



EPBC Act 2020 Review

May 2020

Soils for Life (SFL) is a not-for-profit organisation working with regenerative agricultural producers across Australia. SFL shares the learnings of these people with the wider agricultural sector so that other producers can improve their ecological, financial and social sustainability. To do this we evaluate, publish and promote case studies of regenerative landscape management where there is demonstrable success of improving ecological, production, economic and social values. We aim to represent enterprises across Australia's agricultural production systems and climatic regions.

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SFL INTEREST IN THIS CONSULTATION

Our case study participants are at the forefront of challenging issues that face agriculture in the 21st century. The views and perspectives of regenerative landscape managers provide an opportunity to discuss ideas and contribute to complex agro-ecological issues we face today. Our case study participants are actively seeking to improve the biodiversity and health of the landscapes they manage and have direct experience working with federal and state environmental legislation and the interactions between these.

SFL welcomes the opportunity to make this submission and to explore ways in which the existing regulatory framework can be made to work more effectively. The submission reflects a consolidated perspective from our engagement with our case study participants and the broader agricultural community interested in regenerating agricultural landscapes.

SUMMARY OF RECOMMENDATIONS

The SFL provides the following recommendations for improvements to the Act. Further detail is provided in the body of our submission.

1. A key priority for reform should be that the Act support regenerative agricultural practices where appropriate. We propose that these practices are continuing uses as defined under the Act.
2. Regenerative farmers are part of the wider agricultural sector. Duplication between States and Commonwealth can be reduced by a strong active leadership role from the Commonwealth and a coordinated approach from all levels of government to the rights and obligations of farmers. The Act should define national standards and objectives instead of focusing on compliance with process. The Commonwealth should establish detailed long-term biodiversity goals, standards, indicators and reporting to inform policy and decision-making under the Act.
3. SFL notes the Craik Review from 2018 and believes that the issues covered and solutions proposed should be considered within the context of the EPBC Act review and in the main are supported.
4. The approvals scheme needs to be improved upon; it should be outcomes driven and risk-based, instead of process driven. Where producers undergo innovative land use change the Act should make provision for suitably qualified environmental professionals, to be appropriately recognised with qualifications and/ or certification, such as through the Certified Environmental Practitioner Scheme (CEnvP), to evaluate novel land use change to determine if it is consistent with the objectives of, and therefore allowable, under the Act.
5. Cumulative impacts of projects at a landscape-scale should be considered within the Act, along with the need for setting regional outcomes and objectives through bilateral agreements with each state, allowing planning schemes and combined impacts to be referred to the Commonwealth for determination of potential to affect MNES.
6. There is a need to demonstrate the efficiency and effectiveness of offsets through improved transparency. This must ensure that offset arrangements are demonstrably supporting the aims of the Act and are applied more consistently across landscapes.

KEY ISSUES OF CONCERN

SFL submission addresses four main issues identified in the discussion paper:

1. the matters of national environment significance (MNES) triggers
2. the strategies with which the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is implemented and suggestions for improvements
3. changes to governance arrangements to support efficiency and effectiveness
4. how implementation may be strengthened and made more accountable.

MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE TRIGGERS

Climate Change

SFL facilitates positive and sustained behavioural change in the management of the Australian agricultural landscape. This is to ensure a thriving natural environment, able to continuously support profitable quality food and fibre production, a sustainable agricultural sector and ensure good health outcomes for the benefit of all Australians in the face of increasing climate variability.

In response to these increasing climate risks, such as uncertainties around regular rainfall and changing patterns, many of our innovative case study farmers are initiating novel land management practices to improve the resilience of ecosystems across their farming landscapes. Our case studies show the success in improved outcomes. The process driven orientation of the EPBC Act lacks recognition of the cumulative impacts of climate change and does not have the flexibility to effectively support innovative and adaptive management by regenerative farmers' to improve the resilience of the landscape. Given the emergence of novel climate and environmental conditions, the review should consider the implications of changing climate for land management and how this intersects with the objectives of the Act.

Monitoring

The establishment of a set of national standards and objectives should be supported by an appropriate set of goals, criteria for evaluation and robust data collection. The EPBC Act should be underpinned by a more credible, adequately resourced, monitoring and reporting program. The continuing development of high-resolution remote sensing tools provides more opportunity for a broader range of monitoring strategies.

Many of our case study farmers have shown that there are benefits for production from improving landscape ecological function. Environmental protection and biodiversity conservation is ultimately a public good. The capacity for ongoing maintenance, restoration and improvement of species and ecosystems should be shared across the community. Options might include the establishment of a Trust or potentially other restoration funds.

RESPONSE TO DISCUSSION PAPER QUESTIONS

Question 2

<p>How could the principle of ecologically sustainable development (ESD) be better reflected in the EPBC Act?</p> <p>For example, could the consideration of environmental, social and economic factors, which are core components of ESD, be achieved through greater inclusion of cost benefit analysis in decision making?</p>	<p>Needs to recognise that protection of environment will be more difficult with climate change.</p> <p>Science based precautionary principles.</p> <p>More emphasis on intergenerational equity.</p> <p>Benefit-cost analysis – sways towards those things that are costed and nearer term benefits that tend to benefit easier to cost economics/utility over environmental factors. Could further develop appropriate national environmental accounts to support a cumulative, cohesive integration of this. Need to incentivise economic growth that does not lead to environmental loss.</p>
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Question 3

<p>Should the objects of the EPBC Act be more specific?</p>	<p>Yes, whilst more land is protected, Australia continues to lose species with ongoing environmental degradation reported. The EPBC Act should have protection and enhancement of the environment as its central purpose. A healthy, resilient, biodiverse environment is central to sustaining a viable, resilient economy. Consideration of economic benefits should be included, however should be secondary to those of the environment under the Act.</p> <p>The Act should also more explicitly support the recovery and restoration of ecological function and biodiverse landscapes as well as improving resilience of habitats and productive capacity given growing threats from climate change.</p> <p>Should be a key part of governance processes to meet international obligations around environment and biodiversity. Also noting that the Paris Agreement committed to improving adaptation capacity and resilience to climate change without threatening food production nor environmental integrity. Climate change is a serious threatening process that will likely require assisted migration of many species with a commensurate need to support research, planning and enable support to sustain resilience over time. The Act needs explicit objectives that reflect the need to sustain resilience.</p>
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Question 5

<p>Which elements of the EPBC Act should be priorities for reform? For example, should future reforms focus on assessment and approval processes or on biodiversity conservation? Should the Act have proactive mechanisms to enable landholders to protect matters of national environmental significance and biodiversity, removing the need for regulation in the right circumstances?</p>	<p>Craik (2018) provides a number of practical recommendations to improve the efficiency, effectiveness, transparency and fairness of administering the Act, more or less within its current scope. SFL generally believes that regenerative agriculture should get more credit for restoring ecological processes and habitat for biodiversity in general and MNES in particular. Such credit should, where appropriate, include monetary compensation and rate relief from local government. Under the current or any future EPBC arrangements, SFL would contend that most regenerative agriculture practices are examples of “continuing use” under the Act; whether farmers are aware of this is another matter.</p>
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Question 6

<p>What high level concerns should the review focus on? For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?</p>	<p>Craik (2018) outlines a number of areas where there is a poor understanding of the EPBC Act by farmers. This is partly a function of business size compared with mining companies and developers. However, it is also a function of misalignment of the national definitions of threatened ecological communities compared with similar (but not identical) state definitions. This is similar to the history of rail gauges. State definitions are backed up by inventory and expertise, some of which is available and useful to farmers for local use. Most of recommendations 1 to 14 in Craik (2018) provide suggestions for improving extension to farmers by the Commonwealth.</p> <p>Regarding whether the EPBC Act has been effective, there is much evidence of continuing decline in MNES. However, there are positive stories, too, where communities and governments jointly take on the recovery tasks.</p>
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Question 7

<p>What additional future trends or supporting evidence should be drawn on to inform the review?</p>	<p>Climate change is resulting in the development of novel climatic and environmental conditions that may require assisted migration of species to support longevity and retention of biodiverse, resilient habitats. The Act needs to be able to support these measures to support resilience and sustain genetic, if not species and ecosystem diversity.</p> <p>The EPBC Act could adopt a more proactive approach that serves to identify risks, threatening processes including the cumulative effects of</p>
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	<p>other habitat loss or fragmentation and those from a changing climate etc. This would potentially support reduced planning uncertainty by more explicitly identifying areas of higher risk. However, this would require funding of a more robust research and analytical capability than currently exists.</p> <p>Craik (2018) provides many practical recommendations to improve the efficiency, effectiveness, transparency, fairness of and resourcing for administering the Act, more or less within its existing scope. We presume that all or most of these will be considered in the current review.</p>
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Question 8

<p>Should the EPBC Act regulate environmental and heritage outcomes instead of managing prescriptive processes?</p>	<p>Support need for more clearly articulated goals, supported by a cohesive, well-funded monitoring, evaluation and risk management framework.</p> <ul style="list-style-type: none"> - Condition, extent and threats should be a core part of the analyses. - Improved information access and reporting outcomes for the community and in support of development and planning. <p>The EPBC Act is supported by SFL as a safety net for Matters of National Environmental Significance (MNES), recognising that the regulatory burden (on government, proponents and stakeholders) will only increase as the lists grow.</p>
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Question 10

<p>Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act seeks to achieve? In our federated system should they be prescribed through:</p> <ul style="list-style-type: none"> • Non-binding policy and strategies? • Expansion of targeted standards, similar to the approach to site contamination under the National Environment Protection Council, or water quality in the Great Barrier Reef catchments? • The development of broad 	<p>Yes, need to positively motivate and support more cohesive regional planning and action by private landholders.</p> <p>National goals, supported by effective, high resolution, spatially explicit monitoring and evaluation.</p> <p>Focus on both protection but also restoration and maintenance of resilience.</p> <p>Non-binding policy and guidance is not supported as it would be ineffective.</p> <p>Recommendations 14 and 16 of Craik (2018) mention harmonisation and standardisation of several topics re the EPBC Act, but provide</p>
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<p>environmental standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?</p>	<p>insufficient detail as to how this would be progressed. SFL supports the general direction, but considerable consultation with the agriculture sector would be needed throughout any change process. Any standards setting and compliance process would be a big challenge in Australia's federal system.</p>
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Question 11

<p>How can environmental protection and environmental restoration be best achieved together?</p> <ul style="list-style-type: none"> • Should the EPBC Act have a greater focus on restoration? • Should the Act include incentives for proactive environmental protection? • How will we know if we're successful? • How should Indigenous land management practices be incorporated? 	<p>Yes, the EPBC Act should have a greater focus on restoration, particularly in those ecosystems that are deemed priorities for sustainable management e.g. reconnecting large isolated patches of listed communities that are listed as rare and threatened. Reconnecting a Commonwealth listed threatened or endangered ecosystem on land managed for ecosystem on agricultural production need not include restoration to a fully natural condition including all indicators of ecological function, structure and composition. Restoration of a threatened or endangered ecosystem on agricultural land maybe sufficient for many plant and animal species.</p> <p>Yes, the Act should include incentives for proactive environmental protection. This could include incentives that support For example those developments that adversely affect environments (of course excluding threatened species which should not be adversely affected) in such cases these impacts should include incentives for proactive environmental protection. This would support and provide income to agricultural landholders responsible for large tracts of land.</p> <p>Act should include positive incentives for protection, enhancement, restoration and addressing climate risks where assisted migration is required. Innovative regenerative agricultural practices such as pasture cropping should be encouraged, too, even though the outcomes for MNES may not be apparent at the start.</p> <p>Act should include appropriate dis-incentives for loss or harm, where economically driven this should include offset plus additional restoration, though not be allowed where species/habitat are critical or endangered.</p> <p>How should success be measured? Methods for measuring success involving relative measures of ecological condition assessed against a fully</p>
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	<p>natural reference state. This involves benchmarking a site of interest against a fully natural reference state. Such frameworks have been developed and tested and are now in place in all states and territories. A standardised national approach, Accounting for Nature’s protocol show how this operates for native vegetation by building on and endorsing the vegetation condition methods of each state and territory. Payments can be made to land managers for improvements in vegetation condition scores e.g. Queensland’s Land Restoration Fund carbon co-benefits program.</p> <p>How can Indigenous land management practices be incorporated? Queensland’s Land Restoration Fund carbon co-benefits program shows how this is being implemented both through paying for employment of Indigenous peoples and through paying for the rollout of land management programs on Indigenous lands. These initiatives could easily be incorporated under programs e.g. <u>Community Development Employment Program</u> and <u>Indigenous Protected Areas Program</u>.</p> <p>Recommendation 21 of Craik (2018) is also relevant to this question, as are numbers 18 to 20 (regional planning) to provide context, improved inventories and priorities for the MNES activities. Measures of success could come from a credible monitoring program.</p>
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Question 13

<p>Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?</p>	<p>Regional assessments are one example of strategic assessments that would provide more certainty for resource industries, including agriculture. They may not fully replace case-by-case assessments, because of the need for a safety net for MNES. Representatives of the agricultural sector need to be involved in such assessments.</p>
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Question 14

<p>Should the matters of national significance be refined to remove duplication of responsibilities between different levels of government? Should states be delegated to deliver EPBC Act outcomes subject to national standards?</p>	<p>Craik (2018) presents a number of examples of poor coordination between federal and state counterparts. Reduced duplication should clearly be a priority. There are a number of options as to how this could be achieved in our federated system. Craik (2018) gives several options. Developing Commonwealth standards presents particular issues; such exercises often skew towards state views with their existing investment</p>
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	in on-ground expertise and inventories.
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Question 15

<p>Should low-risk projects receive automatic approval or be exempt in some way?</p> <ul style="list-style-type: none"> • How could data help support this approach? • Should a national environmental database be developed? • Should all data from environmental impact assessments be made publicly available? 	<p>The provision of more integrated, spatially explicit planning tools that support agricultural productivity as well as biodiversity enhancements and protection in agricultural landscapes would be beneficial. This could include regional plans and other highly detailed, spatially explicit biodiversity information to streamline and incentivise restoration of vulnerable habitats and more effectively identify risks.</p> <p>Whilst projects may be low-risk in isolation, there is risk that automated approvals may result in a lack of consideration of the cumulative effect of changes to the environment. Any changes need to explicitly address this issue.</p> <p>Further consideration of inclusion of projects / changes in an integrated, spatially explicit planning tool at a national level could enable automated triggers for cumulative impacts on a regional basis to be identified and referred for assessment.</p> <p>Data for environmental impact assessments should be made publicly available. Western Australia appears to be making progress in this difficult domain (WABSI 2019).</p> <p>Farmer representatives should be involved in policy development related to data collection and presentation. This is because of perceived privacy concerns and data sensitivity issues. These concerns need to be balanced against the public interest and the need for transparency.</p>
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Question 16

<p>Should the Commonwealth’s regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?</p>	<p>While habitat protection is important, its adoption in lists could lead to regulatory overreach with respect to the agricultural sector. The proscription of habitat is different for each species; these add up to large areas that could restrict agricultural activity whilst being suboptimal re conserving biodiversity - especially MNES. For example, general vegetation mapping is an inadequate surrogate for meeting the habitat needs of many rare and threatened species because particular attributes may not be collected (e.g. the presence of tree hollows) and the scale of capture is too broad.</p>
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Question 17

<p>Should the EPBC Act be amended to enable broader accreditation of state and territory, local and other processes?</p>	<p>This seems to be one way to avoid the duplication of effort currently experienced by many proponents. The states often have superior inventory of MNES-related entities. The states have good understanding of their own definitions but limited knowledge of the EPBC subtle differences. More education, training and cooperation is also needed.</p>
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Question 18

<p>Are there adequate incentives to give the community confidence in self-regulation?</p>	<p>Self-regulation would seem to be a more efficient way forward in low risk cases. However, confidence would be improved by a better evidence base (from regional surveys, etc.) and face to face educational outreach, as per many of the recommendations of Craik (2018).</p>
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Question 19

<p>How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management?</p> <ul style="list-style-type: none">• How can we best engage with Indigenous Australians to best understand their needs and potential contributions?• What mechanisms should be added to the Act to support the role of Indigenous Australians?	<p>SFL supports enhancements to the EPBC Act that improves support, capacity and opportunity for Indigenous Australians to be active in environmental and heritage management and for the maintenance and protection of the environment to better support preservation of Indigenous cultural knowledge. Indigenous Australians should play a pre-eminent role in the development of any legislative changes that impact them and SFL would support all efforts to achieve that.</p>
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Question 20

<p>How should community involvement in decision-making under the EPBC Act be improved? For example, should community representation in environmental advisory and decision-making bodies be increased?</p>	<p>Recommendation 9 of Craik (2018) is one way of improving transparency and fairness of a key part of the EPBC Act. New approaches and initiatives such the development of offset policies, strategic plans and conservation trusts, should involve representatives of the agricultural sector.</p>
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Question 22

<p>What innovative approaches could the review consider that could efficiently and effectively deliver the intended outcomes of the EPBC Act? What safeguards would be needed?</p>	<p>Several innovative approaches have been supplied in response to other questions, here. Whatever new approaches are considered need a credible and accessible monitoring and reporting program enabling all stakeholders to access the underlying data to enable alternative interpretations.</p>
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Question 23

<p>Should the Commonwealth establish new environmental markets? Should the</p>	<p>Ecosystems or species that are threatened or endangered require active support for expansion</p>
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<p>Commonwealth implement a trust fund for environmental outcomes?</p>	<p>of habitats and as such offsets should not be considered suitable.</p> <p>Offsets, could be a useful mechanism however, this should require recognition that the use of offsets, ultimately results in less habitat overall. Given loss of species, any actual loss of habitat should be offset with an equal amount and a suitable proportion restored to improve resilience such as reducing fragmentation. These should be consistent with enhanced bioregional planning. The agricultural community have significant land holdings and requiring development to support restoration could create new market incentives and payment streams that support agricultural landholders to improve and restore ecosystems and habitat.</p> <p>Environmental threats are increasing and providing a new trust fund to support improved environmental outcomes is supported.</p> <p>If markets are to be developed, clear contingencies need to be made for the possibilities of market distortions and failure.</p>
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Question 24

<p>What do you see are the key opportunities to improve the current system of environmental offsetting under the EPBC Act?</p>	<p>Craik (2018) mentions the inconsistencies, lack of transparency and alleged unfairness in the application of EPBC offsets. Recognising some of the limitations of offsets we mentioned under the previous question, if they're to go ahead anyway, Craik's suggestions would seem to make improvements to the current issues.</p>
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Question 25

<p>How could private sector and philanthropic investment in the environment be best supported by the EPBC Act?</p> <ul style="list-style-type: none"> • Could public sector financing be used to increase these investments? • What are the benefits, costs or risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds? 	<p>Another major element of private sector and philanthropic investment could be to establish a National Biodiversity Conservation Trust tied to the EPBC Act to support the public benefits of protection of MNES using market based approaches. Such an initiative was key recommendation of the NFF 2018 submission to the Independent Review of Interactions between the Environment Protection and Biodiversity Conservation (EPBC) Act and the agriculture sector.</p> <p>This would enable the long term protection and management by farmers (among others) of MNES through arrangements such as conservation agreements. A fund such as this could provide an</p>
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	<p>avenue for the protection of MNES identified in regional planning approaches.</p> <p>The Trust could generate stewardship payments to landholders for evidence-based environmental outcomes associated with MNES.</p> <p>In addition, the tax system could be reformed to reward environmentally responsible land management regimes that deliver evidence-based environmental outcomes associated with MNES.</p>
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Question 26

<p>Do you have suggested improvements to the above principles? How should they be applied during the review and in future reform?</p>	<p>This review and Craik (2018) seem to have identified most of the principles relevant to EPBC reform. There is obviously a question of priorities amongst those principles.</p>
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References

- Craik, W. 2018. Review of interactions between the EPBC Act and the agriculture sector. Independent report prepared for the Commonwealth Department of the Environment and Energy.
- SFL Round 1 CASE STUDIES <https://soilsforlife.org.au/programs/case-studies/case-studies-round-1/>
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- WABSI 2019. The Western Australian Biodiversity Science Institute, Digitally Transforming Environmental Assessment. Report of the Digital Environmental Impact Assessment Working Group. URL: https://wabsi.org.au/wp-content/uploads/2019/10/Digitally-Transforming-Environmental-Assessment_Working-Group-Report.pdf accessed May 2020.