reports clearly show that water extraction does not exceed the water allocated for extraction (see Figure 3). The highest percentage of allocation used was for Adelaide and SA country towns followed by the Lachlan Valley (the latter also include urban and other uses). On average, for 2007-08, 60% of the Basin's allocated water was used (for all uses).

Figure 3 Use of Valley Allocations 2007-08 (Murray-Darling Basin Authority, 2009, p. 54)

System	Total Allocated Water in Valley ¹ (GL)	Use of Allocated Water in Valley (GL)	Use as a percentage of Total Allocation (%)
New South Wales			
Intersecting Streams ¹	0	0	n/a
Border Rivers ¹	175	58	32%
Gwydir ¹	150	36	24%
Namoi/Peel ¹	88	35	40%
Macquarie/Castlereagh/Bogan	101	29	29%
Barwon-Darling ¹	0	0	n/a
Lower Darling ¹	39	11	29%
Lachlan	31	31	98%
Murrumbidgee	1,075	458	43%
Murray	273	216	79%
Total NSW	1,932	875	45%
Victoria			
Goulburn	328	222	67%
Broken	19	10	54%
Loddon	120	99	83%
Campaspe	114	94	83%
Wimmera-Mallee	151	13	8%
Kiewa	20	4	21%
Ovens	62	15	25%
Murray	638	582	91%
Total Victoria	1,452	1,039	72%
South Australia			
Metro-Adelaide & Associated Country Areas ²	90	89	99%
Lower Murray Swamps Country Towns	21	15	69%
Country Towns	37	37	100%
All Other Purposes	372	282	76%
Total South Australia	521	423	81%
Queensland			
Condamine and Balonne ¹	126	91	73%
Border Rivers ¹	61	15	25%
Macintyre Brook ¹	12	9	72%
Moonie ¹	0	0	n/a
Nebine ¹	0	0	n/a
Warrego ¹	3	1	56%
Paroo ¹	0	0	n/a
Total Queensland	202	117	58%
Aust. Capital Territory	0	0	n/a
Total Basin	4,107	2,454	60%

Most of the concerns from the wider benefit have also come from perceptions about which state gets what water – and this concern is primarily focussed on the southern Basin. As shown in the following graphs (Figure 4 and Figure 5), the state most affected by the reduction in inflows was NSW followed by Victoria. The affect on South Australia has been more recent but trending down at a similar projection to the earlier impacts for NSW and Victoria.

It's important to note that the Authority (and previously the Commission) managed water in the southern connected system to the South Australian border. Flows over the border (including to the Coorong and Lower Lakes) have traditionally been the responsibility of the South Australian Government.

There are all sorts of ethical and moral arguments put forward to focus attention on South Australia, and in some respects may be justified. However, the NFF notes that environmental issues from the drought span the entire Basin, e.g. there are some 2000 wetlands affected by acid sulphate soils yet focus is on the iconic Lower Lakes. That is not to say that these areas are not important but context is also important.

Figure 4 Summary of All State Diversions²

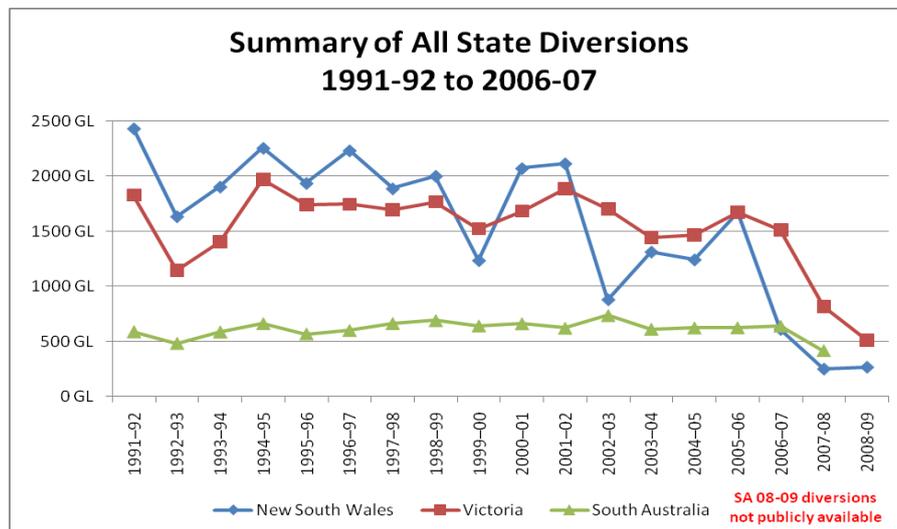
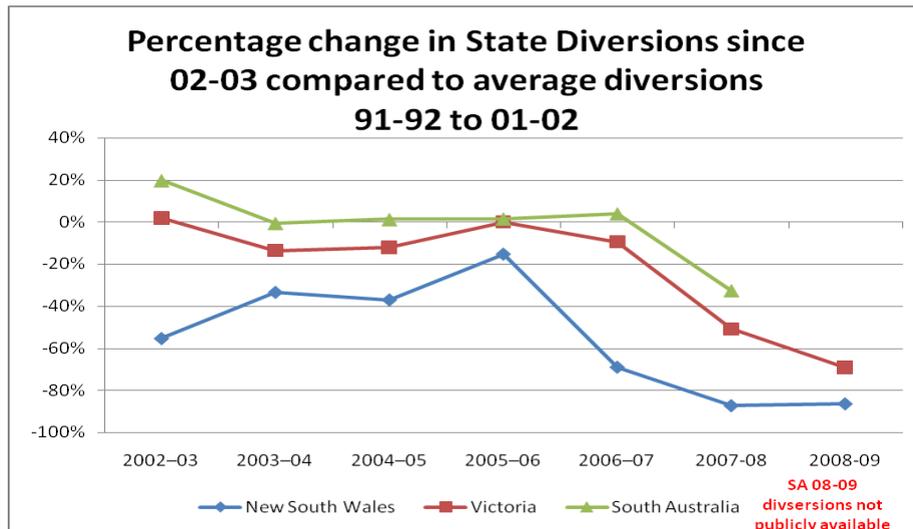


Figure 5 Percentage Change in State Diversions since 2002-03 compared to average diversions pre-drought (1992-92 to 2001-02)³

² Data sourced from MDBC Annual Reports

³ Ibid



It is unfortunate, that many (outside the water sector) also do not understand current water management regimes. As a result, there is much confusion about what can and cannot be done. For example, the public focus on closing down Cubby Station would not have assisted the Coorong and Lower Lakes. There is a role for Governments to better articulate the reality of water management and property rights.

The creation of a water trigger, similar to land clearing, would duplicate both state planning processes and the newly established Commonwealth planning processes. As stated in the Interim Report, is also unlikely to affect current water entitlements as these entitlements are likely to fall under s.43A (prior authorisation). The clear issue is, with the drought, there is little or no extraction, despite owners (including Governments) holding the right to access water.

Water Extraction Trigger

Many of the issues raised as likely actions under this discussion (on farm water storages, other dams, issuing of new water entitlements and water use for plantation forestry) are already being dealt with – both under the EPBC Act and state planning. The risk to shared resources strategy has been developed (Murray-Darling Basin Commission, 2008). This strategy includes assigning roles and responsibilities for the risks – and is the appropriate management tool.

Likewise, farm dams are managed under State based planning regimes as are mine water extraction (see also National Water Commission study into the impacts of mining on groundwater resources).

The issue of new water entitlements is largely embargoed in manner of the major areas where there is concern about water extraction – and those that are being released and auctioned off by State governments are in areas where there is very little extraction. So the likely impact will not be significant and trigger referral. Where water extraction is an existing use, the Interim Report notes that this extraction will fall under prior authorisation. If existing water use is to be referred, then this will create a significant work load for DEWHA.

The Interim Report notes that perhaps it may be better to examine the impacts of actions on the environmental assets of a water resource, yet this is exactly what the new Basin Plan is designed to resolve. NFF does not therefore support the inclusion of a water extraction or other trigger.

Expansion of Wetlands Trigger

Suggestions to include wetlands of “national” as well as “international” significance would be a considerable impost on DEWHA – creating a requirement for a 1400% increase in wetlands matters of NES. However, it will also undermine planning at a state and catchment level (the latter via NRM regional plans). NFF understands that there are currently significant issues in putting into place the ecological character of wetlands.

In many respects, it might be relevant for the Commonwealth to focus resources on protection of Ramsar sites in the first instance and delay any focus on wetlands (and wild rivers) until such time as Ramsar sites are adequately managed. From a practical perspective, this should focus on Ramsar sites outside the Basin (as the Basin Plan will put in place appropriate management of Ramsar sites within the Basin).

Except the Basin, the States will not currently support Commonwealth intervention – nor has there been support historically under the Constitution. The focus has been on where the Commonwealth has a clear international obligation. No more was this apparent than through the COAG negotiations for the Water Act 2007 and its supporting Intergovernmental Agreements.

Like other areas, NFF does not support and does not believe that the States would support such approaches. In addition, it will duplicate state planning processes and would be unlikely to result in better environmental outcomes. Furthermore, the Minister has the capacity to conduct a strategic assessment (see paragraph 10.3). NFF submits that this is a more appropriate option in lieu of new triggers.

Management of Wetlands

NFF supports the development of ecological character descriptions for Ramsar wetlands but notes that this must be adequately resourced. Likewise, NFF supports the development of wetland management plans. However, this must include funded investment plan, particularly where these wetlands are located on private land.

Emergency Water Related Actions

NFF supports suggestions for permitting temporary emergency remedial actions however, notes that there should be provisions to ensure that this is not abused. It might also be relevant to include the provision of critical human needs in areas outside the Basin.

Chapter 10: Strategic Assessments and Bioregional Planning

Landscape Approaches

While NFF notes that there may be benefits in undertaking landscape approaches, this must be carefully explored. In many cases, the datasets for particular communities and species are inaccurate. This could negatively influence landscape scale assessments as well as increase costs. Perhaps another option would be for the Commonwealth to assess referrals against the landscape context according to the listing advice.

Where landscape approaches are developed, the NFF notes that there must be consideration of other existing plans, including State and Local Environmental Plans and regional NRM plans. Duplication must be avoided.

NFF would support, where landscape plans are in place, for the Minister to ensure compliance (via monitoring) and review the plans from time to time for appropriateness.

Initiation of Strategic Assessments

Development of a strategic assessment relies on a negotiation between Governments and other parties. As a result, altering the collaborative nature of such an assessment will not engender parties entering into a “forced” assessment in good faith. NFF does not support either a call in power or embarking unilaterally.

Bioregional Planning

While there is some merit in investigating removal of the Commonwealth land requirement, bioregional planning may not result in a better outcome due to the inaccuracy of many datasets. Perhaps significant investment and dialogue with the States/Territories on datasets may be a logical first step.

Chapter 12: Threatened Species and Ecological Communities

Themes and Prioritisation of Lists

NFF notes that there is a lack of awareness of the process of nomination and listing. Education and communications could assist in resolving some of the issues, as well as better transparency.

However, as stated earlier, the sheer number of species and ecological communities causes concern about implementation of recovery planning. There is some argument that there should be a wider community discussion and agreement on the focus of conservation, i.e. should the focus be on species recovery at all costs (even if these may become extinct due to evolution), or on rescuing species and ecological communities that will be around in future. From a resourcing perspective, the latter makes more sense and could be more cost effective (a little money going much further).

List Alignment

NFF notes suggestions to align Commonwealth and State Lists to IUCN criteria. However, there could be perverse outcomes for this. For example, Tasmania has many species that are now extinct on the mainland but common in Tasmania. Such a suggestion may disadvantage protection of these species.

Earlier, NFF also suggested ways in which there may be a prioritisation of species and ecological communities that are of significant national focus (with others being subsumed by States/Territories). This may be another way to resolve some of these concerns and issues. The NFF suggestion is mirrored in the Interim Report (paragraph 12.64). An issue is the perception of a loss in funding via Caring for Our Country Program. However, this may be resolved by a funding agreement at a COAG level.

Listing Criteria

NFF supports retaining the existing flexibility of the TSSC and the Minister for categorisation of the listed species on a case by case basis.

Listing Categories

NFF notes that there are only three species listed as conservation dependent and given the removal of the criteria under IUCN, it makes sense for its removal in the EPBC Act. The current listings should be referred back to the TSSC for criteria assessment if needed, i.e. if this cannot be achieved operationally by DEWHA. NFF does not support an expansion of the categories to cover near threatened and/or an emergency category or data deficient.

Focus on Biodiversity Conservation

NFF notes that there is a need to clarify the current confusion that every species found within a threatened community is now considered as threatened as well. This covers what could also be native pest animals. Clarity around this would be helpful.

Chapter 13: Biodiversity Conservation, Recovery Planning and Threats Management

Recovery Planning

NFF notes that only 20% of recovery plans are in place, and 14% are in preparation. There is therefore merit in a regional approach to recovery planning. However, this must be managed to ensure that species and ecological communities not currently covered by the EPBC Act are not inadvertently covered by the recovery plan. NFF does not support the use of multi-species threat based approach as this implies a combination of both threat abatement and recovery planning. NFF are unconvinced that this would lead to better environmental outcomes.

NFF notes that any recovery or threat abatement plan will not be effective unless it contains a fully funded implementation plan.

Conservation Advices

There is some merit in exploring conservation advices. However, this could be extended to ensure that these are developed in conjunction with State Governments to reduce duplication.

Landscape Approaches to Biodiversity Protection

NFF notes suggestions for a new category of ecosystems of national significance. NFF believes that this is a duplication of ecological communities and hence is not convinced that this would lead to better environmental outcomes.

Chapter 18: Wildlife Trade, Live Imports & Biosecurity

Genetically Modified Organisms

NFF does not support the listing of GMOs as a new matter of NES. This view is supported by the Independent Review (paragraph 18.55) which states that it is likely to lead to duplication and uncertainty. However, the NFF would suggest that there be some precautions about non-GMO supporters using current provisions to delay technology for mischievous reasons.

Biosecurity

NFF supports alignment of the EPBC Act (i.e. pre and at the border) to the new Biosecurity arrangements as per the Beale Review recommendations. However, NFF notes that the Federal Budget funding is significantly reduced from that recommended by Beale.

Emergency Arrangements

NFF notes that if pre and at border biosecurity arrangements are effective, then any incursion could be managed under recovery planning framework. NFF supports that Governments ought to explore emergency response arrangements for the environment (and cost sharing among Governments), i.e. set up a similar arrangements as for the agricultural industry but with Governments being the partners and responsible for funding the incursion.

Chapter 19: Governance and Decision Making

Threatened Species Scientific Committee

NFF supports the view in the Independent Report on the TSSC.

Advisory Bodies

NFF notes that there are a number of advisory committees. It is timely that these be reviewed in terms of relevance looking forward. Some function might be better subsumed into the TSSC. If it is considered appropriate to continue with some (existing and or new), then NFF suggests that it would be appropriate to establish an agricultural advisory committee. Such a committee could be charged with providing advice to the Minister with regard to agricultural issues, but also to provide advice on social and economic impacts.

Public Participation

There is merit in reviewing the objects of the Act in relation to public participation. This may also assist in alleviating concerns or issues from the broader public in what they can expect. It may avoid attempts, which are clearly evident in submissions, for the wider public to control administration of the Act. This is clearly a function of the Minister and DEWHA. Clarity around when and how the public can participate is welcome.

The NFF in other areas of this submission, have made a number of observations about public participation.

Ministerial Discretion

While NFF notes concerns that Ministerial power should not be abused, there is merit in exploring other opportunities (flexibility) for better conservation outcomes. At present, the Minister can only chose to list, or not to list. An alternative approach may be to delay listing decision, but set in place conservation targets for implementation. This could then be reviewed within a certain timeframe. If the targets are not being achieved, this can trigger a review of the status of the species for listing.

Chapter 20: Review Mechanisms under the EPBC Act

Time Limits for Reconsideration

It is unrealistic not to have timeframes on the reconsideration process, therefore, NFF supports that this is changed.

Judicial Review

Judicial Review is about asked a Court to determine whether the Minister's decision is the correct decision. The current provisions in the EPBC Act mirror procedural fairness provisions in other Commonwealth legislation and the Courts. Claims that these provisions are inadequate are simply not demonstrated. There is currently an open process so stakeholder's capacity to participate is not an issue, i.e. there is no prohibition on participation.

NFF disagrees with suggestions from NGOs to seek greater process with the judicial review. This process is currently in line with other legislation and there is no demonstrated need for a change.

Merits Review

The NFF is of the view that where the Minister is the sole decision maker in a decision tree, there ought to be a merits review. Where the Minister is the final decision maker in a decision tree (i.e. at the top of a multi-step process), the decision should not be subjected to merits review.

Legal Standing

NFF understands that legal standing is about the ability to take legal action. Again, there should be no change to the legal standing. However, NFF does support the right of third parties to be heard in the process, i.e. there should not be a change to allow all and any persons to commence a Judicial Review.

Access to the Courts

As per the above discussion, NFF does not support changes to legal standing and costs as these related to access to the courts. In relation to costs, NFF does not have any empathy with stakeholders who wish to be given a free rein to the Courts. The liability that attaches to costs ensures rigour in the decision to take litigation.

NGO's or individual stakeholders are no different to farmers (the latter are likely to be in a worse position) regarding their ability to access resources or the provision of a security deposit in litigation. There should be no special circumstances afforded to these stakeholders. Furthermore, it was recently demonstrated that the community can and does contribute when a public request is made. This was made very clear by the publicity and donations to Senator Brown when he went public about likely bankruptcy and the threat to his position in the Senate. It could be relevant that NGOs have significant resources at their discretion.

Moreover, if the public wish to bring an action, this must be supported by substance/merit. To proceed, it must be a strong claim/case. Any change is likely to bring a floodgate of claims that fail a merits test, undoubtedly resulting in an increase in vexatious and frivolous claims.

As a principle, there should be no special focus or conditions for public instigated litigation.

Chapter 21: Enforcement, Compliance, Monitoring and Audit

Claims by NGOs about their ability to report breaches of the Act should not be seen as reason for legislative change. Enforcement and Compliance is clearly an operational role under the auspices of DEWHA.

It is totally inappropriate for a legislated right for third parties to put in a complaint and then be eligible for compensation from the fines imposed. This occurs in NSW where Unions are able to report breaches and then receive the Court imposed fines. There is also a need to protect against vexatious and frivolous reports.

Where there is no evidence that there have been substantial breaches which are not being investigated to justify setting up a new process for compliance. As with other legislation, the public have the right to make a complaint to the Commonwealth Ombudsman who will investigate such claims. Perhaps this might be better enunciated to the public.

Chapter 22: Administration under the EPBC Act

Funding

Resourcing of the administration of the EPBC Act has been an ongoing concern. Streamlining both internal DEWHA processes and duplication with other jurisdictions should help to free investment for implementation. This is a major concern.

The focus for NFF has been on ensuring a small amount is spent on communication of the EPBC Act to farmers to ensure that the number of major compliance incidents are minimised.

There does need to be recognition by stakeholders that the Government simply does not have the resources to do everything. As a result prioritisation can and does occur. The EPBC Act cannot be seen as a cure for all environmental ills. However, a wider community discussion needs to occur on what the focus of the EPBC Act ought to be, e.g. spending a lot of money to protect a small number of critical endangered species that may become extinct due to evolution (even if exacerbated by climate change) or spending less money protecting a greater number of species for the future.

Chapter 23: Reducing Regulatory Burden and Streamlining Processes

NFF has made significant statements elsewhere in the submission relating to these two issues.

Chapter 24: Cost Recovery

Landholders currently invest significant time and resources for private land conservation (see <http://www.nff.org.au/farm-facts.html> for further data supporting this statement). There is also a significant investment on behalf of the wider community. In some areas, covenants are not funded. In some cases, farmers participate in market based mechanisms, including the

Environmental Stewardship Program – an NFF initiative. But the vast majority fund this private land conservation on behalf of the wider community – and it is a considerable cost.

The administration of the EPBC Act is a responsibility of the Commonwealth Government. To date, proponents are required to fund the cost of preparing referrals and approvals. As a result, NFF does not support representations to implement cost recovery of administration of the EPBC Act.

As a consequence, NFF does not support the introduction of any charging regime, including the proposals for scale approaches (based on size of project, industry concerned, individual or company proponent, or other proactive measures).

Conclusion

Increasing calls for improved conservation and biodiversity management in the name of public good are quite justifiably met with scepticism by the farming community, as these calls rarely if ever acknowledge current sound on-farm management practices. There is significant Government and other research (National Farmers' Federation, 2009) that documents the significant investment by farmers on behalf of the wider community. Whilst it could be argued that some of this investment (e.g. weed, pest and disease control) is a component of modern, sustainable farm production systems, NFF believes that through the adoption of processes like minimum or no-till farming systems, environmental best management systems and precision farming, that agricultural businesses demonstrate that they are already making a significant contribution to biodiversity conservation.

This raises the issue of the differential between the high level of on-farm production-linked investment, and that into the 'lock and leave' processes traditionally associated with biodiversity conservation. NFF has continually raised the need for incentives, such as the Environmental Stewardship Program for on-farm conservation activities. The issue which firsts needs addressing is the Government's commitment to moving beyond the development of a 'strategy' and into providing incentives for landholders to become involved in more traditional forms of biodiversity conservation.

Despite the existence of the EPBC Act for nearly ten years, there is little knowledge of the Act and the obligation of farmers to comply. Complexity and duplication of legislation and planning across all three levels of Government has not assisted resolving this issue. For the agriculture sector, alignment and streamlining must be a priority, along with the economic, social and environmental aspirations of ESD.

Change just for change's sake or because some individual or group has a perception of an issue is not sufficient grounds to recommend changes to the EPBC Act. Changes must be substantiated by real and considerable issues. Perceptions are not justifiable.

NFF Contact

Deborah Kerr
NRM Manager
Ph: 02 6273 3855
Fax: 02 6273 2331
Email: dkerr@nff.org.au

Bibliography

Beeton, R. J., Buckley, K. I., Jones, G. J., Morgan, D., Reichelt, R. E., & Trewin, D. (2006b). *Australia State of Environment 2006 - At A Glance*. Australian State of Environment Committee. Canberra: CSIRO Publishing on behalf of the Department of Environment and Heritage.

Beeton, R. J., Buckley, K. I., Jones, G. J., Morgan, D., Reichelt, R. E., & Trewin, D. (2006a). *Australia State of Environment 2006*. Australian State of Environment Committee. Canberra: CSIRO Publishing.

Finnigan, J. (1994, December 16). *Land-based inputs into the coastal zone*. Retrieved August 7, 2009, from Department of the Environment, Water, Heritage and the Arts: <http://www.environment.gov.au/coasts/publications/coastal-zone/finnigan.html>

Murray-Darling Basin Authority. (2009). *Water Audit Monitoring Report 2007-08*. Canberra: Murray-Darling Basin Authority.

Murray-Darling Basin Commission. (2008). *Murray-Darling Basin Risks Strategy*. Retrieved August 7, 2009, from Murray-Darling Basin Commission: http://www.mdbc.gov.au/__data/page/2232/Risks_strategy.pdf

National Biodiversity Strategy Review Taskforce. (2009). *Australia's Biodiversity Conservation Strategy 2010-2020 Consultation Draft*. Canberra: Department of the Environment, Water, Heritage and the Arts.

National Farmers' Federation. (2009, May 29). *NFF Submission to Australia's Biodiversity Conservation Strategy 2010-2020. Consultation Draft*. Retrieved August 7, 2009, from NFF Submissions to Government: <http://www.nff.org.au/policy/submissions.html>

Productivity Commission. (2007). *Annual Review of Regulatory Burdens on Business - Primary Sector*.

Attachment 1



Courier Mail
08/08/2009
Page: 71
Village Green
Region: Brisbane
Circulation: 214468
Type: Australian Capital City Daily
Size: 223.87 sq.cms
MTWTFSS-



Brian Williams

williamsb@gnp.newstd.com.au

Have your say

THIRTEEN years ago, before he died, my father asked that about a quarter of our grazing property south of Emerald be preserved in its remnant state.

As this was before virtually any land-clearing legislation, my only practical option was to have it declared the Avocet Nature Refuge – the first in this area.

This involved a conservation agreement with the Beattie government, which allowed me to graze the area but compelled me to abide by a strict management code.

Among other requirements, I was prohibited from clearing any timber. My family was ridiculed by many for its green tendencies, and there were other sacrifices. I bent over backwards to satisfy the Government and conservationists by complying fully and even promoting the scheme.

I agreed to have the endangered flashjack wallaby relocated here (the first attempt on private land) in an effort to prevent its extinction.

There were the usual cameras and congratulatory letters from the Government but I was unaware of the deceit and hypocrisy awaiting me.

Last year a coal exploration company was given permission to drill in the area and after they left their mess and broken fences behind, I started questioning my decision.

Now the very same decision-makers in collusion with several conservation groups have prevented me from treating regrowth on some of my most productive land.

Have I spent too long in the sun, or

is this hypocrisy and deceit beyond belief?

I have decided to put my nature refuge agreement with the Government on hold until the end of the moratorium. Then, if the ban on endangered regrowth is enacted as legislation, I will terminate the agreement.

This is not just a personal protest.

It is on behalf of all landholders who are deliberately and systematically being stripped of their rights and ability to remain viable by a bullying and uncaring Government.

As for the future, it's a case of the old adage "once bitten, twice shy", because hell will freeze over before I enter into another voluntary agreement with this Government.

Hugo Spooner
Springsure





'Regrowth' echoes in anger

THIRTEEN years ago, before my father died, he requested that about 25 percent of our grazing property, south of Emerald, be preserved in its remnant state.

As this was prior to virtually any land-clearing legislation, my only practical option was to have it declared the Avocet Nature Refuge – the first in this area.

This involved a conservation agreement with the Beattie Government, which allowed me to graze the area but compelled me to abide by a strict management code. Among requirements, I was prohibited from clearing any timber at all.

My family was ridiculed by many for its "green tendencies" and there were other sacrifices to be made. I bent over backwards to satisfy the Government and greens by complying fully and even promoting the scheme.

I agreed to have the endangered Flashjack relocated here (the first attempt on private land) in an effort to prevent its extinction.

There were the usual cameras and congratulatory letters from the Government, but I was unaware of the deceit and hypocrisy awaiting me.

Last year a coal exploration company was given permission to



drill on the area and after they left their mess and broken fences behind, I started questioning my decision.

Now, to rub my face into the proverbial, the very same decision makers (in collusion with several green groups) have prevented me from treating regrowth on some of my most productive land.

Have I spent too long in the sun, or is this hypocrisy and deceit beyond belief? I have decided to put my nature-refuge agreement with the Government on hold until the end of the moratorium. Then, if the ban on

endangered regrowth is enacted as legislation, I will terminate the agreement. This is not just a personal protest. It is on behalf of all landholders who are deliberately and systematically being stripped of their rights and ability to remain viable, by a bullying and uncaring government.

As for the future, it's a case of "once bitten, twice shy". Hell will freeze over before I enter into another voluntary agreement with this Government.

[Springsure.](#)