



National Farmers' Federation

Submission to

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

22 June 2018

NFF Member Organisations



Australian Chicken Growers' Council Ltd



CANEGROWERS





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.

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1. Introduction

The *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* is a substantial piece of environmental legislation that regulates a range of activities which may impact matters of national environmental significance (MNES) including World Heritage, National Heritage, wetlands of international importance, listed threatened species, ecological communities and others. The scope of the EPBC Act covers a range of sectors including mining, urban development and, importantly, agriculture.

This review focuses only on agriculture. This is an important inquiry for NFF as for the first time a specific focus has been provided on a sector that is significantly impacted by this legislation and has been, and continues to be, poorly dealt with. From the outset NFF states that it is concerned about how the EPBC Act applies to the agriculture sector which is responsible for managing a significant part of Australia's land mass. Almost half of Australia's land mass is managed by farmers. In that respect, the EPBC Act needs to recognise that farmers are in the best position to manage the land sustainably and protect the environment and so should be encouraged to do so. These concerns include how the listing process is applied, interpreted, communicated and reviewed. There are also concerns about how enforcement processes are applied and pursued. Finally, whether the EPBC Act operates effectively and efficiently to identify and protect particularly critically endangered, species or communities.

The EPBC Act is poorly delivered for the agriculture sector and the NFF is concerned about how it is being applied to the agriculture sector. It seems to take a precautionary principle approach, which leads to overreach in terms of targeted species and communities. Critically, when the conservation advice is poorly defined, it creates confusion, mistrust and concern. The EPBC Act puts in place a listing review mechanism where the entity (The TSSC) recommending the initial determination is responsible for reviewing the listing and essentially, marking their own homework. The EPBC Act's requirements are often unknown due to poorly implemented education and communication processes and it creates unnecessary uncertainty for farmers. There must be an increased focus on minimising non-compliance through effective communication.

The farm sector has a vital interest in working with the environment and sustaining it to ensure environmental health outcomes that allow the sector to carry out its business into the future. It is extremely important to farmers to invest in and support healthy landscapes. Inherent in this is protecting important environmental assets. Generally, farmers will willingly 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, even better, if there is a value attributed – see chapter 6); a process they can have confidence in; a framework of operation that is reasonable, clear and certain; and is based on objective and repeatable science. Farmers are interested in protecting environmental icons and will do so given an operating environment as described. They are competent and reliable landscape managers.

The NFF Native Vegetation policy (which focuses particularly on the EPBC Act) is a key informative document of this submission and is included as Appendix A.

1.1 List of Recommendations

3) Threatened Species Scientific Committee

- (a) That a cost benefit analysis be undertaken to determine whether the EPBC Act is being delivered as efficiently for environmental outcomes as possible;**
- (b) That the listing nomination process ensure that analysis of national and regional representation of a species is a component of the consideration;**
- (c) Establishing a less onerous referral process that recognises the low level of risk associated with most farming activities;**
- (d) Establishing an offsets policy that is specific to the unique nature of agriculture projects;**
- (e) That the scope of the TSSC expertise be amended to include at least two representatives with formal qualifications and practical experience in productive landscape management;**
- (f) That a formal, funded, agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident, especially in the development of conservation advice;**
- (g) That in developing conservation advice, social equity and economic considerations, consistent with the principles of Ecological Sustainable Development, be applied;**
- (h) A ‘discovery process’ with the TSSC, or a subset, with appropriate agriculture representatives be implemented to allow a mutual understanding of views on an issue prior to a formal request for a review of a listing; and/or**
- (i) The mechanism that allows the TSSC to recommend a listing, and also consider a review of that listing, be reconsidered with a goal of a more independent process being in place.**
- (j) That a formal agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident. Especially in the development of conservation advice and prior to public consultation.**

4) Better Administration and Communication

- (a) Implementing formal bilateral or trilateral (where local government is in play) negotiations to resolve how to ensure that a farmer can get a single set of advice on their particular site and be assured (protected) from sanction if the advice is adhered to;**
- (b) Development of accurate, multi-jurisdictional mapping that shows layers of all environmental legislative requirements on a specific site to a scale that is meaningful on the ground and is subject to challenge when ground truthed. These should be accessible through an online portal and at strategic locations;**
- (c) Using trusted networks to educate the broader agriculture community to as to a general range of issues they need to consider and how to go about seeking advice if land use change or intensification is contemplated. Such advice should be available in the form on non-binding consultation where it is sought; and**
- (d) That Hawke recommendation five is fully implemented and there is one list, one assessment methodology which presumably gives rise to one set of comprehensive maps and one compliance regime.**

6) New Paradigm

- (a) That the EPBC Act listings be reviewed to identify species and communities that can be valued and that a transition to a market based approach for protecting endangered and critically endangered species and communities be commenced;**
- (b) That the developing communication engagement capacity of the department of environment be enhanced. Including to formally and clearly partner with other jurisdictions (State and/or Local Government) to provide concise information at a single point for landholders; and**
- (c) That the Commonwealth commit to support protection of public biophysical assets that are endangered or critically endangered by investing \$20 billion over the next decade through the creation of an Environmental Stewardship Fund.**

7) Vegetation/Climate Trigger

- (a) That there be no trigger of any kind incorporated in the EPBC Act or its regulations.**

2. Response to the questions in the Issues Paper

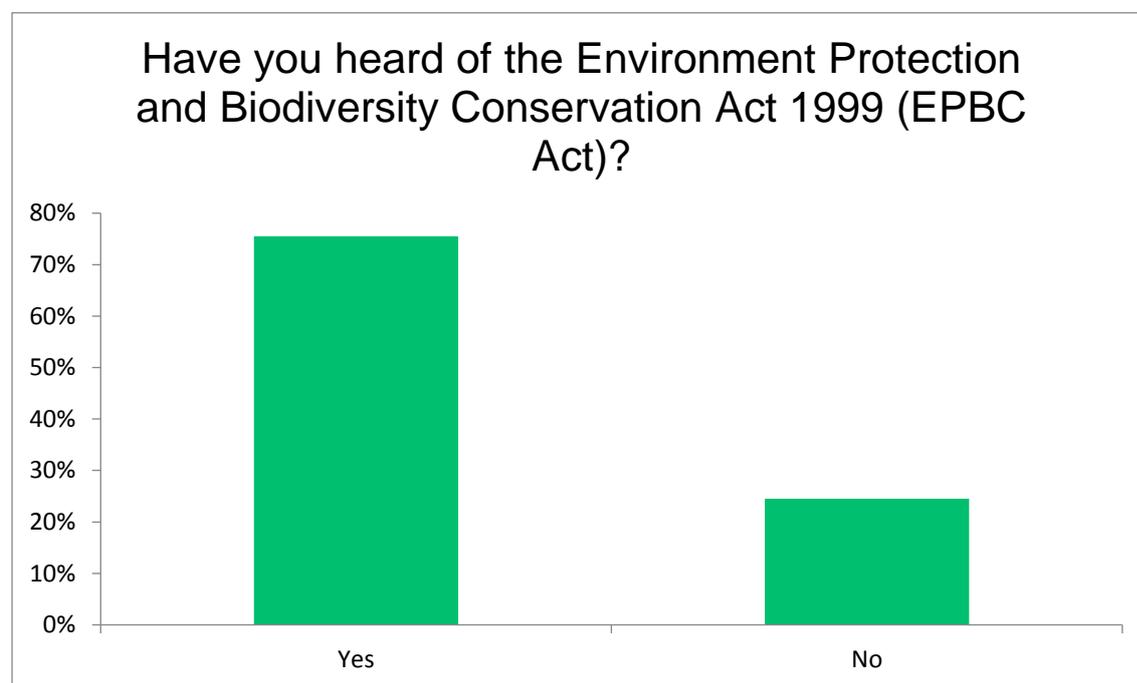
A core component of the Aither Issues Brief was a set of questions which Dr Craik and the consultants developed to focus responses. The NFF took a decision to specifically explore these questions by way of a survey that was distributed directly to farmers by NFF member organisations. The survey yielded 155 responses from across Australia, which were predominantly farmers but also included a small number of advisors to the sector.

The survey aimed to canvas farmer's experiences around compliance with the EPBC Act and understand how they want the EPBC Act to work. The responses have been used to inform this submission.

There were 155 responses to this survey. The NFF relies on evidence and data as a foundation of policy development and has a high level of confidence that the responses received have been consistent with how the NFF perceives the EPBC Act and with other feedback from members. The responses reinforce issues outlined in this submission. The survey responses while small in terms of overall sample provide direct and reliable evidence and data of farmer experience with the EPBC Act.

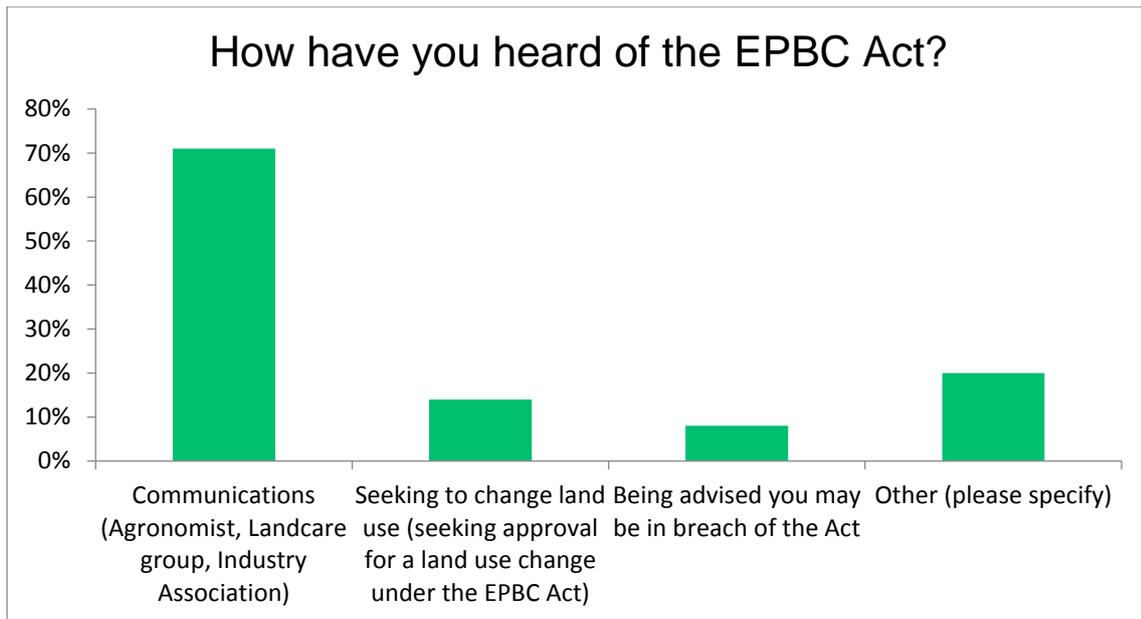
The questions are:

1. *Have you interacted with the EPBC Act in the past? Please be as specific as possible, including if you have previously referred actions, noting that submissions will be made public unless confidentiality is specifically requested.*



NFF comment:

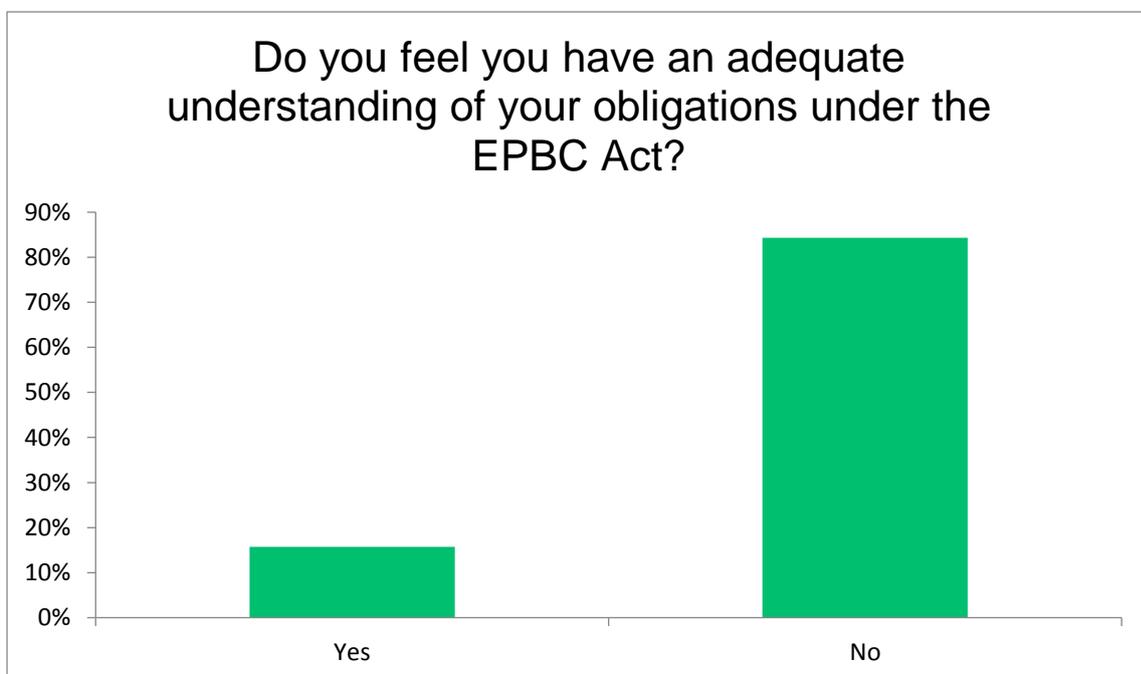
While this may seem an inordinately high number, with recognition, it is anticipated that many people will have not proceeded with the survey if the subject matter was not familiar. It is, therefore, possible the high no response is likely to be due to loyal organisational members. The following responses seem to support this interpretation.



NFF comment:

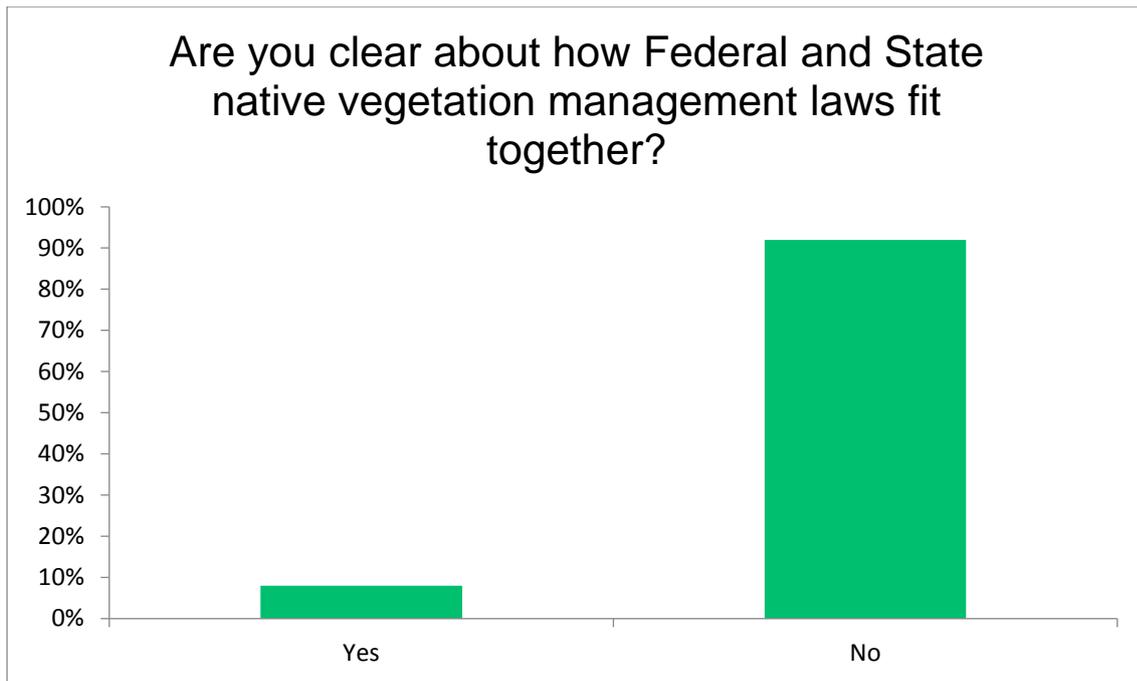
This suggests the majority of farmers become aware of issues through consultation with trusted organisations. This suggests that a majority communication with farmers is through trusted organisations, who often provide expert advice. This may guide Government Departments on how and where to invest its resources to achieve better communications with farmers.

2. *Do you feel that you have an adequate understanding of your obligations under the EPBC Act?*



NFF comment:

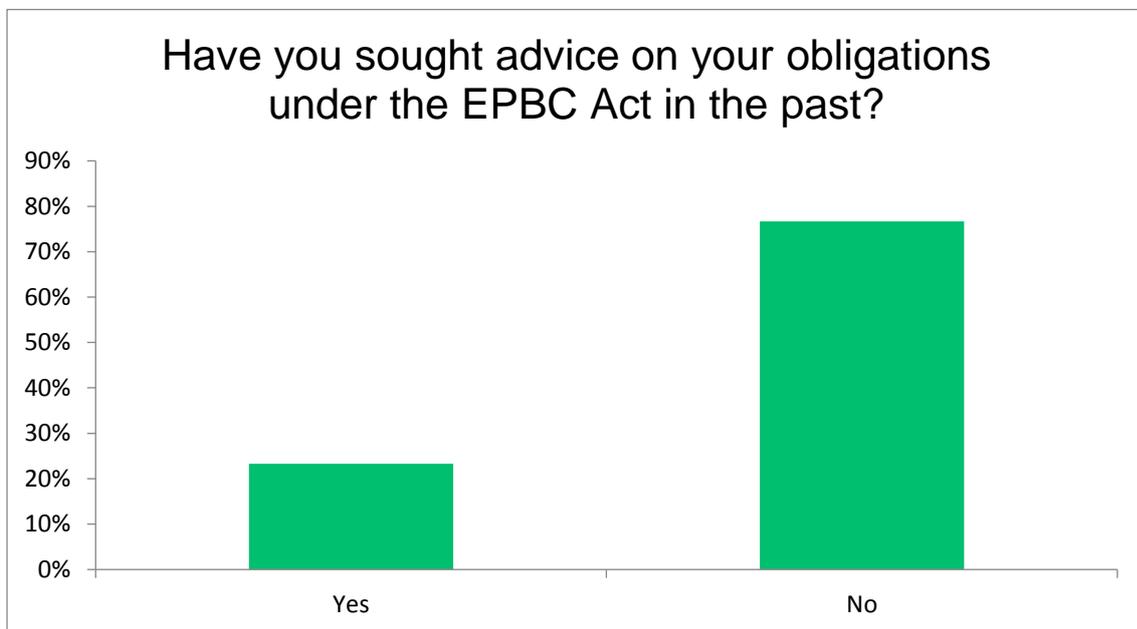
Supports the view that this is a poorly understood and communicated piece of legislation. This is a general response across all states and all occupations.



NFF comment:

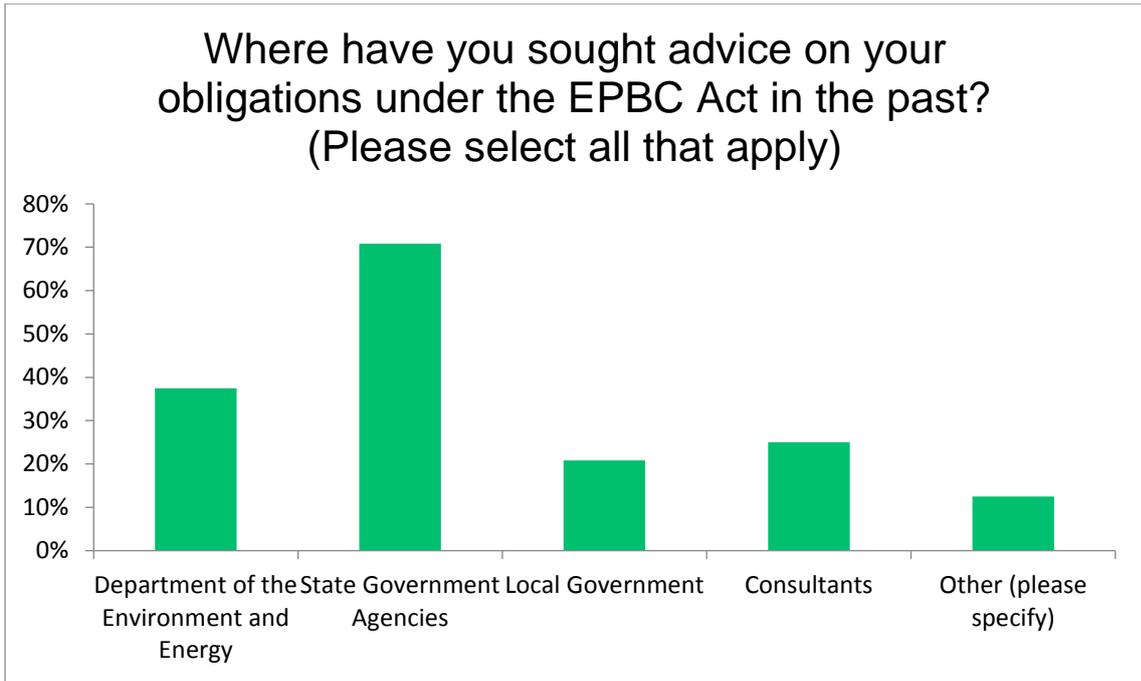
Shows significant confusion and underpins the communication issue. The NFF has made several recommendations to address this issue in section 4 of the submission.

3. *Where have you sought advice on your obligations under the EPBC Act in the past (e.g. from DoEE, a State Government, a local government, a consultant, your neighbour etc.)? How would you assess the quality and usefulness of the advice you received?*



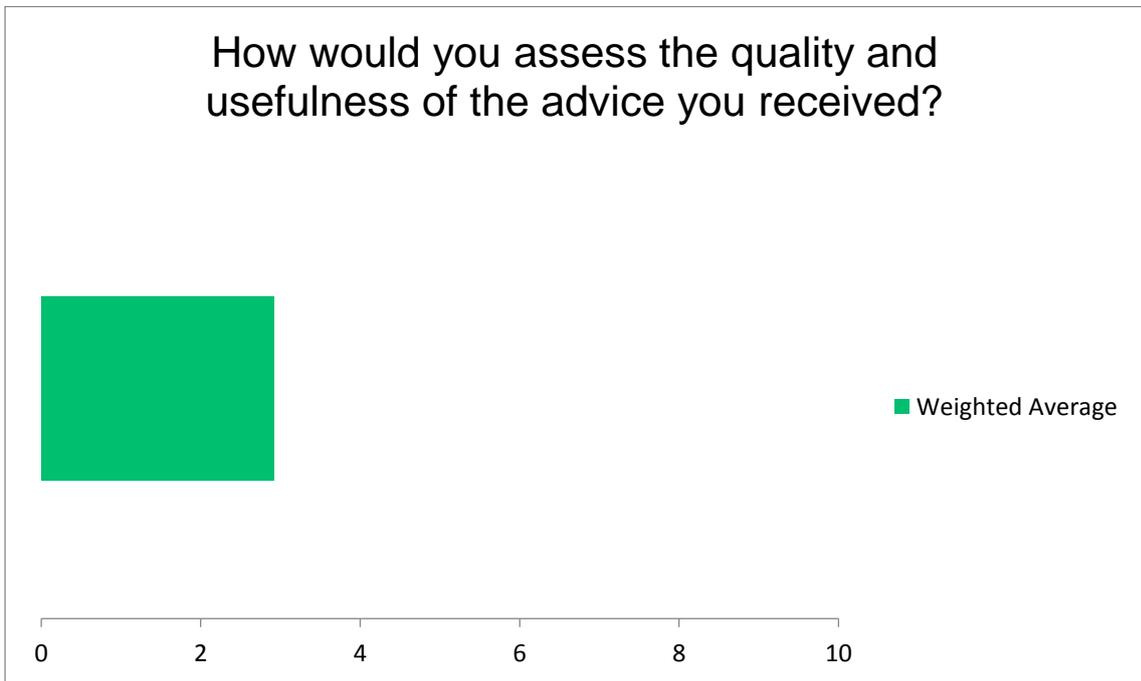
NFF comment:

This may be again be a lack of communication. It may also represent fear of being identified.



NFF comment:

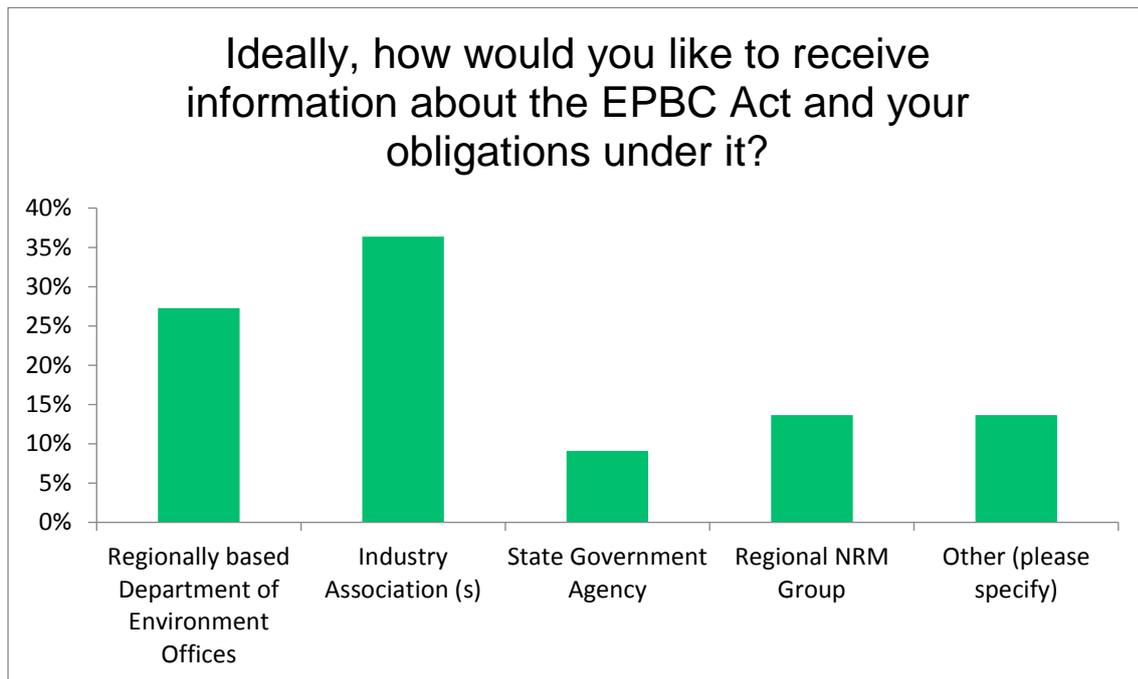
Most farmers are seeking their advice from State Government. This is despite the EPBC Act being Commonwealth legislation. The key message here is that farmers do not differentiate between state and federal controls and are keen to have information provided at a single point. Section 4 makes recommendations to this effect.



NFF comment:

0 is poor 10 is good. The view therefore is that the quality and usefulness of the advice is low. A better designed communications program is needed to address this concern.

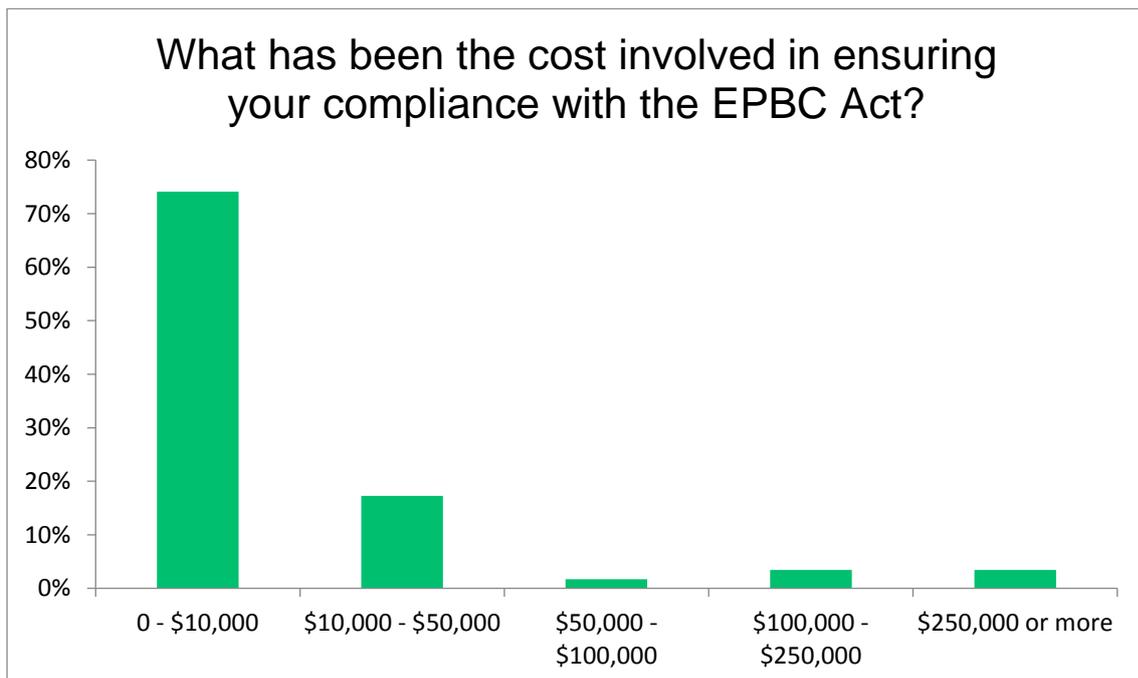
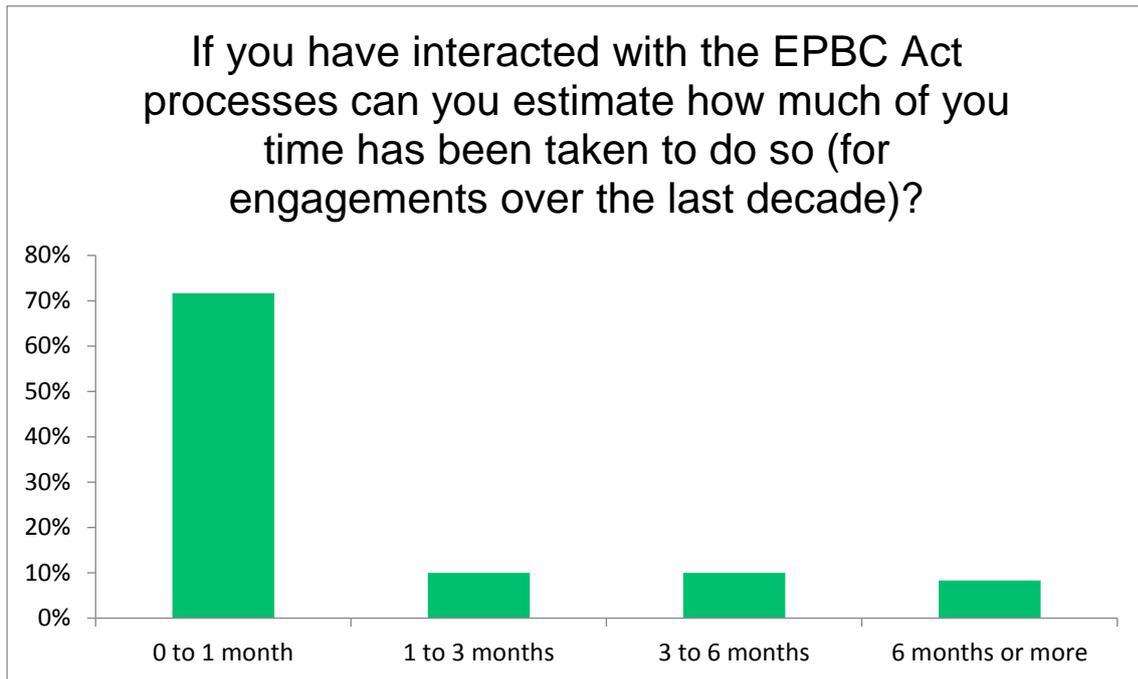
4. Ideally, how would you like to receive information about the EPBC Act and your obligations under it?



NFF comment:

Supports the argument that locally available information and/or trusted sources is preferred. There is a preference expressed for regionally-based (local) officers which seems to suggest a one-stop shop type of arrangement for environmental legislation information is preferred. Also, the strong support for industry associations goes to the earlier identified issues of trust.

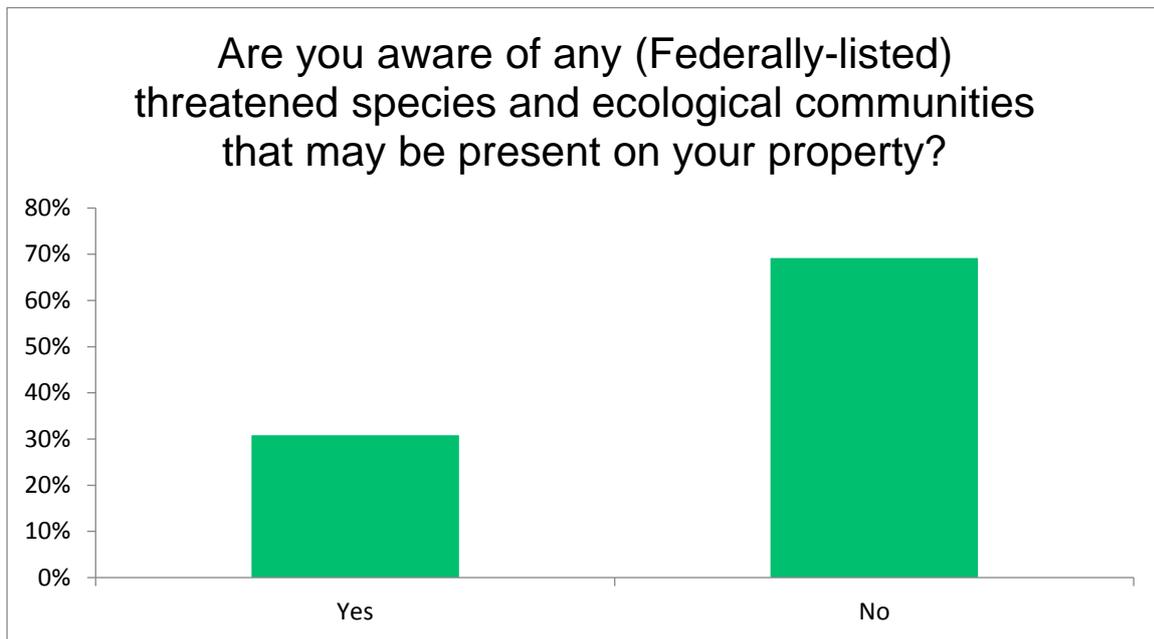
5. What has been the time or cost involved in ensuring your compliance with the EPBC Act in the past? Please be as specific as possible.



NFF comment:

There seems to be a lack of visibility as to whether there is a cohort of farmers that have not sought advice about their obligations under the EPBC Act but are impacted by the EPBC Act.

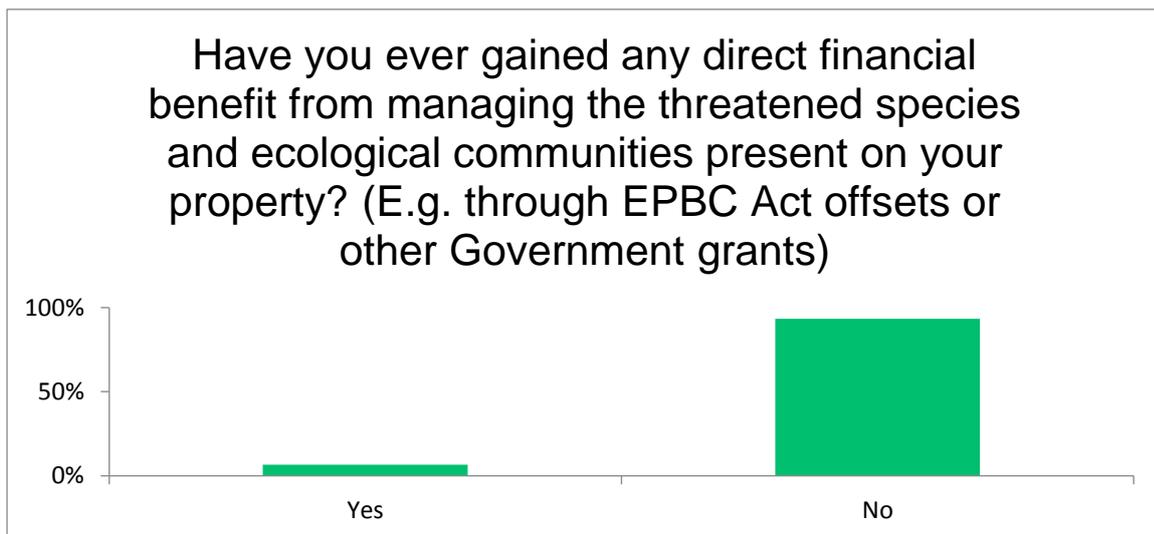
6. Are you aware of the threatened species and ecological communities that may be present on your property? What measures, if any, do you undertake to manage your impact on these species and communities?



NFF comment:

Interrogation of the raw data reveals that this response is for 29 people, 11 of which sought advice. The confidential information, especially the case studies, provide more depth of this issue.

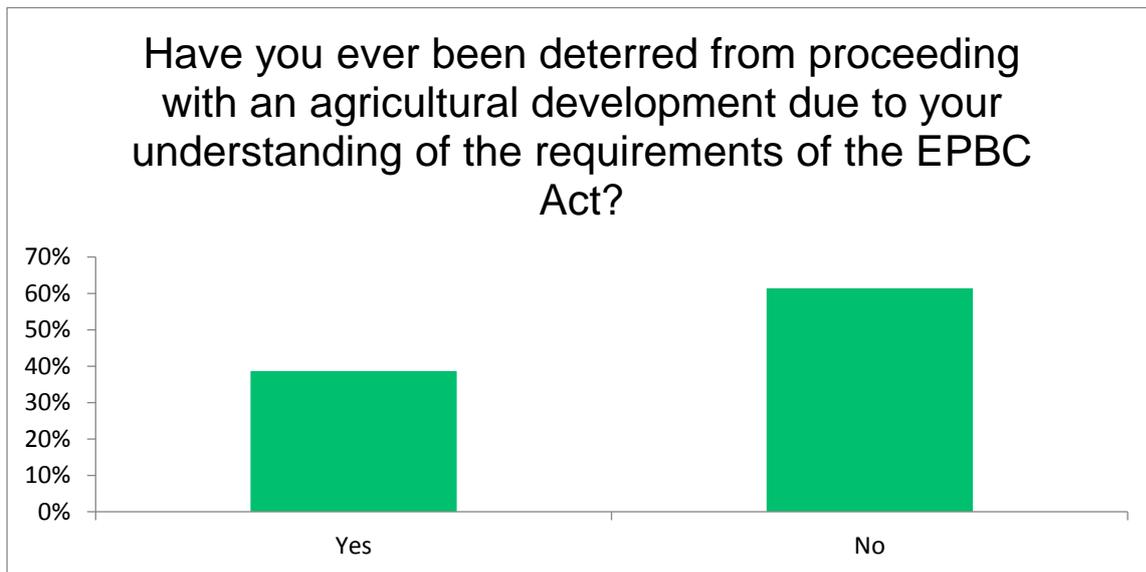
7. Have you ever gained any direct financial benefits from managing the threatened species and ecological communities present on your property (e.g. through EPBC Act offsets or other government grants)?



NFF comment:

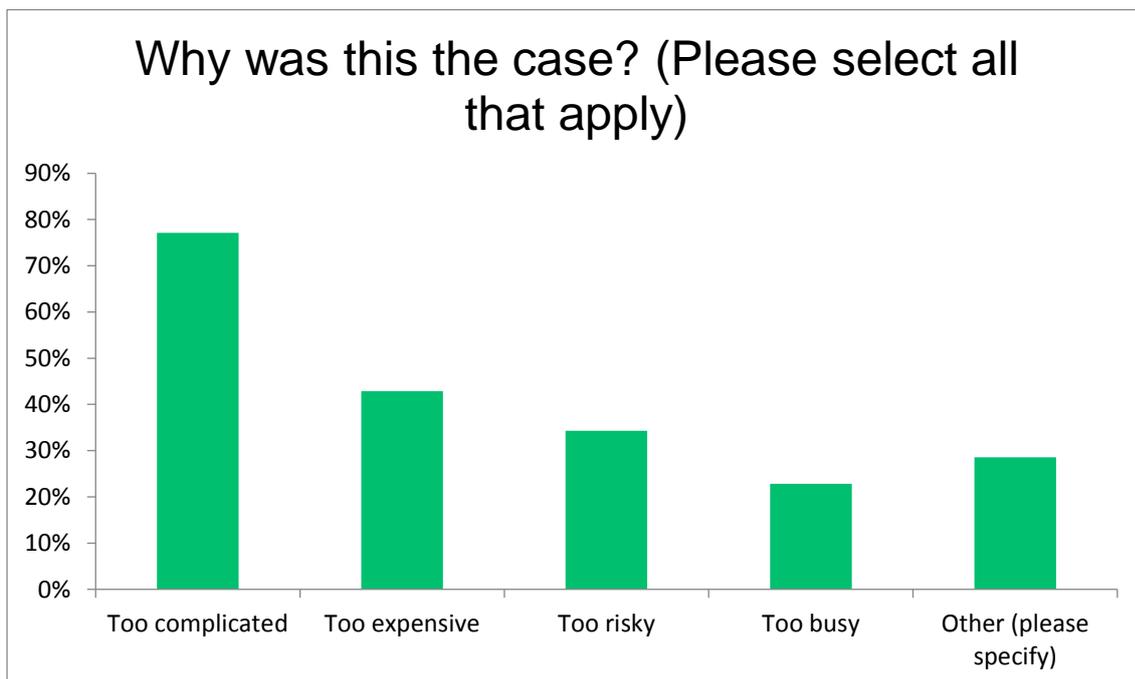
This response is consistent with the limited availability of programs. NFF's proposals in section 6 promote a change of paradigm that would provide much better monetary recognition or private burden of protecting public good assets.

8. *Have you ever been deterred from proceeding with an agricultural development due to your understanding of the requirements of the EPBC Act? Have you ever withdrawn or let lapse a referral under the EPBC Act? If so, why?*



NFF comment:

The yes response is disturbingly high and supports the argument that there is concern. The graph below teases out the rationale.



NFF comment:

The first column supports the NFF’s concerns over complexity and poor communication of the EPBC Act.

9. *How do you think the Australian Government can improve achievement of its environmental protection and biodiversity conservation objectives through its interactions with the agriculture sector?*

Summary of responses:

On the whole, responses were broadly constructive. The main messages and opportunities for improvement expressed through the survey include:

- Greater recognition of the role of farmers as an environmental manager through stewardship payments, that is, payments for environmental services their property provides for public good. This is not limited to stewardship payments, but there should be ‘mechanisms to assist land holders that are transitioning to sustainable land management practices’.
- Greater alignment and consistency between the Federal and State (and in some States, Local) environmental management laws – avoiding duplication of approval processes and utilising local knowledge and expertise. This could help to achieve better clarity regarding triggers for referrals and requirements for approvals.
- Greater direct engagement and collaboration with the landholder or farmer in order to understand their management practices, recognising that ‘*each area is different*’. This is necessary to determine solutions that can be practically applied on a landscape scale.
- A more community and grassroots approach to protecting species – ‘*If a species of fauna or flora is of conservation value and valued by the community, then I believe that it is the responsibility of that community to bear the cost of its protection. The landowner is only the guardian and they should be fairly compensated for the work entailed in its conservation and not financially disadvantaged as a result of any legislative obligations.*’
- Better communication in general.

NFF comment:

These are some key responses which underpin the desire for market based instruments.

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

Many of the same issues here were mentioned in question 9. However, there was an expressed frustration, for example, in:

- The lack of consultation and direct engagement.
- The inflexibility of the EPBC Act which makes it difficult to comply with.
- The poor communication of the EPBC Act. Many find it difficult to fully understand the EPBC Act and their obligations under it.
- The lack of Federal and State legislative alignment.
- How complicated the EPBC Act is overall.

3. Threatened Species Scientific Committee (TSSC) Process

The NFF is concerned that the EPBC Act is not meeting its expectations in a number of areas. It is poorly communicated to those that are held responsible for its on ground implementation, in this case farmers. There are also concerns that the current costs of administering the EPBC Act are such that a different way of implementation, moving away from command and control legislation to a more market-based approach may considerably improve environmental outcomes. NFF seeks a cost-benefit analysis to assess the efficiency of the current legislative and compliance framework. There is concern that significant funds are being applied to compliance and administration which may be better used in communications and/or incentives.

The EPBC Act also remains ‘distant’ from agricultural users, as evidenced by the significant number of respondents from the survey that expressed their frustration at the lack of on ground consultation and direct communication with farmers. It is considered a burden by the rural sector due to poor understanding, misinformation and lack of clarity of requirements.

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.

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 millions, 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.

3.1 Current state of the TSSC

The Threatened Species Scientific Committee (TSSC) is a critical player in the process of listing, re-categorising and delisting threatened species and communities. The TSSC is appointed by the Minister for the Environment. The TSSC has the following expertise:

Members collectively have extensive knowledge and experience of flora and fauna conservation and ecology, with specific expertise ranging from marine and freshwater ecology, molecular ecology, invertebrate and vertebrate taxa, botany, plant ecology and community engagement. (www.environment.gov.au/biodiversity/threatened/tssc)

The current ten members are undoubtedly highly qualified individuals and together seem to meet the scope outlined above. The TSSC operates under mature and published guidelines including:

- Under what circumstances a listing can be considered;
- The consultation process for a listing;
- The mechanism for recommending a listing and thresholds for defining the level;
- Providing conservation advice for the listing; and
- Reviewing the listing to adjust its status (higher or lower threshold or delete).

The TSSC acts on advice from the Minister in relation to listings or reviews and provides recommendations back to the Minister for their consideration. Ultimately, discretion lies with the Minister.

In a process sense the listing and TSSC frame is logical and transparent. Despite this, there are a number of concerns.

There is concern that the identification process for listing does not establish the need for review. The NFF is of the view that there needs to be a process of ensuring that the nomination process for listing considers the MNES process especially including its occurrence on a national scale and also its regional significance. There is also a need to prioritise where the species might be protected or where a recovery plan might be viable. For example the Comprehensive, Adequate and Representative process used for the Regional Forest Agreement process is a mechanism that could establish where coverage exists for a particular species or community on public land. Once done the focus can turn to private land if further protection is required.

A flow chart of the current listing process is at Appendix B.

While it is appropriate for the TSSC to be well qualified and expert in its field this frame does leave some issues to be resolved. It is clear that there is ongoing concern with the way that the conservation advice is developed and interpreted on the ground.

In the case of the Natural Temperate Grasslands of the South Eastern Highlands Ecological Community (NTG-SEH), the conservation advice, when practically applied, would capture much more of the landscape than the target of 3% of the presumed pre-settlement extent (estimated to be around 500,000 ha). The NFF have commissioned a report on this issue which will be provided to the review team.

This worked example gives rise to concerns about the extent to which conservation advice is appropriately defined to capture the actual target areas rather than a more cautionary approach. When considered in the context of mapping that accompanies the listing, the over-estimate concern is exacerbated.

A further concern on the NTG-SEH, as a consequence of its re-categorisation to critically endangered, is that it now has a broader geographic footprint than previously. This is causing further concern in those newly captured areas where the *'ecological communities targeted in the listing are considered endemic'* (pers comm Clapham).

Another dynamic that is of concern to the farm sector is the limits imposed by the conservation advice process that relates to whether or not an activity has a significant impact.

A significant impact is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant

impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. You should consider all of these factors when determining whether an action is likely to have a significant impact on the environment

www.environment.gov.au/epbc/about/glossary#significant

There are various issues that arise in this context. 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 as intensification. Also of concern, for example, with the return to profitability of the wool sector, is whether a consequential return to fertiliser application to promote pasture growth may lead to a change in composition of a pasture and inadvertently put it back in scope. While this is expected not to be the case, potential impact of the NTG-SEH is of concern. The NFF are uncomfortable with the lack of clarity in the EPBC Act and guidance on enlargement, expansion and intensification and are seeking legal advice on ways to improve the EPBC Act, interpretation and/or guidance.

Turning to the opportunity to seek a review of the listing, there are a number of concerns. Firstly, there is an obvious question about the mechanism that allowed a listing that needs review. This is discussed in the next section.

Secondly, if a review is considered necessary there is a substantial burden on the proponent to provide a (presumably scientifically) substantiated case for the review. A current example is that Vicforests' \$2.1 million investment over the past 3 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 own experience there has been consideration given to seeking a review of the NTG-SEH's 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).

Thirdly, a successful application for a revision of a listing would trigger a further investment of resources to attend review discussions and generally prepare information. And in committing those resources the review would be conducted by the TSSC, which made the initial recommendation. Thus the TSSC would be, as it were, marking its own homework. This outcome lacks the normal expectation of natural justice and creates insecurity for proponents that their arguments may not be fully considered on their merits.

3.2 How should the TSSC operate in the future?

The NFF considers there is scope for significant improvement in the operation of the TSSC and related factors.

It is noted that there are various formally constituted advisory committees that exist within the scope of the EPBC Act. They include the:

- Biological Diversity Advisory Committee;
- Indigenous Advisory Committee;

- Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC); and
- Threatened Species Scientific Committee

The NFF holds a productive working relationship with the Department of Environment and Energy and is a substantial contributor to the public consultation process provided directly or through these various committees. Despite this the NFF remains frustrated at the slow progress causing ongoing difficulties in the administration and farmer understanding of the EPBC Act. There is a *prima facie* case that, given farmers are responsible for managing around half the Australian land mass, there should be a more formal interaction with expertise within the system especially in the context of listings that apply to agricultural land. Additional positions should be made available to represent on ground understanding and be formally funded. This funding can be in the form of sitting fees or similar rather than expecting industry/private landholders to foot the bill for this contribution of expertise.

Alternatively, there is also a case that the TSSC could have its scope amended to incorporate scientific views from the land management sector. Such representatives could be those with qualifications and appropriate experience with landscape management, ecological assessment at a landscape level, or those with academic and practical management skills in farm management. Or both.

There are a number of further issues. The NFF supports the need to limit vexatious demands for review. That said, the development of a mechanism that allows a dialogue on measures within a listing (including the conservation advice) in a non-prejudicial manner may be an appropriate way to develop a mutual understanding of issues prior to any formal application being made. This may necessarily include the TSSC, or a subset thereof, with appropriate farm sector representatives.

The NFF has repeatedly expressed concerns about listing proposals that includes whether proposed species areas really are threatened where they still exist, because they still exist, and whether they are represented adequately elsewhere. And when combined and considered at a national scale are they MNES. The NFF is often not convinced these tests are always met.

The critical point in the process is really when the development of conservation advice and appropriate mapping is being developed. This is where the expanded expertise contemplated above is critical. The example of the NTG-SEH demonstrates where the application of the conservation advice extends the possibly captured area compared to the target area by more than a multiplier of 10. The target is 15,000ha and depending on the information source there could have been as much as 500,000ha prior to European settlement. That such an interpretation is possible, whether it is ultimately accurate or not, demonstrates that this is poor advice.

Another area of concern is that the process as it currently stands allows the Minister to consider socio-economic impacts only once they make their final consideration of the recommendations. The principles of Ecological Sustainable Development (ESD) allow consideration of economic, environmental, social, and equitable measures. NFF proposes that ESD considerations are 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 sound development of conservation advice. 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 farm sector would be better placed to positively participate if the level of confidence in the listing, 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 can be seen as 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.

The NFF is of the view that there needs to be a consideration of how to ensure an unbiased consideration of listing reviews to give proponents more confidence in a balanced outcome.

NFF recommends:

- a) That a cost benefit analysis be undertaken to determine whether the EPBC Act is being delivered as efficiently for environmental outcomes as possible;**
- b) That the listing nomination process ensure that analysis of national and regional representation of a species is a component of the consideration;**
- c) Establishing a less onerous process that recognises the low level of risk associated with most farming activities;**
- d) Establishing an offsets policy that is specific to the unique nature of agriculture projects;**
- e) That the scope of the TSSC expertise be amended to include at least two representatives with formal qualifications and practical experience in productive landscape management;**
- f) That a formal, funded, agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident, especially in the development of conservation advice;**
- g) That in developing conservation advice, social equity and economic considerations, consistent with the principles of Ecological Sustainable Development, be applied;**

- h) A ‘discovery process’ with the TSSC, or a subset, with appropriate agriculture representatives be implemented to allow a mutual understanding of views on an issue prior to a formal request for a review of a listing; and/or**
- i) The mechanism that allows the TSSC to recommend a listing, and also consider a review of that listing, be reconsidered with a goal of a more independent process being in place.**

3.3 Better Implementation for Landscape Scale Operations

One difficulty that the EPBC Act presents to the farm sector is its application across a broad range of circumstances. In its most prescriptive guises the EPBC Act focuses on geographically confined proposals that might include mine or urban development, or even proposed land use change in agriculture, for example, development of irrigation infrastructure.

For general agriculture the EPBC Act intersects with broadscale landscape issues and, more precisely, on land use change or intensification as described above. Even in this latter circumstance the impact of agriculture on listed species and communities is predominantly negligible in the landscape and of unlikely material impact on the preservation of those identified environmental assets. It grows more frustrating for the farm sector when palpably poor understanding of the practicalities of on-ground intentions result in the expression of concerns or alleged breaches of the EPBC Act.

Time and again the sector is advised that continuing land use practice will not incur the attention of the regulator yet circumstances like tree lopping for drought fodder and weed control to prevent the further spread of exotic species seem to be inevitably grey and irregularly dealt with by regulators.

In one case, a farmer in the Monaro Region of NSW was afflicted by the encroachment of African lovegrass into property. As his property was listed as a national significant ecological community, the farmer cannot practically control the weed (i.e broadacre spraying) until it reaches 50% of the perennial population of the grassland, at which point, it would be almost impossible to practically control. Additionally, the protected minimum area of 0.1 ha makes control on a broadacre basis totally impractical and unworkable. This particular example demonstrates the excessively prescriptive nature of the EPBC Act and does not recognise the dynamic nature of the environment nor best practices for weed control. There are, of course, flow-on impacts for the community if it becomes well-established in the area, impacting production of neighbouring properties as well. Interestingly the Nature Conservation Council is also concerned about African lovegrass. It has [published](#) some findings which indicate that a fire and herbicide regime may be an effective solution. Such a treatment is likely to prove difficult for the NTG-SEH captured resource due to the impact of the regime on native grasses.

Further, the recurring focus on patch size (down to 0.1 ha) and claims of intentions to only focus on the very best examples of remnant vegetation, in particular, cause concern for farmers where they may have unidentified small patches, or patches of pristine remnants, that they are neither equipped to identify, nor expecting it to exist in well used parts of their property.

Aside from the need to better communicate these expectations and identify where threatened species and communities realistically may occur, and for that matter, to what extent, the listed species may be expected to exist, a more equitable and clearer process needs to be found to assure farmers that the burden they feel is, for the most part, unjustified.

The evidence available to NFF suggests that the EPBC Act has the intent of targeting only quite specific areas of the landscape. For the most part this may be the case. Nevertheless, there remains a serious question as to how this can be done better. If indeed most farming practices are unlikely to affect listed species and communities, and don't, then there must be a pathway to a different outcome for those areas that are not clear, yet captured i.e. referrals and approvals shouldn't be required in some circumstances and/or much simpler application processes applied for low risk activities

The NFF has no difficulty accepting the need for a regulatory environment that covers serious and large scale breaches of the law. Equally, NFF acknowledges that the best intentions of departmental and appointed experts are to provide a balanced application of the EPBC Act. Where the difficulty lies is the fervour with which unmapped, uncommunicated and even unknown breaches are sometimes pursued.

The NFF is currently working closely with the Department to address this difficulty and some progress is evident. What is needed though is a more proactive and comprehensive engagement. The current process of predominantly reactive 'flying squads' needs to be replaced with a well-funded (either within the Department or under some sort of delegation to state authorities or other experts) engagement process that will assist in restoring confidence of the farm sector in the EPBC Act.

Historically, there has been an out-posted Departmental officer to NFF which sought to build that communication bridge back to the farm sector. While this was a useful experience in doing business and yielded some successes by way of engagement with farmers at key events, it has revealed that the best place to interact with farmers is in the comfortable surrounds of their farm or in local settings. Nevertheless NFF remain interested in a level of national engagement (probably out-posted) to support the delivery of a regional communications model.

NFF recommends:

- j) That a formal agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident. Especially in the development of conservation advice and prior to public consultation.**

4. Better Administration and Communication

The NFF has previously noted the importance of communicating the EPBC Act requirements to farmers. A measure of the success of this communications strategy must be the number of contraventions of the EPBC Act incurred by the farm sector. Where a contravention occurs, this could often be considered as a communications failure. Whilst there remains the possibility of wilful non-compliance, there is minimal evidence of this taking place.

The NFF suggests that failure has occurred, primarily: when farmers do not know about the EPBC Act; what actions may trigger assessment; and when the Government has not adequately advised farmers in affected regions of new listings of species and ecological communities. As the number of listings increase, there will be an increasing exposure of farmers to non-compliance. This should be avoided through the establishment of adequate mechanisms to inform farmers about the EPBC Act and their obligations under the EPBC Act. 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.

The results of the NFF survey demonstrate this failure. Over 80% of respondents felt that they did not have an adequate understanding of the obligations under the EPBC Act. A further disconnect is demonstrated with over 90% of respondents unclear with how Federal and State native vegetation management laws interact.

It is noted that, on 11 May 2018, Assistant Minister for the Environment, the Hon. Melissa Price MP, announced 50 changes to the listing process including the addition of 41 species, transfer of 6 species and removal of 3 species on the list of threatened species. Given the already inherent difficulty in communicating the existing combined 1800-1900 species and communities to potentially affected communities, NFF will be seeking to fully understand the communications plan for this latest cohort as an example of how the information dissemination will evolve.

These issues have been raised as critical concerns by NFF across a number of reviews. While NFF is heartened by the signs of more direct engagement from the Department of Environment in recent times, much more needs to be done. The experience in the South Eastern Highlands where an amended (escalated) listing was announced in April 2016 yet was so poorly communicated that landholders, and more critically NSW Government extension officers, were not aware by September of that year. This represents a microcosm of the problem.

The NFF has repeatedly argued for more streamlined and connected communications program as indeed did the Hawke Review in 2009.

4.1 Federal/State/Local Government

The current paradigm of operation of environmental law in Australia sees it administered by, at least, the Federal and State Governments. In some jurisdictions Local Government also has power and can impose environmental requirements through its planning and other local regulatory responsibilities.

Additionally, the development, review and implementation of legislation at the varying levels of government lacks harmony. In what NFF describes as the pendulum effect, variations in laws at one level of government too often occur at similar times to reforms at another level where laws are respectively tightened or loosened depending on the politics and the cycle of reform.

The current Commonwealth law has been reasonably static, notwithstanding some variations to listings (for example, the announcement of 41 new listings as described above). Just recently, the NSW Government has varied its laws to be more production and landscape focussed, thus potentially triggering EPBC Act provisions that may have otherwise been covered in previous iterations of NSW laws. Conversely, Queensland has just taken a draconian jump to a preservation-like regime which the farm sector in that state is extremely concerned about.

No matter where the jurisdictions are on the pendulum, it inevitably means that there are ongoing realignments between various tiers of government. It is observably difficult enough for the 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.

In a real example there is now evidence that the same patch of grassland has been assessed against a State and a Federal compliance regime and has yielded two different answers. Briefly, the State assessment, based on analysis that measured species proportionality including perennial and annual species, found the patch in question to not be of significant ecological value. However, the Federal compliance required an assessment of proportionality which only allowed calculation of perennial species. This apportioned an ecological value that rated the patch as important and in need of preservation. Leaving aside surrounding issues of the appropriateness of the listing and its conservation advice this inconsistency clearly demonstrates why farmers have difficulty. It also questions to what extent the intergovernmental memorandum of understanding (see below) is working.

The frustration of farmers is felt where 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 jurisdictions. There are current examples of this in both Queensland and NSW.

The NFF has consistently sought a mechanism that will 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.

Of particular concern is the inaccuracy of mapping. There is substantial evidence especially in NSW and Queensland that the mapping is inaccurate and unreliable. Industry is strongly of the view that the current state of mapping is such that it cannot be relied upon as a decision tool, and nor can they be reasonably utilised as a compliance tool. The NFF have continually raised this as an issue.

Perhaps as an example of the frustration that continues to be felt with inadequate tools the following is noted. The development of the Regional Forest Agreement (RFA) process in the 1990s addressed very similar issues to what are being confronted at present. The RFAs

undertook Comprehensive Regional Assessments for each area, incorporated in this process was the establishment of world class Comprehensive, Adequate and Representative (CAR) Reserve System, providing for endangered species protection and continuously improving the sustainable management of forests. This process protected identified species, and each RFA was advanced bilaterally. The important message here is not the RFA outcome it's that the science used for the CAR process was available in the 1990s and included mapping. Almost 30 years on it is a reasonable expectation this can be applied to private land to provide some certainty. In a data rich society these tools should be available through an online portal or at strategically placed locations.

Example of EPBC Act mapping issues

A farmer with a mixed farming operation near Roma in Queensland has been working with a company to set aside country for carbon credit scheme but inaccurate EPBC maps have resulted in half that country being ineligible for the scheme. Extensive work is now required to ensure that the EPBC map is ground-truthed and amended to reflect the farm history and its actual vegetation status. The farmer is encouraging the company to use his situation as a pilot to challenge the mapping, however there is resistance because of the time, cost involved and the lack of clear process involved in seeking EPBC maps to be modified to reflect on-the-ground factual information.

The company reports that it frequently finds that EPBC maps are not accurate and that there is no straight forward process for getting maps reviewed and amended, and as a result the amount of land able to be included in carbon projects is lower than should be the case. This directly impacts on the farmer commercially and acts as a disincentive for setting aside large amounts of country if only part of it is eligible to attract stewardship payments. It is a perverse outcome that the EPBC through the inaccuracy of its mapping is reducing the amount of land able to be farmed for carbon.

In assessing the farm's carbon potential, the company undertook extensive analysis of the property and prepared comprehensive and accurate mapping based on historic documents and photos and detailed satellite imagery of the actual property. This involved going through the imagery pixel by pixel for a 1000acre paddock to accurately map the paddock. The mapping closely aligned to previous state department mapping, but when overlaid with the federal EPBC map half the country became ineligible for the carbon scheme. The fact that state and federal mapping is so inconsistent demonstrates the flaws in the system, and the importance of ground truthing maps and information which are relied upon to make environmental decision.

This situation highlights the major concern about the accuracy of current mapping associated with the EPBC. It also demonstrates the difficulty, expense and time involved in challenging these maps and the lack of a clear process to do so. It is also evident that without the significant external sources with high level of expertise in this area, it is not viable for an individual farmer to challenge the accuracy of EPBC maps and seek maps to be updated to reflect the situation on the ground.

There is now enough experience and understanding of what the concerns are, they have been articulated over a long period by NFF and its members, a solution should be found to resolve these issues. One option is to seek resolution through formal COAG processes.

The NFF recommends:

- a) **Implementing formal bilateral or trilateral (where local government is in play) negotiations to resolve how to ensure that a farmer can get a single set of advice on their particular site and be assured (protected) from sanction if the advice is adhered to;**
- b) **Development of accurate, multi-jurisdictional mapping that shows layers of all environmental legislative requirements on a specific site to a scale that is meaningful on the ground and is subject to challenge when ground truthed. These should be accessible through an online portal and at strategic locations; and**
- c) **Using trusted networks to educate the broader agriculture community to as to a general range of issues they need to consider and how to go about seeking advice if land use change or intensification is contemplated. Such advice should be available in the form on non-binding consultation where it is sought.**

4.2 Consistency across jurisdictions

Recommendation five of the 2009 Hawke review states:

Recommendation 5 – A National Approach

The Review recommends that Australian, State and Territory governments move to a single national list of threatened species, including marine species and ecological communities, through accreditation of State and Territory processes for listing endemic species. This process should include:

- (1) agreed accreditation for listing;*
- (2) agreed protocols;*
- (3) minimum procedural standards; and*
- (4) consistent documentation standards.*

NFF regards this as a critical recommendation. NFF acknowledges that there is a common assessment method which goes some way to addressing this issue.

However it does not seem to have given rise to full implementation as described by Dr Hawke. There is certainly some progress through the development of the [Intergovernmental Memorandum of Understanding Agreement On A Common Assessment Method For Listing Of Threatened Species And Threatened Ecological Communities](#). While this might reasonably set the frame of operations, the key outcome sought (that is, consistent identification definition and management regimes for species across the nation and across jurisdictions) seems not yet to have been achieved.

The NFF seeks:

- d) **That Hawke recommendation five is fully implemented and there is one list, one assessment methodology which presumably gives rise to one set of comprehensive maps and one compliance regime.**

5. Legal Changes

The NFF is taking advice to ascertain whether the following issues can be proposed for legislative amendment or clarification, once the advice is to hand NFF will provide it to the review.

Consideration of socio economic measures in conservation advice.

Whether the consideration of social and economic impacts can be included as a factor in the development of conservation advice (social and economic impacts are currently considered by the Minister after the conservation advice is draft), and if so how best to insert the consideration.

This would be specific to conservation advice dealing with the agricultural sector.

Third party appeals

Consider reform to ensure landholders are able to operate on the basis of guidance from a Commonwealth Officer without having to undertake the referral process.

This would involve limiting/shifting a landholders liability in the event a third party lodges an administrative appeal against their activity which they have undertaken in accordance with advice from a Commonwealth Officer.

Sections 43A and 43B

Consider options to clarify these provisions, in particular the terms:

‘to promote the conservation and ecologically sustainable use of natural resources’;
and

‘an enlargement, expansion or intensification of use’;

In doing so the Department’s Guidance Note 11 advice will be reviewed to establish whether this provides adequate clarification.

6 New Paradigm

6.1 Command and Control Regulation Vs Market Based Instruments

When the EPBC Act was conceived and implemented in 2000 there were only nascent pockets of market-based instruments for environmental services. An early example is clean air credits in New York City in the 1990s. In this context aspirations to regulate and protect threatened species, though difficult for landholders then and now, were most logically and cost-effectively achieved by legislative intervention. This represented itself practically as a command and control mechanism where rules of engagement were determined under the auspice of environmental protection legislation. Identified species are assessed and classified based on a threat matrix and then conservation advice is developed that is a cautionary ‘best bet’ for arresting species and community decline. Conservation advice is, in theory at least, also focussed on species recovery.

This current paradigm of operation continues to perplex and distress landholders. The complexity of this process, agitated elsewhere in this submission, leaves landholders confused and with a feeling of carrying the burden of protecting environmental assets at their own cost. There is also the perverse incentive whereby landholders with the most significant remnant (threatened) ecological communities or occurrence of rare species are restricted the most and carry the greatest responsibility or burden.

While there are examples of purchasing of environmental services to aid and sustain recovery, for example, the Environmental Stewardship Programme for the Box Gum Grassy Woodland under the National Landcare Program, these are, by and large, the exception rather than the rule. 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 major policy instrument mix chosen for achieving desired outcomes is regulation, enforcement and compliance, with limited attention provided to other instruments such as: formal education and training; suasion; extension programs; participatory approaches; market-based mechanisms; economic incentives; direct investment; covenants and MoUs; common law; duty of care; stewardship; formal agreements; research and development; monitoring; evaluation; benchmarking and adaptive management; assessment procedures; self-regulation; quality assurance processes; EMS and ecolabeling; public relations; marketing and advertising; conditionalities; institutional arrangements; change other policies, or; reasoned inaction in agreed areas.

Whenever biodiversity legislation reduces the potential and/or value of farmland for a deemed community benefit and devolves the impost onto the landholder without due and deserved recompense, then inevitably the legislation will eventually fail in its intent. This lesson is indelibly written in many instances of history.

Almost two decades later this paradigm remains the default position. It is time to explore a new horizon.

At the end of the second decade of the 21st century there are options to protect species and communities differently.

The World Resource Institute has estimated the value of ecosystem services to be US\$33 trillion a year. Internationally, the ecosystem services approach to natural resources management is now being used by governments in the European Union, the United Kingdom, the United States, Canada and New Zealand. Over the last two decades, together with traditional conservation tools, innovative instruments, such as PES (Payment for Ecosystem Services), have been proposed and implemented all over the world in order to improve management effectiveness in biodiversity conservation.

Payments for ecosystem services (PES) occur where individuals or communities are paid for the protection and provision of ecosystem services. This concept has manifested itself in various policies and programs internationally. Large bodies of work and scientific literature have explored and analysed their application, implications and outcomes for society (Schomer and Matzdorf 2013).

For example, the European Union budget provides payments to farmers/land managers for the supply of environmental services through programs designed by each member state according to their (environmental) priority. Participation of farmers/land managers in these schemes remains voluntary. Ecosystem services payments are supported by a percentage from the EU budget, with the remainder provided by the member-state budget and/or from private sources. The practices and actions of landholder need to be explicitly defined, monitored and controlled, so that the Ecosystem Service and benefit can be achieved. The payment calculation is based on income foregone for the beneficiary in order to perform the actions needed, plus additional costs incurred. For certain measures opportunity costs are also taken on board.

In Australia, there are maturing markets for emissions reductions (via the Emissions Reduction Fund) which are underpinned by carbon sequestration methodologies that are consistent with internationally agreed trading mechanisms. These schemes engage landholders in commercial activities that protect and enhance, particularly, vegetation assets. Methodologies such as human induced afforestation, savannah fire management and managed regrowth all promote the enhanced sequestration of carbon in the natural environment. Judicious design also requires the participants in the scheme to meet requirements for pest and weed control. It is in the participant's interest to maximise sequestration through active management of the sink. These requirements collaborate to focus on the commercial return of the resource.

While there are still scale problems with these schemes, that is, they penalise small landholders, due largely to transaction costs of carbon accumulators. The commercialisation of the environmental 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, and the disproportional burden of environmental protection and confusion under the EPBC Act.

Under the current legislative regime there are limited opportunities to receive stewardship type payments and these, where taken up, are viewed positively by the landholders. The

opportunity now is to commence transition for many more market based instruments to encourage protection rather than enforce it.

In valuing protection of high conservation value vegetation that may exist in the listing process as endangered or critically endangered, and it is accurately mapped, then a landholder can 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.

A key issue for the farm sector is that it is unfairly bearing the burden of public good conservation. This has been a recurring theme since prior to the EPBC Act, back at least to the overnight introduction of State Environmental Planning Policy 46 in NSW in the mid-1990s. The NFF is of the view that trust was breached then, and through similar mechanisms in other jurisdictions, it has never recovered. Many comments from the NFF survey express a clear frustration towards the operation of the EPBC Act and a desire for more on-ground engagement and consultation with farmers. While recent focus on engagement by the Department is applauded, and its enhancement encouraged, there remains a substantial trust and knowledge deficit.

The experience of the Emissions Reduction Fund (ERF) and other market-based valuations of biophysical assets provide confidence that there is an opportunity to expand the biophysical candidates for market-based instruments. The NFF retains concerns about how this program is able to be accessed by small landholders and also whether it is causing adverse impacts on regional communities.

A critical concern is that where land tenure is uncertain that those that hold management rights (as lessee, or owner manager) over the landscape are fully engaged in any market based instruments including ensuring that the managements rights holder. The NFF will seek close engagement in the design of schemes to ensure these rights are protected.

It is plain that, to do the job of communicating properly, more resourcing is needed, which is made all the more difficult in a climate of greater efficiency requirements and indeed budget cuts to the public service. It is also an opportunity to consider a transitional collaborative role from communications/extension that is publicly funded to a commercial framework governed by resource outcomes rather than enforced protection.

To take this opportunity seriously there will need to be a medium term commitment from government to stand in the market to underwrite the investment. There is already evidence of other investors, largely developers seeking to offset habitat destruction. It is noted that there is a 12 year investment of over \$10 billion from the Commonwealth in the Murray-Darling Basin to purchase predominantly environmental outcomes (in the form of acquiring environmental water).

The NFF proposes that an Environmental Stewardship Fund (ESF) be created to support the development of mature schemes of market-based instruments for endangered and critically endangered biophysical assets. The fund should commit \$20 billion over the budget forecast

period of 10 years. If the aim of Australian agriculture is to achieve a level of \$100 billion per annum industry by 2030 and if the 80,000 farmers across the country were to receive a \$25,000 payment per year that were tied to preserving and providing ecosystem services, that would equate to \$2 billion per annum. This money could be spent through the implementation of market based instruments and also for threat abatement to particularly vertebrate species. The ESF should have the capacity to be a trading scheme where the dynamic nature of the Australian landscape can be represented.

The ESF would need to be innovative, flexible and target both threatened species protection and threat abatement. For threatened species protection funds should be made available through a competitive (reverse auction/tender perhaps) process that seeks to identify and appropriately protect sufficient numbers/hectarage of a robustly identified listing of endangered or critically endangered species/communities. There would preferably be triple goals of protection (and arresting decline of populations), implementing and monitoring a recovery plan in the participant areas, and to seek to move the population down the threat matrix (ultimately aspiring to delisting). There could also reasonably be a scheme design that would reward the achievement of these goals once independently verified. A likely scenario would be annual stewardship payments with bonuses for recovery and delisting.

The second key area of investment would be reducing threats. There will be several examples of key threatening processes or species that impact listed fauna in particular. Let's consider predation by feral cats. It is estimated by the Australian Wildlife Conservancy (AWC) 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. 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. 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. More detail on the damage that cats cause and some of the successes by the AWC can be seen [here](#). Other feral predators should also be considered for control.

While this mechanism is being considered, developed and funded there remains an increased need for greater capacity to deliver the necessary support systems that will provide greater clarity to landholders.

There are a number of examples of structures that could be mirrored under or within an ESF. The NFF notes that the Clean Energy Finance Corporation has an investment remit to support more rapid adoption of clean energy technologies. The ERF is in the process of investing \$2.3 billion in carbon reduction through a range of negotiated methodologies. The Department of Agriculture and Water is investing over \$10 billion purchasing water entitlements from consumptive users to establish a (Murray-Darling) basin wide pool of environmental water that is being strategically applied via the Commonwealth Environmental Water Holder to support and recover icon environmental sites. A combination of attributes of any or all of these structures would be a significant basis for the architecture of an ESF.

NFF Recommends:

- a) That the EPBC Act listings be reviewed to identify species and communities that can be valued and that a transition to a market based approach for protecting endangered and critically endangered species and communities be commenced.**
- b) That the developing communication engagement capacity of the department of environment be enhanced. Including to formally and clearly partner with other jurisdictions (State and/or Local Government) to provide concise information at a single point for landholders.**
- c) That the Commonwealth commit to support protection of public biophysical assets that are endangered or critically endangered by investing \$20 billion over the next decade through the creation of an Environmental Stewardship Fund.**

7 Vegetation/Climate Trigger

The NFF is aware that there are proposals for greenhouse, climate and/or land clearing triggers to be incorporated into the EPBC Act.

The greenhouse trigger was noted in recommendation 10 of the Hawke review (below) and ought to have lapsed as it was recommended to sunset once the Carbon Pollution Reduction Scheme was implemented. That has happened and so has the successor to it. The NFF regards this as off the table.

Recommendation 10

The Review recommends that:

(1) an interim greenhouse trigger, with a threshold of at most 500,000 tonnes of carbon dioxide equivalent emissions, be introduced as soon as possible by way of Regulation to sun-set upon commencement of the Carbon Pollution Reduction Scheme; and
(2) the Act be amended to insert a requirement to consider cost-effective climate change mitigation opportunities as part of strategic assessments and bioregional planning processes

With the existence of separate mechanisms, such as the Emissions Reduction Fund, and ongoing international commitments to climate change there is no compelling case argued for either a climate or land clearing trigger. The principles of relying on competent science to inform the decision making process under the EPBC Act are the appropriate mechanism. For clarity NFF is opposed to such measures as they serve no useful purpose in the context of the objectives of the EPBC Act or the EPBC Act *per se*.

NFF recommends:

- a) **That there be no trigger of any kind incorporated in the EPBC Act or its regulations.**

8 Case Studies and Survey Results disclaimer

The NFF has been able to draw together some case studies that reinforce a number of arguments. Notably, many of the responses to the survey also support the arguments articulated herein.

There has been some direct reference to case studies, and in some cases identification of the author. However, NFF do not believe that publishing the detail of these case studies necessarily adequately protects the individual. Instead NFF has entered into a confidentiality agreement with Dr Craik and Aither consulting whereby we have supplied the case studies we have to hand to support the case being argued herein.

In terms of the NFF survey, some individual responses to questions have been quoted in the text of this submission. They have been de-identified herein and have also been as they were provided to Dr Craik and Aither under the same confidentiality agreement referred to above.



Native Vegetation

Policy Position

Change is needed in the way that the Commonwealth Government administers the *Environment Protection and Biodiversity Conservation Act* in relation to the management of native vegetation on farms. To make native vegetation policy more workable for farmers the Government must develop specific guidelines and policies that are relevant to agricultural developments, provide a streamlined process for seeking approval and dedicate resources to assisting farmers understand and comply with the law.

Issue

Since the *Environment Protection and Biodiversity Conservation Act* (EPBC Act) was passed by the Commonwealth in 1999, the farm sector has argued that the way in which the law is applied to agricultural developments does not work.

Both State and Commonwealth laws govern the management of native vegetation on farms. This results in both duplication and confusion. An activity may be exempt from requiring approval under a state law, but still require assessment and approval from the Commonwealth. Further, a species or ecological community may be defined and protected in one way by the state, and in a different way by the Commonwealth – so even determining whether you have a protected matter in the first place can be difficult. While work has started to harmonise and streamline jurisdictions, more needs to be done.

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. A multi-stepped referral, assessment and approval process is required that properly reflects the lower risks that are often associated with agricultural activities.

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 debateable conservation value. A new

way of considering isolated paddock trees, with reasonable offsets that protect areas of higher conservation value, is required.

It is important that farmers are aware of their legal responsibilities under the EPBC Act. Resources to develop communication materials that are relevant to farmers and to proactively communicate to the farm sector have been stripped from the Department over time. Investment in education and awareness is a cost effective way to ensuring compliance with the requirements of the Act.

Background

The EPBC Act protects matters of national environmental significance, including threatened and migratory species, wetlands, endangered ecological communities and national heritage properties.

Where a proposed activity may have a significant impact on a protected matter, the activity should be referred to the Commonwealth Department of the Environment for assessment, and where required, approval.

What the industry needs

Change is required to the administration of the EPBC Act to make native vegetation policy more workable for farmers. These changes include:

- dedicating resources to facilitate strategic and proactive communication of farmers' regulatory responsibilities under the EPBC Act;
- preparing guidelines – suited for farming situations – that can assist farmers make a decision as to whether they are likely to trigger the EPBC Act and how they can exercise due diligence when considering environmental laws;
- further streamlining of State and Commonwealth vegetation management laws, to reduce red tape and to ensure that farmers are better able to fully understand all their legal responsibilities;
- establishing a multi-step referral process that recognises the low level of risk associated with most farming activities;
- establishing an offsets policy that is specific to the unique nature of agriculture projects; and
- developing specific guidelines in relation to clearing isolated paddock trees.

2017

Process for listing threatened species, ecological communities and key threatening processes under the *Environment Protection and Biodiversity Conservation Act 1999*

