

Submission to the Review of the interaction between the Environment Protection and Biodiversity Conservation Act 1999 and agriculture and food production

About ACF

The Australian Conservation Foundation (ACF) is Australia's national environmental organisation. Established more than 50 years ago ACF has an extensive history in working to protect and conserve Australia's environment and advocating for a more sustainable society and economy. ACF has more than 500,000 supporters nationally, is proudly independent, non-partisan and funded by donations from Australians.

Summary

ACF welcomes the opportunity to provide comment in to the Review of the interaction between the Environment Protection and Biodiversity Conservation Act 1999 and agriculture and food production.

There is no doubt that Australia faces significant environmental challenges. As one of the few mega-biodiverse developed nations in the world, our title as a global leader on extinction and biodiversity loss is shameful. ACF accepts the need for a sound agricultural sector and supports an environmentally sustainable agricultural sector. However when it comes to protection of the environment, no other sector has been afforded as favourable treatment through the national environmental regulatory process as the agricultural sector. In 18 years only 99 agricultural projects have been referred under the EPBC Act, representing less than 1.6% of total referrals, despite significant growth in land clearing and loss of biodiversity in that time. This also demonstrates the inadequacy of the EPBC Act in addressing Australia's biodiversity crisis. Stronger and more effective national environmental laws and institutions are needed to tackle the environmental challenges of this century and give the community confidence in the government's ability to effectively and equitably protect our environment.

ACF remains deeply troubled by the singular nature of this review's focus, which has no formal regard for environmental protection or improving environment or biodiversity outcomes within its terms of reference. The review has been developed to service one sector and is constrained in its capacity to provide for reforms that will benefit all Australians and future generations in an equitable manner. It also marks a disappointing turn towards favourable treatment of stakeholder views and has potentially set a polarising precedent for reform.

Key Points:

- Land clearing for agriculture and habitat loss remain one of the primary drivers of biodiversity decline and extinction risk in Australia.



- The loss of native biodiversity, including matters of national environmental significance, will continue to have long term impacts on agricultural resilience and productivity through the loss of regulating and supporting ecosystem services.
- Data demonstrates there is no undue regulatory burden on the agriculture sector arising from the EPBC Act. Agriculture development constitutes less than 1.6% of the total projects referred in the history of the EPBC Act and the legislation has had no demonstrable bearing on national agricultural productivity.
- The windback of land clearing laws in both Queensland and NSW in recent years highlight the need for appropriate federal safeguards, both in terms of protecting matters of national environmental significance, including threatened species and the Great Barrier Reef, and securing appropriate emissions reductions. Rather than weakening national laws, there is a clear need for stronger and more effective national environmental laws that can deal with the cumulative impacts of land clearing.
- ACF strongly supports the independent and scientific listing of threatened species and ecological communities. Any sector specific policy advice in relation to threatened species and ecological communities should be developed once a listing decision has been recommended and made.
- Potential improvements to the way the government regulates agriculture include:
 - Setting national standards and thresholds that make it clear where development should occur and protect important environmental values - eg threatened species habitats.
 - Implementing independent monitoring and reporting frameworks to pick up on non-compliant activity sooner and ensure agriculture has appropriate regulatory coverage under the EPBC Act.
 - Improving the information and mapping of habitat areas for threatened species and threatened ecological communities, as well as other matters of national environmental significance.
 - Setting thresholds to provide certainty to all stakeholders as to where development should and should not occur, including protecting critical habitat areas.
 - Strengthening and bolstering the regulator through increasing compliance, education and outreach.
 - Providing suitable incentives, through regulation, eco-certification schemes, and investing in appropriate agri-environment schemes and/or taxation reform.

See further detailed comment below.

Appropriateness of environmental regulation

On almost all indicators, Australia's environmental health is declining. Australia leads the world in mammalian extinction and sadly boasts almost 2000 nationally threatened species and ecological communities. Recent explosions in land clearing, particularly in Queensland, have severely impacted on biodiversity, including destroying habitats of both nationally threatened and common species. The 2016 State of Environment Report confirmed this very fact, with key trends for biodiversity and the land sector poor and deteriorating (see Figure 1 below).

Figure 1: Snapshot of State and trends of biodiversity - State of Environment Report 2016

Component	Summary		Grade				Confidence		Comparability To previous years
			Very poor	Poor	Good	Very good	In Grade	In Trend	
Terrestrial animals - mammals	<p>State and trends of mammals vary across the country. Evidence of ongoing declines is seen for mammals across northern Australia. In southern and eastern</p> <p>more Supporting information Topics</p> <p>Declines in a large proportion of species across taxa in all states. Particular concern about mammals in northern Australia. Data collection is still too</p> <p>more Topics</p>	2016							
		2011							
Terrestrial animals - reptiles	<p>Very limited information and jurisdictional reporting exist for the state and trends of reptiles. Overall, improvement in the status of listed taxa</p> <p>more Supporting information Topics</p> <p>Very limited data, but concerns have been raised about ongoing decline, including in grasslands and woodlands</p> <p>Topics</p>	2016							
		2011							
Terrestrial animals - amphibians	<p>Except for a few high-profile species, very limited information and jurisdictional reporting exist for the state and trends of amphibians. However, greater survey</p> <p>more Supporting information Topics</p> <p>Survey information is very limited but research consistently points towards major declines in many areas</p> <p>Topics</p>	2016							
		2011							

Source: State and trends of biodiversity Biodiversity (2016, 2011) <https://soe.environment.gov.au/assessment-summary-81-state-and-trends-biodiversity>

Land clearing and habitat loss remain one of the primary drivers of biodiversity decline in Australia. The major threats to biodiversity, and appropriate management responses, as identified by the CSIRO are outlined in Figure 1 below. Many of these can be attributed either in part, or wholly, to poorly regulated agricultural activities, including land clearing, over-grazing, fertiliser and nutrient run-off and over-extraction and interception of fresh water.



Figure 2: Table of major threats to biodiversity

Table 4.1: Major threats to Australian biodiversity and management actions to abate them	
Threat	Management actions
Habitat loss and fragmentation	Halting clearing of native vegetation via legislation Expanding the National Reserve System (see Chapter 5) Protection and restoration of native vegetation on private land through incentives Restoration via native revegetation, and inoculation of soil with beneficial micro-organisms Passive natural rehabilitation via fire and grazing management Captive breeding and translocation
Invasion by non-native species	Preventing introductions via regulation and quarantine Surveillance, detection and eradication of new arrivals Containment of slow-spreading species Controlling existing invaders by pesticides or herbicides, baiting, and culling Protection of ecosystems and species by removal (plants) or fences (feral predators and herbivores), or moving at-risk species to islands Biological control
Livestock grazing	Management of grazing (stocking rate and access to water) Protecting vulnerable species or ecosystems by fencing Spelling areas from grazing to allow recovery
Altered fire regimes	Instigation of less intense, smaller fires to create a mosaic of age-since-burn where too frequent and on too broad a scale Controlled burning where fires are too infrequent Suppression of non-native invasive grasses with high fuel load (e.g. gamba grass and buffel grass) or fire-assisted shrubs (e.g. broom)
Over-harvesting of native species	Regulation and anti-poaching enforcement Compensation to offset loss of harvests Captive breeding and reintroduction programs
Water pollution, both marine and fresh water	Regulation of chemical and fertiliser use and dumping of waste Minimising water use in irrigated agriculture Increasing biodegradability of waste Improved sewage treatment and containment
Disease	Lower risk of spread through strategies based on epidemiology Maintain disease-free locations of suitable habitat Quarantine through isolation or destruction of infected individuals to minimise spread Captive breeding and release of disease-free populations

Source: CSIRO – Biodiversity: science and solutions for Australia <http://www.publish.csiro.au/Books/download.cfm?ID=6967>

Cost increases with inaction

The destruction of natural ecosystems and loss of biodiversity and ecosystem services from development and agriculture are, in most cases, permanent. These impacts incur significant ongoing social, environmental and economic costs that continue to be borne out over generations. It is far more costly to rehabilitate or repair damage to natural ecosystems than it is to avoid making these impacts in the first place.

The significance of loss of ecosystem services due to biodiversity loss to the agriculture sector is still poorly understood. However, there is no doubt that a healthy environment and the provision of ecosystem services are central to healthy agricultural sector. Studies have found despite the significant benefit that agricultural businesses obtain through regulating ecosystem services, such as water filtration, pollination and disease prevention, policies that

prevent the destruction and degradation of these services are lacking.¹ Through poor policy design and lack of appropriate regulatory controls, the sector is broadly able to continue to draw down natural capital. As Sandhu et al note:

“the agricultural sector in Australia negatively impacts on all regulating and supporting ecosystem services, despite the importance of these services in the process of agricultural production”

The costs to restore these services are immense. A prime example of this is the significant public expense allocated toward rectifying overallocation of water in the Murray-Darling Basin. An impact that occurred over generations will now cost Australians upwards of \$13 billion. These reforms represent the most expensive natural resource based structural adjustment program that has been undertaken in Australia’s history, a cost that could have been avoided through better planning and political decision making. Yet despite the significant investment, there is significant uncertainty as to whether the plan will be able to deliver on its promise of healthy rivers and wetlands within the Basin.

Land clearing is a significant contributor to biodiversity loss and climate change

Land clearing remains the single biggest driver of habitat loss and biodiversity decline in Australia. Domestically it is one of the leading causes and contributors to wildlife decline and extinction. In Queensland there has been a 400% increase in clearing rates from 2010 to 2016. In 2015-16 reporting year 395,000 hectares of native vegetation was destroyed, and area larger than the entire ACT. Clearing occurred in a range of areas, including in known critical habitat areas for Koala’s and within reef catchments.

Effective regulation of land-clearing is a necessary and urgent intervention in Australia, given that eastern Australia has now become a global land clearing hotspot.² This designation has largely been brought about through weakening regulatory requirements in the *Vegetation Management Act 1999 (VM Act)* in Queensland in 2012 and poorly regulated clearing in NSW. Though it is worth noting that Queensland recently reinstated tighter land clearing controls.

Alongside its impacts on biodiversity, land clearing is a significant source of carbon emissions nationally. In particular, the sharp rise in land clearing in Queensland has contributed significantly to Australia’s overall climate emissions and acted as a counteracting force against taxpayer funded emissions abatement, effectively nullifying the at least one billion dollars of abatement secured through the Emissions Reduction Fund.³ The cost of inaction on land clearing and lack environmental regulation of the agriculture sector is high.

The windback of land clearing laws in both Queensland and NSW highlight the need for appropriate federal safeguards, both in terms of protecting matters of national environmental

¹ Sandhu, Harpinder & Crossman, Neville & Patrick Smith, F. (2011). *Ecosystem services in Australian agricultural enterprises*. *Ecological Economics*. 74. 19-26. 10.1016/j.ecolecon.2011.12.001.

https://www.researchgate.net/publication/229321002_Ecosystem_services_in_Australian_agricultural_enterprisES.

² Global deforestation hotspot: 3m hectares of Australian forest to be lost in 15 years
<https://www.theguardian.com/environment/2018/mar/05/global-deforestation-hotspot-3m-hectares-of-australian-forest-to-be-lost-in-15-years>

³ Land-clearing wipes out \$1bn taxpayer-funded emissions gains
<https://www.theguardian.com/environment/2018/may/29/land-clearing-wipes-out-1bn-taxpayer-funded-emissions-gains>

significance, including threatened species and the great barrier reef, and securing appropriate emissions reductions.

Objects of the EPBC Act and regulation of agriculture

Despite almost two decades of operation the EPBC has been ineffective in regulating some of the most significant impacts on biodiversity, including land clearing and agricultural development. The objects of the EPBC Act are clear as to its ambition for the protection of Australia's environment and biodiversity, and include:

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and*
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and*
- (c) to promote the conservation of biodiversity; and*
- (ca) to provide for the protection and conservation of heritage; and*
- (d) to promote a co- operative approach to the protection and management of the environment involving governments, the community, land- holders and indigenous peoples; and*
- (e) to assist in the co- operative implementation of Australia's international environmental responsibilities; and*
- (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and*
- (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co- operation with, the owners of the knowledge.⁴*

Australia now has almost 2000 species and ecological communities threatened with extinction. In fact the trajectory of biodiversity in Australia over the past 18 years of operation of the Act has worsened and we have had at least three known vertebrate extinctions in that period. The continuing decline in the health of our environment, as documented by the governments own State of Environment Report, make it clear that the Act has failed to meet its objectives and a new approach to national environment protection is needed.

Agricultural referrals under the EPBC Act

As noted by the review team in its discussion paper there have been very few agriculture referrals under the EPBC Act. This fact was also noted by the Productivity Commission in its draft report on the regulation of agriculture:

"In the period 1999– 2014, there were 54 agriculture-related projects referred for assessment, of which eight projects were subject to conditions (Australian Government 2014a)"⁵

⁴ EPBC Act 1999 s3 <https://www.legislation.gov.au/Series/C2004A00485>

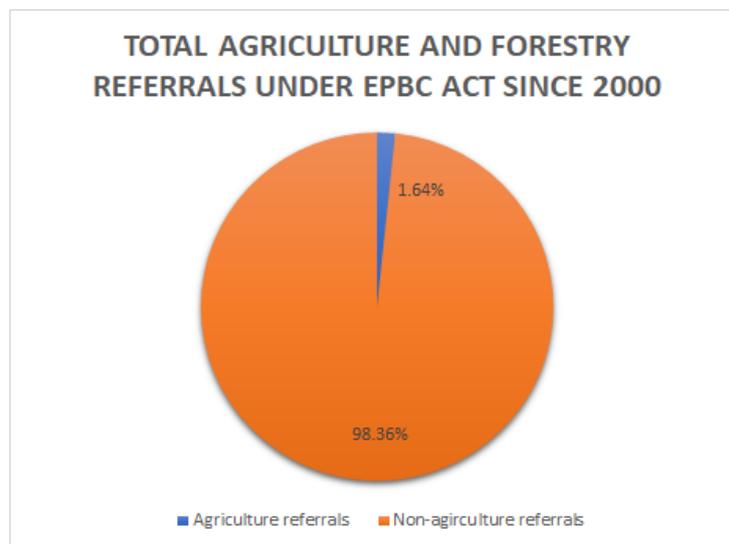
⁵ Productivity Commission Regulation of Agriculture Draft report <https://www.pc.gov.au/inquiries/completed/agriculture/draft>



As of June 2018, only 99 EPBC referrals were classified as agriculture or forestry had been submitted for assessment under the EPBC Act according to the Department's database.⁶ These 99 referrals have occurred over an 18 year period, in which more than 6000 referrals have been lodged with the federal government. Currently, agriculture constitutes less than 1.6% of the total projects referred in the history of the EPBC Act.

Of the 99 agriculture projects 13 projects were proposed by state or local governments, not companies or individuals, and at least 2 were research or habitat restoration projects. Meaning the total number of private agriculture referrals under the Act is 84. Only 26 of these proposals required formal assessment, representing less than 1% of total referrals ever received. Only one agriculture project has not approved by the government, the mass electrocution of Spectacled Flying-Foxes (EPBC Ref 2002/571).

Figure 3: Total Agricultural Referrals under EPBC Act



Given agricultural projects that are determined controlled actions represent less than 1% of total referrals under the EPBC in the legislations history, it is clear that the EPBC has not been an onerous burden on agricultural productivity nationally. Moreover, the data demonstrates that agriculture has been significantly under-regulated, particularly in relation to its potential impacts on threatened species and habitat loss. The sheer majority of land clearing and deforestation that has occurred in Australia since the inception of the Act has not been referred or assessed. For example in Queensland cumulative land clearing (2004 – 16) totalled more than 2 million hectares and in NSW only one sixth of land clearing was accounted through regulatory approvals between 2007 - 2011.⁷

Outside of the formal referral process, completed successful compliance and enforcement case judgements for agriculture number less than ten. Only one classified agricultural project has been subject to a strategic monitoring audit, the aerial baiting of wild dogs for which the proponent was the NSW Government.

⁶ Department of Environment and Energy EPBC Database <http://epbcnotices.environment.gov.au/referralslist/>

⁷ Bombshell: Just one-sixth of rural land-clearing tracked in NSW
<http://www.smh.com.au/environment/conservation/bombshell-just-onesixth-of-rural-landclearing-tracked-in-nsw-anus-philip-gibbons-says-20160502-qojvkw.html>

There has been an exceptional lack of regulation of agricultural activities over the history of the EPBC Act. This is evidenced through both system level analysis as well as specific case studies. However there remains concern within parts of the agriculture sector of undue regulation. The perception by entities of regulatory burden, or fear of regulatory intervention, is worth considering, but this perception has been continually over-emphasised, often for political purposes. Terms of trade, commodity prices and climatic and weather events are far greater determinants of agriculture productivity and profitability than national environmental law.

Interaction between Commonwealth and State legislation

Australia could and should be doing more to protect matters of national environmental significance, including threatened species and important places. The EPBC Act has failed in its fundamental mission due lack of adequate standards and thresholds and too much decision maker discretion. Lack of certainty about areas that should not be developed, such as critical habitats for threatened species, are not clearly articulated in the legislation.

The “One Stop Shop” policy for environmental approvals has been strongly opposed by the Australian community due to the diminution of environmental standards and abandonment of appropriate environmental leadership by the federal government. The failure of the policy has been evidenced in the need for federal intervention in Queensland following the weakening of their land clearing laws.

Ensuring national leadership and setting clear national standards for environmental protection will play an important role in both improving environmental outcomes and ensuring alignment with state and territory regulatory regimes. The federal government has a unique opportunity to set environmental national outcome standards and protections for wildlife though the upcoming statutory review of the EPBC Act, without having to delegate decision making or weakening environmental protections - which were hallmarks of the One Stop Shop policy. This includes the potential to set harmonised protections for biodiversity through the establishing clear enforceable thresholds where certain activities can or cannot occur, with one such example being critical habitats for threatened species. Similarly, nationally consistent laws and standards as they apply to land clearing will be important for realising the objectives of *Australia’s Biodiversity Strategy 2010-2030*, *Australia’s Native Vegetation Framework* and our international obligations under the Convention on Biological Diversity Aichi Targets.

Improving Australia’s approach to the management and protection of critical habitats will have important benefits for the recovery of threatened species and the awareness of species conservation in the broader Australian public. Paired with an improvement in recovery planning processes and threatened species list management, stronger critical habitat laws will greatly improve transparency and accountability in threatened species conservation. Similarly, such measures will also provide important signals to governments and developers regarding the location of critically important environmental values that must be avoided when planning development projects.

Improving the information and mapping habitat areas for threatened species and threatened ecological communities will send important signals to farmers and other sectors as to the likelihood of significant, acceptable and/or unacceptable impacts.

Improving the use of remote sensing and satellite technology will have benefits across data collection and compliance activities. Presently there is a rudimentary level of technological capacity and remote sensing capability in the federal environmental regulator. Ensuring reliable access to remote sensing satellites, which can detect changes in vegetation that occur outside of EPBC Act referral areas, would significantly improve the Department's capacity to identify and respond to potential non-compliance issues in a timely fashion.

Species and Ecological Community Listing

One of the successes of recent years has been the listing process for threatened species and a concerted move towards alignment of listing processes across jurisdictions to the Common Assessment Method. It is crucial that the scientific independence of the Threatened Species Scientific Committee and listing process is respected.

Once a species or TEC is listed there is an important and often unmet need to perform community outreach and engagement with the regulated (and broader) community. Historically, the Department of the Environment and Energy has performed this task with varying levels of effort, including engaging with Local Land Services on new TEC listings, undertaking national roadshows on policy development and having an outposted officer with the National Farmers Federation for a number of years. No reviews of the efficacy of these approaches have ever been made public, but they warrant some level of investigation.

Improving awareness and understanding of national environmental law in the agriculture sector

Improving engagement and outreach on listing of threatened species and TEC's, as well as regulatory approaches and policy more broadly, is critical across sectors. Providing clear and easy to understand policy guidance is also crucial. This should not take away or impinge on the need for scientifically robust and technical advice as part of the listing process, but behoves the need for clearer translation of this information into useful public communications.

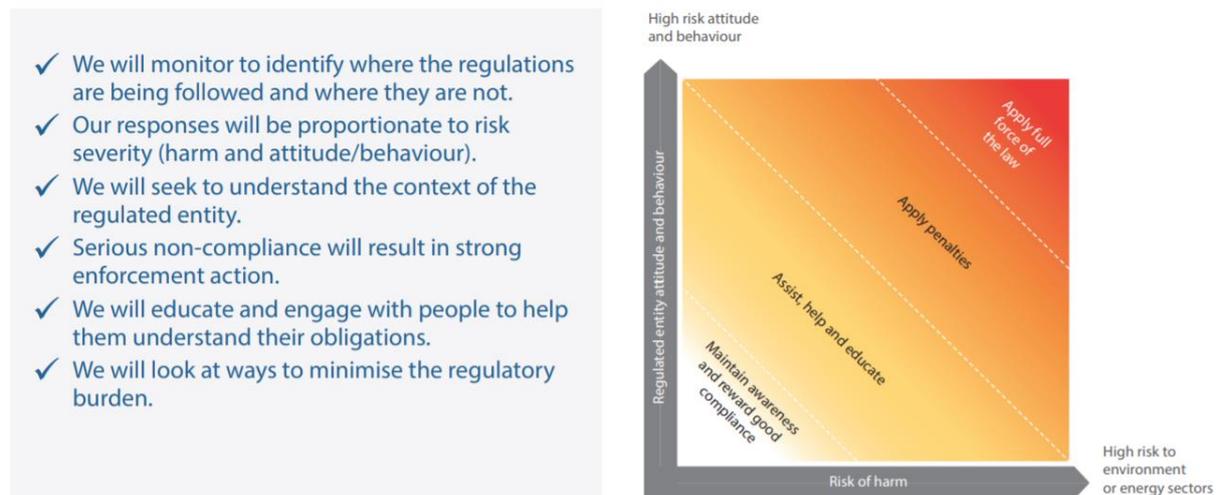
Across Australia methods of communication are changing rapidly, and there is a need for government and regulators to be more engaged with these changing trends. For any policy or activity the government must better understand its intended audience and how they communicate, and this may involve developing different communication products across various media channels, from direct mail and face-to-face through to social media and mobile technology. The Department attempted to develop a mobile app previously, which had limited uptake and very poor support. Innovation and improvements in communication require ongoing investment of resources and management commitment.

It is important to note that the Department's capacity to engage in these types of activities has been significantly curtailed by very large budget cuts. The Department has seen an overall decline of its appropriations by 43% from 2013 out to the end of the forward estimates in 2021-22. This has serious implications for engagement and outreach. For example recently announced job cuts of up to 25% to the Biodiversity Division will limit capacity to develop and deliver improved information on threatened species and ecological communities alongside existing workloads.

Similarly, cuts to spending under the NHT Special account, including for landcare programs, further remove opportunities to incentivise positive actions on farms. The NHT will shrink from \$262m in 2013 to \$146m by 2021, a cut of almost 50%. Resourcing and investing in outreach and engagement will build both the regulators social license and improve community awareness, but requires dedicated resourcing in a an already constrained public agency.

Early and regular engagement is also an important part of diligent regulatory behaviour, which is consistent with the Department's recently released regulatory capability framework. The framework was based on a co-design process than included both ACF and the NFF along with other organisation and experts. To date, the capability framework has yet to be effectively applied by the Department. For example information is not readily shared or made available and proportionate regulatory responses are not being deployed, particularly in some compliance cases. Key to addressing some of the issues raised in the discussion paper will be the full and open implementation of the Departments regulatory maturity project and capability framework (see example at Figure 4) .

Figure 4 - Proportionate Regulatory Responses



Source: <http://www.environment.gov.au/about-us/accountability-reporting/regulatory-framework>

Incentivising action

Alongside existing regulatory regimes there are a range of tools that are available to government to incentivise positive action on private lands. Siloing and compartmentalisation of Departments means these are not often viewed with regulatory approaches.

Agri-environment schemes have operated in Australia for decades with mixed success. For example the environmental stewardship programme, which contracted on-farm conservation activities from willing participants, was an important mechanism to encourage positive conservation efforts, but also had challenges in its application from complexity and lack of

broader support.⁸ The Biodiversity Fund provided mechanisms to support on farm conservation through a variety of programs, however was discontinued. The current National Landcare Program is the primary Australian Government vehicle for the delivery of on-farm conservation, yet there is minimal alignment between NLP and the regulatory functions of the Department, and as noted above, the NHT Special account (which fund the NLP) has been subject to a significant cut in funding.

Alongside agri-environment schemes, options for the government also include improving tax incentives for on-farm conservation and providing access to climate financing for native habitat conservation. Both these mechanisms that can play important roles in incentivising farm sector conservation activities. As noted by the Australian Conservation Lands Alliance:

Various but limited tax incentives currently exist for landowners who engage in private land conservation initiatives. These include income tax deductions and concessional capital gains tax treatment for entering into conservation covenants or other ATO-recognised permanent protection instrument registered on title, as well as deductions or concessions for landcare operations. Whilst these measures are intended to provide tax benefits and incentives to land-based environmental activities, they do so in a very limited manner. ALCA submits that reform is required to address limitations and barriers to landholder contributions to maintaining and often restoring the country's biodiversity and natural assets on private land.⁹

Potential tax reforms, whilst largely out of scope of this inquiry, include:

- reviewing 'landcare operations' deductions under the Income Tax Assessment Act 1997 with a view to broadening the availability of concession to include 'ecological management and restoration'; and
- Including non-capital expenditure and entitlement of all landholders with conservation covenants to a deduction against assessable income for conservation works expenditure

Another mechanism for improving conservation outcomes includes certification schemes. Whilst explicitly mentioned in the Terms of Reference, its is difficult to look at this in isolation of other incentive models available. Environmental certification schemes rely on a number of pre-conditions, including a willing and engaged regulated sector, the capacity to ensure market advantage, a social license through clear differentiation of product based on environmental performance and genuine engagement with the environmental sector. Successful environmental certification schemes are reliant on constructive engagement and shared-ownership across regulated and interested sectors, such as the Forest Stewardship Council, which is governed by industry, social and environmental chambers.

⁸ Salt et al 2016 - Learning from agri-environment schemes in Australia: Investing in biodiversity and other ecosystem services on farms <https://press.anu.edu.au/publications/learning-agri-environment-schemes-australia>

⁹ ALCA submission to the Tax White Paper 2015
https://cdn.tspace.gov.au/uploads/sites/52/2015/06/Australian_Land_Conservation_Alliance_Submission_2.pdf