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SUBMISSION

The Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

April 2020



Introduction

The NSW Irrigators' Council (NSWIC) is the peak body representing irrigation farmers and the irrigation farming industry in NSW. Our Members include valley water user associations, food and fibre groups, irrigation corporations and commodity groups from the rice, cotton, dairy and horticultural industries. Through our members, NSWIC represents over 12,000 water access licence holders in NSW who access regulated, unregulated and groundwater systems.

NSWIC engages in advocacy and policy development on behalf of the irrigation farming sector. As an apolitical entity, the Council provides advice to all stakeholders and decision makers.

Irrigation farmers are stewards of tremendous local, operational and practical knowledge in water management. With over 12,000 irrigation farmers in NSW, there is a wealth of knowledge available. To best utilise this knowledge requires participatory decision making and extensive consultation to ensure this knowledge can be incorporated into best-practice, evidence-based policy. NSWIC and our Members are a valuable way for Governments and agencies to access this knowledge.

NSWIC welcomes this public exhibition as an opportunity to share local, practical and operational knowledge and expertise in water management. NSWIC offers the expertise from our network of irrigation farmers and organisations on an ongoing basis to ensure water management is practical, community-minded and follows participatory process.

This submission represents the views of the Members of NSWIC with respect to The Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999. Each member reserves the right to independent policy on issues that directly relate to their areas of operation, expertise or any other issues that they deem relevant.



NSW Irrigators' Council's Guiding Principles

Integrity	Leadership	Evidence	Collaboration
Environmental health and sustainable resource access is integral to a successful irrigation industry.	Irrigation farmers in NSW and Australia are world leaders in water-efficient production with high ethical and environmental standards.	Evidence-based policy is essential. Research must be on-going, and include review mechanisms, to ensure the best-available data can inform best-practice policy through adaptive processes.	Irrigation farmers are stewards of tremendous knowledge in water management, and extensive consultation is needed to utilise this knowledge.
Water property rights (including accessibility, reliability and their fundamental characteristics) must be protected regardless of ownership.	Developing leadership will strengthen the sector and ensure competitiveness globally.	Innovation is fostered through research and development.	Government and industry must work together to ensure communication is informative, timely, and accessible.
Certainty and stability is fundamental for all water users.	Industry has zero tolerance for water theft.	Decision-making must ensure no negative unmitigated third-party impacts, including understanding cumulative and socio-economic impacts.	Irrigation farmers respect the prioritisation of water in the allocation framework.
All water (agricultural, environmental, cultural and industrial) must be measured, and used efficiently and effectively.			Collaboration with indigenous nations improves water management.



Overview

The NSWIC welcomes the 2nd statutory review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). We support the Australian Government's commitment on delivering improved national environmental laws that maintain a healthy environment, a strong economy and viable communities. NSWIC is firmly committed to the principle of responsible management. This commitment is embodied in the three domains of sustainability, responsibility and ethics. Irrigation farmers, as individuals that grow the food and fibre that sustains the Australian people and greatly assists the Australian economy, understand that the viability of their sector relies on maintaining and increasing the value of the natural capital of their land.

Irrigation farming is an integral and important segment of the national agriculture sector with stewardship of over 51% of Australian landmass. We are proud of our pivotal role as stewards of this natural capital and ecosystem services that sustains our industry and the broader community. It is important that the management of the environment safeguards the health of critical ecosystems while securing the viability of the communities that rely on productive water use for economic, social and cultural outcomes.

NSWIC is pleased to provide our members' views on the operations of EPBC Act and offers recommendations on changes needed to secure ecological sustainability in the Murray Darling Basin that supports thriving productive water industry and communities. In this submission, we provide the basis for making the following specific recommendations:

1. Develop clear and uncomplicated guidelines to facilitate referrals of farming sector for decisions. Ensure that EPBC Act is applicable only to activities to a scale that is of national environmental significance.
2. Develop scheduled information sessions for farming communities, especially in irrigation regions, to educate members on their obligations and process for achieving compliance.
3. Further streamline the referral process and decision process for proposed development activities in irrigation farming.
4. This current review of the EPBC Act should identify or create new approaches that emphasise and promote partnerships amongst stakeholders to increase on ground environmental outcomes in farming landscapes.
5. Conduct periodic scientific reviews of the various provisions of the Act to allow adjustments to processes and targets.

Submission

This submission will be restricted to addressing those questions or parts thereof that are of most relevance to agriculture and irrigation farming.

Is the EPBC Act delivering what was intended in an efficient and effective manner?

We consider EPBC Act to be the overarching legislation for management of the environment and protection of matters of national environmental significance (MNES) in Australia. The operational environment of irrigation farmers exposes them to MNES provisions, we are therefore keen to find practical ways for ensuring



compliance with the EPBC Act such that the critical role of producing food and fibres is not imperilled.

Irrigation farming and agriculture in general have an enviable record in environmental stewardship in Australia. There is however a strong perception amongst the farming community that the Act has adopted the approach of “one-size-fits-all” and that does not suit the complex nature of farming operations.¹ It is not uncommon for many small businesses to be unaware of their obligations under the Act and what is required and expected of them in ensuring compliance. This is because of the perception that the Act is primarily meant to regulate high impact activities such as large-scale infrastructure developments or mining. Many of our members are small business operators many of whom would consider farm work developments as being subject to only State/Territory regulation only without an awareness of any possible EPBC Act implications.

There is a genuine lack of awareness and clarity about the overarching objectives of the Act in its regulation of farming operations. The Act is seen as lacking provisions that are practical in addressing environmental issues in the agriculture sector². There is also limited support for a farmer in need of guidance on any potential issue of referral. The process of obtaining advice is time-consuming and makes farmers unclear about their engagement in the system and in referring development proposals as required under the EPBC Act. Many land managers, who are expected to take primary responsibility for the protection of environmental assets, view the referral process as being punitive and dis-empowering for businesses.

The view of our members therefore, is that the EPBC Act is not delivering what was intended in an efficient and effective manner, especially in the agricultural sector. NSWIC feels that the Act and its protocols are not suited for the regulation of agricultural land developments especially as they relate to MNES.

Recommendation 1: Develop clear and uncomplicated guidelines to facilitate referrals of development proposals from the farming sector and to expedite decision making. Ensure that EPBC Act is applicable only to activities to a scale that is of national environmental significance.

How well is the EPBC Act being administered?

The Act was originally administered by the Commonwealth Department of the Environment (DoE) on the directive of the responsible Minister and Departmental Secretary/Deputy Secretary. These principal officers can delegate their powers to an employee of the Department, who often happens to be the Director of National Parks. The explanatory notes published by the then DoE demonstrated how these top officers can further delegate their powers to other officers within the Department, who then exercise those powers on behalf of the Minister, Secretary or the Director of National Parks.³ This administrative arrangement creates a large gulf between the principal officers with authority and those that make operational decisions.

¹ <https://nff.org.au/media-release/farmers-welcome-practical-recommendations-for-unwieldy-epbc-act/>

² <http://www.environment.gov.au/system/files/consultations/9a283b7c-ef31-47e6-9de8-3675c294f990/files/aither-briefing-paper.pdf>

³ <https://www.environment.gov.au/resource/epbc-act-policy-statement-epbc-act-delegations-section-515-epbc-act-and-regulation-1901a>



The principle of delegation is meant to facilitate operational decisions on referrals and seems to work well on matters that are straight-forward not involving “any contentious issues or grey areas in policy” that must be referred to the minister for determination.⁴ Although the whole process of delegation is aimed at expediting decision process, however seemingly routine matters still have be deferred to the minister for determination. A typical example is given in the explanatory notes, mentioned earlier, on the process involved for processing a request to extend an approved access to a site due to bad weather. Under the current guidelines, such a seemingly simple matter must be escalated to the minister for approval which seems excessive.

The administration arrangement is further muddled by the separation of responsibilities amongst the various jurisdictions. The State/Territory governments and local governments have the primary responsibility for the management of native vegetation and biodiversity, but the authority of these jurisdictions in approval processes can be over-ridden if there are MNES or “where Commonwealth agencies are proposing to take an action.” Moreover, the referral process which is meant to determine whether or not a proposed action requires approval under the EPBC Act, can take anywhere up to one month to ascertain if a proposed activity requires assessment or approval, and up to another two months for a decision on whether or not an activity is likely to have significant environmental impact.⁵ In sectors where activities are heavily dependent on the season, a 3–6 month process can constrain timely implementation of critical development works.

A multi-jurisdictional arrangement is often beset by poor coordination and lack of clear responsibility amongst the various levels of government in the management of assets under the EPBC Act. For example, our members pointed to the Ramsar listed Five Bough Swamp, Tucker Bill Swamp and the Murrumbidgee National Park in NSW that are often inundated during environmental watering, whilst lacking strong scientific evidence that such artificial inundation is necessary. Mobility and access to farms are often disrupted during such events but the community does not have a clear understanding of whom, amongst the various authorities, is responsible and to contact over such matters.

A recent 60 Minutes story provides a good example of poor management and communication of the intentions and processes of environmental watering.⁶ The story featured an ecologist describing the flooded Barmah Choke forest as the “epicentre of the river's mismanagement and an unfolding environmental catastrophe.” Viewers were shown images of dead and dying red gums “in their hundreds, their roots eroded by the man-made flooding and beyond the banks, killed by the relentless inundation of water made toxic by the trees' shedding leaves.” If experts have such dim view of the environmental watering approach, then the public perception and opinion are almost certainly far worse.

Recommendation 2: Develop scheduled information sessions for farming communities, especially in irrigation regions, to educate members on their obligations and process for achieving compliance.

This Review should consider the recommendations of the first review of EPBC conducted in 2018 for streamlining administration arrangements and approval

⁴ [IBID](#)

⁵ https://www.environment.gov.au/system/files/resources/d60cdd6a-8122-473a-bbd0-d483662cef3e/files/assessment-process_1.pdf

⁶ <https://www.youtube.com/watch?v=LmKkoiSAoUc>



process.⁷ That report recommended early engagement with stakeholders in the planning processes to ensure transparency in decision-making and to provide greater arbitration opportunities for dispute resolutions. It is quite onerous for farmers embarking on development works to navigate through the various jurisdictional and regulatory provisions in assessing ecological communities and priority species.

Another major concern is the seeming inability of the Act administrators in ensuring landholders have enough understanding of their obligations under the EPBC Act. Aither identified poor understanding as a major constraint on the ability of farmers to make informed decisions as to whether any activities or new projects should be referred under the Act⁸. Development of clear guidelines accompanied with up-to-date maps are needed to allow quick identification of environmental assets that are subject to the EPBC Act.

The Aither report also explained that a lack of clear communication and guidelines means many landholders may be missing out on any benefits accruing from implementing relevant provisions of the Act. It identified how protection and conservation of threatened ecological assets or species on the farm could be a potential income earner for the landholder.

A process is needed to provide a direct line of communication that offer succinct advice on approval processes to landholders and for making complaints.

Recommendation 3: Further streamline the referral process and decision process for proposed development activities in irrigation farming.

Is the EPBC Act sufficient to address future challenges? Why?

Uncertainties arising from climate projections pose a great challenge for the management of environment and biodiversity especially in agriculture sector. In what it describes as the most comprehensive analysis of Australian future climate, Climate Change in Australia (CCIA) predicts hotter and drier conditions, harsh fire hazards and increased evaporation for most of the continent especially in the Murray Darling Basin⁹. Such a scenario undoubtedly poses significant risk to the environment and will make water to become even a more contestable resource than it is presently.

The current approach to protection of species nationally and in NSW concentrates efforts on expanding the list of species that are then afforded legislative protection. This often results in exhaustive lists of species that then become a primary focus for protection, this process is in contrast to that of working collaboratively with rural communities and the farming sector on developing a ‘solutions focussed approach’.

There are numerous examples of listings on National and State based Threatened Species register that then lead to increased regulatory burden, but producing limited successful outcomes on the ground. In NSW, the outcomes of singular focus on regulation to addressing environmental and biodiversity priorities can deter collaborative models such as Landcare or Catchment Management based programs.

⁷ <https://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008>

⁸ *IBID*

⁹ <https://www.climatechangeinaustralia.gov.au/en/climate-projections/future-climate/regional-climate-change-explorer/clusters/?current=MBC&tooltip=true&popup=true>



We ask that this Review recommend an innovative approach that identifies opportunities for collaboration between governments, science and the farming sector. It is also important to direct focus away from the current emphasis on increasing the number of listed species to a more collaborative, adaptive and co-designed process that will create a range of options for achieving cost-effective and long-term solutions to environmental and biodiversity issues as they arise. This suggestion will improve species data collection and long-term on-farm monitoring of outcomes. There are examples in Southern NSW of productive partnerships between scientists and the farming sector that are delivering highly successful long-term monitoring programs.

Recommendation 4: This current review of the EPBC Act should identify or create new approaches that emphasise and promote partnerships amongst stakeholders to increase on ground environmental outcomes in farming landscapes.

Recent bushfires and (ongoing) drought have increased public focus on environment issues and often create the wrong perception about agriculture. According to a recent IPSOS poll, environment was close to the top of issues of concerns across majority of demographics in Australia.¹⁰ Many of these concerns can be associated with recent natural events and the high-profile rallies over environment/climate that followed. Many respondents in the poll mentioned “bad river management” and “dead fish” as specific examples of poor environmental management. Although the use of such terms in expressing these concerns are often based on the wrong perception over the culpability of water users, they demonstrate an urgent need for public education.

There are indications that these environmental challenges are only going to intensify along with the urge to apportion responsibility – often without much consideration of the true cause of the events. It is important that the Act should provision for a strong and credible non-partisan public engagement to educate and inform the public on the true nature of developments and contemporary environmental issues. All jurisdictions should have clear and well-articulated messages for their stakeholders and to assure the community of the necessity of the EPBC Act and defeat the perception that the operation of the Act as a “highly politicised exercise”.¹¹

There is also a need for periodic scientific reviews of specific provisions of the Act separate from the industry and operational reviews. Reviews such as the current exercise tend to raise suspicions in some quarters as designed to absolve farmers of their environmental responsibility¹². Keeping currency with scientific developments should guide management of ecological assets such as the Five Bough Swamp and Tucker Bill Swamp that the local communities believe are just depressions that naturally experience episodic inundation.

Recommendation 5: Conduct periodic scientific reviews of the various provisions of the Act to allow adjustments to processes and targets with a new focus on methodologies for increased partnerships with rural communities.

¹⁰ <https://www.ipsos.com/en-au/australians-environmental-concerns-january-2020>

¹¹ https://www.acf.org.au/agriculture_review_overlooks_role_of_national_law_in_protecting_biodiversity

¹² <https://hsi.org.au/index.php/newsroom/agriculture-review-calls-for-1bn-investment-to-address-epbc-act-perception-problem>



Conclusion

NSWIC strongly advocates for the protection of all environmental assets and water resources, not just under Ramsar, as they all contribute to the economic and social wellbeing of the community. Where such assets are water-dependent, the objective of their management should not be focused entirely on flow volumes, but on clear and measurable ecological outcomes. Many of the issues raised in this submission require further scientific investigations, such as ascertaining the historical inundation regimes for many of the minor wetlands.

Irrigation farmers need increased support to understand and acquire the ability to navigate the EPBC Act so that they are able to quickly identify situations when their activities are subject to the provisions of the legislation. This process can be facilitated by providing accurate and comprehensive information on environmental matters in the farming sector, more-so for landscapes with sensitive environmental assets. NSWIC recognises the relevance of Commonwealth leadership on environmental matters, especially those that cut across state boundaries, but wishes to see significant streamlining of the processes and a reduction in regulatory burden.

Please contact me if NSWIC can be of further assistance in this review process.

Regards,

A handwritten signature in black ink, appearing to read 'Luke Simpkins', written in a cursive style.

Luke Simpkins

CEO, NSW Irrigators' Council