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Response to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 Discussion Paper April 2020

The National Landcare Network Ltd welcomes the opportunity to provide a submission to the 'Independent Review of the Environment Protection and Biodiversity Conservation Act 1999'.

The National Landcare Network is the national peak body for community Landcare in Australia. It represents the Landcare movement through the membership of each of the eight state and territory representative organisations: Western Australian Landcare Network, Landcare NT, Landcare Association of South Australia, Queensland Water and Land Carers, Landcare NSW, Landcare Victoria Inc, Landcare ACT and Landcare Tasmania.

The Landcare movement overall includes more than 6,000 community-based groups and district, regional and national networks spread across Australia. Community Landcare provides an extensive social support network and rapid response capability in rural, remote, urban and coastal environments. It is a non-party political movement, inclusive, knowledge-based and committed to communities acting to improve and sustain healthy landscapes.

It is from this community perspective and on ground experience across Australia that we wish to comment on the effectiveness of the current EPBC Act and to proffer suggestions for improvements. The community Landcare organisations have substantially driven community input to setting priorities for regional Natural Resource Management strategies that address Federal as well as state and local priorities. Community Landcare also initiates projects to address threatening processes, and many of these projects and programs rely on Federal investment directly related to the EPBC Act.

This submission has been produced following extensive consultation within the National Landcare Network membership and through its Members Council and other governance structures.

Areas of Concern

The National Landcare Network supports the objects of the Act but considers that both they and the Act's implementation operation require updating to better respond to current pressures and declining environmental outcomes, particularly for biodiversity conservation. In particular:

1. Climate change is not adequately acknowledged in the current Act, both for its direct impacts and for the exacerbating impacts of climate change on most other threatening processes. Threatening processes generally require greater attention under the Act.

2. Plans for the recovery and ongoing protection of endangered and threatened species cannot be effective without considering habitats and landscapes. Species protection and recovery requires a whole of landscape and ecosystem function approach which needs to be encapsulated in revised legislation. Although we favour a landscape and habitats approach, critically, if the recovery plan approach is to continue it needs to be adequately resourced and the implementation of plans needs to be accountable and enforceable.
3. While the intentions of the Act are sound, outcomes are difficult to assess without independent auditing. The framework requires independent monitoring and auditing functions through an independent audit office or commission to measure and report on whether protect and restore efforts are meeting objectives, and whether objectives themselves continue to be relevant and adequate.
4. The discussion paper highlights the need for cooperative arrangements with states and territories. This aspiration is not always met in practice and this gap in cooperation needs to be addressed in the review. Cooperative arrangements are needed across all levels of government and with the community. Local governments are centrally involved in key elements of land use planning, threat mitigation and local biodiversity management significant to the state of the environment.
5. Mechanisms such as offsets have been established with good intentions but are sometimes responsible for adverse outcomes when offsets have seen the loss of important landscapes or habitat that compromises listed species, without commensurate landscapes or habitat being protected. There is a need for basic principles to guide such mechanisms and transparency in their implementation, supported by publicly available spatial data. There is a need for greater scrutiny of “additionality” within the offset mechanism.
6. More comprehensive, well-resourced, environmental monitoring and information could potentially build trust in decision-making, provide necessary confidence to philanthropic and private investors, and streamline processes for small project approvals. Where an environmental accounting approach is applied it needs to be useful at regional and local scales, as well as nationally.
7. The objects of the Act include to promote a cooperative approach to the protection and management of the environment involving governments, the community, land-holders and Indigenous peoples. Nonetheless, local communities have been disempowered by an increasingly top down approach to implementation of the national environmental management framework and inadequate resourcing.

Question11: How can environmental protection and environmental restoration be best achieved together.

Should the EPBC Act have a greater focus on restoration?

The National Landcare Network considers that the EPBC Act should include restoration and ecological function in its objects. We support the comment within the discussion paper that *“...more action to support the recovery of species and ecosystems through national environmental law, or its application, may help in achieving ecologically sustainable development in the future. This is particularly true in the face of growing demands on natural resources and a changing climate.”*

In the past restoration has largely laid outside of the Act with programs such as the National Landcare Program (NLP). We are strongly supportive of the NLP program. However, the reduction in overall funding for the NLP over time and the progressive disempowerment of local Landcare

communities in its implementation appear to be reflective of a degree of policy neglect and lack of strategic intent. As biodiversity outcomes continue to decline, we consider that current program and policy approaches to restoration need to be underpinned with additional mechanisms, including but not limited to environmental regulation.

Landcare groups are proven local providers of on-ground services, including restoration. There needs to be the mechanisms in place to identify restoration priorities and funding mechanisms for local communities to act on them. Restoration is essential to ensure the Act is driven by the intended protection of species and habitat outcomes and not by administrative processes.

Should the Act include incentives for proactive environmental protection?

It would be beneficial for the EPBC Act to include a mechanism to enable the collection of funds to deliver large scale restoration, protection and reconstruction of threatened ecological communities and other landscapes. Similar to the delivery of the Biodiversity Fund, this could encourage the participation of NGOs, Landcare Groups and NRM Organisations to get involved in delivering targeted and priority works to deliver the activities detailed in recovery plans. The Landcare community has the ability to deliver large scale outcomes with private and public landholders.

One of the measures detailed in the National Landcare Network's Policy Statement (2019) was to revise and implement the 2012 Wildlife Corridor Plan. The proposed program could provide direct assistance for local Landcare groups to combine their efforts to connect patches of biodiversity across landscapes connecting communities, increasing ecological function and strengthening resilience.

An improved monitoring framework which includes stricter compliance auditing protocols established for incentives, grants and offset programs is required. Fines for not meeting requirements under the Act need to be sufficient to provide disincentives and could help to fund an increase in auditing to ensure all parties, state and local government and private entities are conforming with the requirements set in the legislation.

How will we know if we're successful?

Australia is unable to adequately measure the effectiveness of most of our investments in biodiversity management or management of pressures. Investments in restoration are rarely maintained for long enough to deliver enduring outcomes, due to changes in government policy and short-term program funding. Further, the outcomes of management actions are rarely monitored and reported for long enough to clearly demonstrate effectiveness. It is important that a monitoring program is developed and implemented which not only monitors a species or ecological community, but also monitors and studies its threats to inform action on the ground. The information gathered by such a program needs to be easily integrated into threatened species and other environmental databases to continuously improve the quality of environmental information used for decision-making at all levels.

Merely recording outputs in systems such as the MERI reporting system does not amount to monitoring.

An example of where a species was monitored to extinction with no real strategy for conservation was the endemic Christmas Island pipistrelle (*Pipistrellus murrayi*). It was listed as Critically Endangered in the EPBC Act in 2006, last sighted in 2009 and declared extinct in 2017. The exact causes of its significant decline were largely unknown. Craig Hilton-Taylor from the International Union for Conservation of Nature (IUCN) was quoted "*We probably could have declared it extinct*

earlier, but we've been waiting for surveys.' Species surveys must be closely correlated with surveys of threats and then to management actions which test the conditions by which a species could increase in numbers. Monitoring needs to be linked to adaptive management to enable on-ground practitioners to use the science and monitoring data to improve the condition and extent of EPBC Listed habitats.

Case Study

Environmental Stewardship Program

Under the National Landcare Program, the Environmental Stewardship Program provides long-term support for private landholders to maintain and improve the condition of matters of national environmental significance under the EPBC Act 1999. Participating land managers are contracted for up to 15 years to conduct management activities to protect and enhance the condition of the threatened ecological community(s) on their land. Activities include grazing management, weed and pest animal control, and maintenance of buffer zones to result in improvement over time.

The basis of the improvement over time was to be measured against state and transition models where sites were to increase in condition and extent based on a set of agreed management actions. Unfortunately, the program did not implement an effective compliance auditing framework to ensure compliance with the contracted activities. This left the program at the mercy of participants' good will to deliver the outcomes as contracted. At the end of some long-term management agreements some sites have not improved in condition and in some cases have possibly declined condition due to unmanaged degrading impacts and a lack of active management. Examples can be seen in the projects delivered to protect and conserve Peppermint Box Grassy Woodland and Iron-grass Natural Temperate Grassland communities in South Australia.

Furthermore, extension support for program participants was limited and relied upon regional NRM organisations and Non-Government Organisations to provide advice and support. This role was not resourced by the Federal Government and therefore not well supported across South Australia. A local and resourceful contact for project participants could assist with implementing a compliance auditing protocol as well as providing invaluable extension support to further ensure the investment in threatened ecological communities mgmt. Bilateral participation in these programs is vital in ensuring that local and regional knowledge is incorporated into project design and implementation. It would also be beneficial from the perspective of ensuring that the program was complementary to state and territory legislation i.e. Conservation covenants.

These programs can be seen as an opportunity to not only improve vast areas of protected ecological communities and provide further protections of previously unmanaged areas, but to also test and improve state and transition models which underpin threatened species recovery plans. Stewardship programs are well placed to test the models as they are generally long-term and have contracted management actions which can be measured against using a fit for purpose monitoring framework. Some of the questions that could be answered by implementing such programs include - Do the management actions deliver the expected gains over time? What are the thresholds by which environmental gains conflict with agricultural productivity? The latter is particularly relevant to implementing conservation grazing in grassy ecosystems with the aim to increase the condition against a state and transition model.

The State of the Environment Report (2016) recognised the value of citizen scientists in their role in biodiversity monitoring and discovery and their contribution to our understanding of the state and trends of biodiversity and pressures. Citizen-science efforts are becoming increasingly important in

contributing data that improve our understanding of the state and trends of biodiversity in Australia. Quality citizen-science requires provision of science based methodology established by registered scientists to collect meaningful data that can inform state of environment reporting for specific species, communities, habitats and landscapes.

The Atlas of Living Australia has improved access to knowledge about the distribution of biodiversity. However, data generated by biodiversity surveys undertaken for development approval purposes has not generally been incorporated into national environmental databases, a lost opportunity for improved understanding and inefficient for industry when processes are duplicated. We support the suggestion in the discussion paper that all data from environmental impact assessments be made publicly available (question 15), subject to the usual protections for precise location information for endangered/threatened or otherwise commercially valuable species.

How should Indigenous land management practices be incorporated?

One of the key findings of the 2011 State of the Environment Report highlighted the critical importance of Indigenous land management to the ongoing maintenance of biodiversity. The increasing area of Australia under Indigenous management is enabling traditional practices to form the basis of new forms of contemporary, collaborative environmental and resource management. We support recognition of cultural science in monitoring the state of the environment.

The rapid expansion of Indigenous ranger programs, combined with increased respect of Aboriginal and Torres Strait Islander cultural rights, obligations, knowledge and resource management practices, provides new opportunities for better understanding and management of biodiversity. Examples of successful programs include Indigenous Ranger Programs to manage Buffel Grass in the Anangu Pitjantjatjara Yankunytjatjara Lands and across the Great Victoria Desert. The national Landcare community encourages and advocates for engaging communities in generational conservation practices which benefit the health and wellbeing of communities and improve the condition of country.

The national Landcare community also advocates for greater inclusion of Traditional Owners in the management of natural resources across the country. Direct input from Aboriginal and Torres Strait Islander groups should inform the reforms to the relevant sections of the Act, rather than voices such as our own. However we note that the EPBC Act provides an opportunity to embed the 'Close the Gap' policy outcomes in the legislation - Aboriginal and Torres Strait Islander peoples' land, water and cultural rights are realised, Aboriginal and Torres Strait Islander people enjoy long and healthy lives, Aboriginal and Torres Strait Islander youth are engaged in employment or education and Strong Aboriginal and Torres Strait Islander workforce participation.

We support an increase in Aboriginal Ranger Programs that provide support to Traditional Owner groups to work on their traditional lands, particularly on private land and in regions where ranger programs do not already operate; and to network and build capacity. The contribution of fuel loads and condition across the Landscape to the recent 'Black Summer' bushfires has led to a current discussion of the potential role of cultural burning using traditional indigenous knowledge and techniques.

Question 13: Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?

To manage and better understand the cumulative impacts of a range of developments in a region, strategic assessments can be undertaken in accordance with section 146 of the EPBC Act. To be

more effective, this process needs to have a stronger focus on environmental protection. This was highlighted by the first Independent Review of the EPBC Act 1999, conducted in 2009, and known as the Hawke Report. That report highlighted the importance of having stronger environmental protections in the strategic environmental assessment processes under Section 146 of the Act. Those comments were reinforced in a 2013 paper by environmental law expert Simon Marsden, who compared the use of section 146 assessments in the Great Barrier Reef and the Kimberley region in Western Australia. In both these examples the potential of strategic assessments were undermined by the political imperative to support resources development, as appears to have also been the case with the strategic assessment conducted for the Perth region which, in the face of major urban development pressure became a tool for accommodating major growth rather than minimising its environmental impacts.

Despite these weaknesses, strategic environmental assessments have great potential to efficiently improve environmental protection. A recognition of these advantages of strategic environmental assessments within the legislation is essential to promote their importance and strengthen the environmental protection they can provide. Key advantages of this approach include; they provide greater certainty to local communities and developers over future developments, reduced administration burden for strategic assessment partners and governments, coordinated establishment and management of offsets, flexible timeframe to better meet planning processes and a capacity to achieve better environmental outcomes and address cumulative impacts at a landscape scale.

Strategic assessments are best achieved through collaborative effort by all levels of government and taking note of data gathered by registered independent flora and fauna scientists. There is currently no single platform for collation of data collected by tertiary institution experts, consultants engaged for specific projects, and through not for profit organisations. A register of independent scientists could extend and strengthen knowledge of species, communities, habitats and landscape extent, condition, and status.

Strategic assessments are important to provide the picture at a landscape scale but there is still the need to make assessments at more localised levels. For example, areas of vegetation in an urban setting can be small and yet of high importance at a local government level that may not feature on a larger scale.

Landcare advocates that there is a need to conduct strategic assessments that provide a context for the more localised assessments. Illustrating this point is the case of the Cockburn Community Wildlife Corridor Inc. (CCWC) in Western Australia which is striving to achieve a strategic goal of “A conserved and enhanced bushland and wildlife corridor that connects the Beeliar Wetlands with the Indian Ocean” (see map at www.cockburnwild.org) which contains the Threatened Ecological Community – Banksia Woodlands of the Swan Coastal Plain. The significance of this urban corridor in the context of regional connectivity in the Perth area (de Marco 2003) has been clearly identified by Zelinova (2020).

As retention of natural areas that provide close to continuous link between conservation areas is listed as priority, establishing an ecological linkage within lands previously reserved as road reserve in the MRS (known as Roe 8 and 9) provides the best option for connecting Beeliar Regional Park to the coastal bushland reserves.

The protection of critical species and habitats in an urban setting is challenging as it often relies on protection and restoration of fragmented areas of vegetation. Strategic assessment at a metropolitan scale that is kept up to date is needed at the same time as a process for engaging case by case assessment at early development stages. Cockburn Community Wildlife Corridor Inc, is working to protect a regional urban corridor of significance and at the same time case by case

development assessments both of which rely on the EPBC Act to determine environmental protection. Their experience has been that the Act has failed to protect significant assets at both scales.

Case Study

Strategic and Case by Case Assessment

Cockburn Community Wildlife Corridor Inc provide an example where the EPBC Act failed to protect both a Threatened Ecological Community (Banksia Woodlands of the Swan Coastal Plain) and habitat for an endangered species (Carnaby's cockatoo). "Our group of volunteers have been GPS mapping the tuarts and banksia in the remnant bushland in the corridor to identify areas that meet TEC criteria. Providing this type of data is our best defence against the loss of significant bushland remnants in the corridor.

The redevelopment of the Hamilton Hill School site threatened 0.5ha of mature banksia woodland adjacent to the corridor which met TEC criteria. Although we had been involved in constructive conversations with the developers, we were disappointed with the extent of the proposed bushland clearing. We submitted a detailed comment in response to the EPBC Act referral lodged by the developer. The comment addressed assertions by the developer that the area did not meet the TEC criteria. In dispute was the "patch size" and bush condition, but data clearly showed that TEC criteria were met. The proponent, we considered from our evidence, had not demonstrated a lack of impact, and the clearing of TEC which includes a threatened species' foraging habitat is contrary to the DEE's own conservation advice. The key reasons the proponent's assertions were considered incorrect was that the patch size had been incorrectly assessed for the Banksia Woodland TEC. The clearing of this flora directly conflicts with the conservation advice of the DEE. Furthermore, this housing development would have gone ahead if approval to clear this small area had not been granted.

Our comment was not accepted as reason enough to amend the developer's plan and this area that should not have been permitted to be cleared has now been bulldozed. If we cannot rely on the EPBC Act to protect Threatened Ecological Communities and endangered species from continued destruction, then our environmental heritage will continue to be lost.

The ongoing loss of endangered Carnaby's Cockatoo (*Calyptorhynchus latirostris*) habitat is disturbing. This bird is listed as an endangered species by the Federal government and "specially protected fauna" by the WA government, due to much of its habitat being fragmented and threatened by ongoing land clearing and development. The 0.5 ha of cockatoo habitat (Banksia bushland) in the redevelopment of the Hamilton Hill site may seem like an inconsequential area. However, remnant cockatoo habitat in the Perth metropolitan area is under continuous threat from development: for example 0.67 ha of mature tuart trees in the High St upgrade (now lost); a significant cockatoo roost in the proposed Brixton St industrial development (now lost); proposed housing development by UWA in the Underwood Rd bush used as a Carnabys' foraging area (still being planned), loss of Banksia woodland "Bush Forever" for the Cockburn rail extension (approved to go ahead); planned harvesting over the next 2 years of the Gngangara pine plantation feeding area and mega-roost site, to mention just a few. Providing suitable offset for both Banksia woodland and Carnaby's habitat is extremely difficult if not impossible in the Perth urban area."

Question 23: Should the Commonwealth establish new environmental markets? Should the Commonwealth implement a trust fund for environmental outcomes?

Environmental protection and restoration require a full suite of mechanisms – educative, informative, incentive, market and regulatory. The continuing decline in environmental outcomes speaks to a need for new approaches and innovation, noting that thin and shallow markets may

require significant government support to reach maturity, if at all, and cost effectiveness must be considered in determining feasibility.

The National Landcare Network supports the establishment of an environmental trust to provide continuity of funding for direct conservation outcomes and monitoring programs, and to provide a coordinated vehicle to manage EPBC Act offset funding. This could deliver lower costs by enabling strategic investment over longer timeframes. It could also deliver more inter-connected areas of protected habitat than the present offsets policy delivers, improving ecosystem benefits.

Question 24: What do you see are the key opportunities to improve the current system of environmental offsetting under the EPBC Act?

We would like to see a much stronger focus on additionality in environmental offsetting. It should not be possible to use already protected lands such as those under convenient as offsets. There is no net gain if already protected assets can be used for this purpose and the mechanism should require a net increase in the value of native vegetation (particularly EPBC matters) through clearance offsets to enable an effective gain in both condition and extent of critical ecosystems. This would improve both private sector and NGO sector uptake of offset delivery. Accurate, up to date and readily accessible spatial information for offset areas, covenants, and other conservation investments whether Federal, State or private sector, would assist in avoiding perverse outcomes.

Community Landcare groups report that once established offset areas are rarely monitoring over time and their condition can degrade. There is a need for clear lines of responsibility to be set at the time offsets are granted for private interests who engage in offset arrangements to maintain the value of the offset areas through ongoing management. This again reinforces the need for ongoing monitoring by an independent auditing body to ensure net gains in protected assets are being made and values protected by responsible bodies.

Investment approach

The National Landcare Network advocates for a new national approach to Landcare investment that draws on the strengths of the movement to support a whole of community response to the protection and restoration of our land, water, wildlife and the communities who love and depend on them.

Successive Government investments have moved away from the local, ground-up focus towards a regionally centralised investment with, in the current model, targeted top-down procurement and no long-term investment. This top-down approach compromises the community intent of Landcare and excludes, disenfranchises and disempowers local communities and initiatives, ultimately reducing the efficacy of procurement and investments.

Adverse policy changes have been combined with an overall reduction of federal investment to levels lower than in 2002. In addition to reduced annual funding, National Landcare Program funds do not preference local action and are often diverted to extreme events, iconic program priorities or projects that are primarily focused on supporting business as usual. It is important that farmers are rewarded for changes that lead to resilience and Landcare stewardship in the face of drought, floods and trade fluctuations.

The National Landcare Network look forward to continuing discussions regarding the 'Independent Review of the Environment Protection and Biodiversity Conservation Act 1999' and welcomes the opportunity to provide additional feedback and detail in the next part of the consultation as part of this review. Please contact Jim Adams, CEO National Landcare Network on 0427 211 406 or CEO@nl.n.org.au.

Kind regards,

A handwritten signature in black ink, consisting of several loops and a long horizontal tail.

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16 April 2020