National Farmers Federation

# National Environmental Standard for Matters of National Environmental Significance

May 2026

# The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade, and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

## NFF Member Organisations

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# Executive Summary

The *National Farmers' Federation* (NFF) welcomes the opportunity to provide a submission to the *Department of Climate Change, Energy, the Environment, and Water* (Department) on the continued development of the *National Environmental Standard for Matters of National Environmental Significance* (MNES). This marks the second formal consultation round on the proposed Standard. Our prior submission to the February 2026 process is attached at **Attachment 1** and is to be read in conjunction with this document. This submission builds upon and updates our prior position in consideration of the revisions and new materials received.

While the NFF supports the development of *National Environmental Standards* (Standards) as a core element of National Environmental Law reform, we do not support the MNES Standard as presently drafted. Properly designed, framed, and implemented, Standards have the potential to improve environmental outcomes and establish clear decision-making parameters for assessment and approval processes that impact regulated sectors including agriculture. However, this is ultimately dependent on them providing clarity in expectations for proponents and the matters decision-makers (and therefore subsequent reviews of Standards) are required to assess against.

The proposed MNES Standard cannot be considered in isolation. The practical effect of the Standard for agriculture will depend on how it interacts with the amended *Environment Protection and Biodiversity Conservation* (EPBC) *Act 1999,* future Standards, regulations, guidance material, compliance settings, bilateral arrangements, and the *National Environmental Protection Agency* (NEPA). Where these elements are unclear or poorly implemented, agricultural producers will face increased uncertainty about how low-risk and business-as-usual land management activities are treated. This is significant because producers regularly undertake continuous and seasonal land management decisions across large areas of the landscape. These decisions often occur in environments where threatened species habitat, ecological communities, native vegetation, and to a lesser extent water resources and heritage values are either present or inferred at a broad scale but without the accuracy needed to support definitive compliance decisions. The result is a shift in the administrative, financial, evidentiary, and legal burden onto producers who themselves have limited capability to determine whether an activity requires referral or Commonwealth approval.

**At a high-level, NFF does not support the MNES Standard that has been presented. The draft Standard does not provide a clear, practical, or viable pathway for agriculture to assess our obligations or determine whether routine farming activities have a Significant Impact on a MNES. It is therefore unfit-for-purpose and cannot be progressed in its current form.**

The regulatory burden that has now been placed upon farmers post-legislative reform is significant and is creating major concern and distress. The lack of clarifying guidance to exempt or mitigate what is clearly low-risk and routine agricultural activities from assessment, and/or commitment (or understanding for that matter) toward the urgent updating of outdated guidance materials for agriculture (i.e., 2013 *Significant Impact Guidelines* for MNES) despite provisions in the Budget to support compliance and extension, has meant reforms have increased uncertainty and worsened what was already a challenging task for farmers seeking to understand their obligations under Federal law.

In addition to the above, NFF notes that the consultation process to-date has deviated substantially from what would ordinarily be expected for reforms of this scale and consequence. No comprehensive Impact Assessment has been undertaken to understand or quantify the impact of reforms to agriculture. This is particularly concerning given legislation includes an embedded non-regression principle (which is novel), while subordinate instruments relating to Tranche 2 are now being substantially brought forward with unclear timelines ahead of the initial November time horizon.

This accelerated process is occurring despite core regulatory functions not yet being finalised or actually consulted on in a formal public setting. This includes NEPA which is still in the process of recruiting a Chief Executive let alone being fully established. It also includes the multitude of proposed Standards which all remain in draft format and have been released in a staggered manner, making it extremely difficult to understand the full regulatory, operational, and economic implications of the proposed framework let alone identify unintended consequences or address the many areas of duplication and overlapping requirements. Several Standards have not yet been released for public comment or scrutiny while others appear to have been delayed indefinitely (with unclear timeframes for consultation and establishment despite a hard preference for a 1 July start).

At this stage, NFF is particularly concerned that the proposed Principle-led approach to implementation is creating significant uncertainty about how consistency with the Standard is to be demonstrated and benchmarked in-practice. The current drafting raises serious questions about whether adherence to the Principles is intended to operate as the practical test for achieving the Objectives and Outcomes, and whether this may structurally dilute or subvert the role of the Objectives and Outcomes themselves. This is a new and significant problem because the legislative framework requires decisions to be consistent with the Standard as a whole, not part-thereof. It must not be dismissed on the basis of complexity as it goes directly to the practicality and future workability of the Standard. While keeping in mind the non-regression principle in legislation, it is important that we get the settings here correct and balanced. Our thinking and comments with respect to the proposed Principle-led approach are detailed in the proceeding sections below.

**Should the Commonwealth proceed with finalising the MNES Standard through the current process, significant amendments are required to make it workable and fit-for-purpose for agriculture. This includes in summary:**

- Better integrating *Ecologically Sustainable Development* (ESD) including through a dedicated Principle so that the Principles-led approach to implementation actually reflects and gives practical effect to the Objectives and Outcomes of the Standard, let alone requirements under the Objects of the EPBC Act (Section 3A);

- Duplication against future Standards are removed and deferred to those separate dedicated processes (in relation to *Environmental Offsets, Data and Information, Community Consultation,* and *First Nations Engagement*);

- Refine legislative drafting to ensure matter-specific Objectives do not introduce broader obligations than those already required under existing international agreements and frameworks;

- Use clearer and more consistent drafting as it relates to the multiple differently framed Significant Impact concepts so that proponents can better understand their Self-Assessment and referral obligations; and

- A commitment to exempt routine and continuing-use agricultural activities from the assessment process and urgently prioritise development in real partnership with industry of clear, useful, and fit-for-purpose guidance for farmers including:
  - Plain English definitions;
  - Clearly outline what is and is not an acceptable practice (i.e., examples that are grounded in the reality of production systems and reflective of what is a legitimate practice);
  - Improved guidance documentation;
  - Better mapping; and
  - Increased resourcing to support extension and communication.

## Principles-Led Approach and Relationship Between Overarching Objectives, Outcomes, and Principles

NFF does not strictly oppose the use of alignment with Principles as an implementation mechanism. However, if Principles are intended to fulfil the role of demonstrating consistency with a Standard, the drafting must be consistent and clearly distinguish the role of the Principles from the Objectives and Outcomes. The Principles also need to be explicit and clearly representative of each Objective and Outcome they are intended to implement. As currently drafted, the four Principles are primarily directed toward environmental assessment mechanics including the *Mitigation Hierarchy,* consideration of impacts, environmental offsets, and evidence. They do not clearly or adequately explain how Outcome 3, which provides that decisions facilitate ESD, are to be achieved.

<u>As stated in the Policy Paper:</u>

- ***Consistency with the MNES Standard will be achieved when the proponent,*** *strategic partner or a Commonwealth Minister or a State/Territory Government,* ***demonstrates that they have satisfied the four Principles, and therefore the Outcomes and Objective of the MNES Standard.***

- *In addition, the MNES Standard will:*
  - *Support primary legislation as a statutory instrument – to* ***set legally enforceable Outcomes, achieved through the Principles,*** *but also retain the flexibility to respond to new approaches to conservation or emerging threats.*

<u>The Policy Paper also states that:</u>

- ***Principles are requirements that need to be applied to achieve the Outcomes and effectively promote the Objective of the Standard*** *and, as a result, the Objects of the EPBC Act.*

As shown above, the Policy Paper uses different formulations to describe the relationship between the Objectives, Outcomes, and Principles. In some instances, satisfaction of the Principles appears to be treated as sufficient to satisfy the Outcomes and Objectives whereas elsewhere, the Principles are described as requirements that achieve the

Outcomes but only *"effectively promote"* the Objective. Additionally, Section 7(2) of the draft Legislative Instrument provides that an action will achieve the Outcomes and Objectives of the Standard **where it is consistent with the Principles.** Read together with the Policy Paper, this creates uncertainty about whether the Principles are procedural requirements or the substantive test that is to be met.

This distinction matters as *"satisfied", "achieve", "applied", "promote",* and *"consistent"* are not equivalent concepts. Applying a Principle suggests a procedural or informative requirement to consider or use it, whereas satisfying a Principle suggests a substantive (normative) requirement that the Principle has been met. Similarly, achieving an Outcome is different from merely promoting an Objective.

If the Principles are considered sufficient to achieve the Outcomes but only promote the Objective, it is unclear whether the Objective must itself be achieved. It is also unclear from the current drafting whether proponents and assessment officers are required to demonstrate that the Principles have simply been applied or that they have been substantively satisfied. For instance, the use of terminology such as *"may"* in 7(4) creates discretion for a decision-maker to arrive at a conflicting view. It should be amended to read as *"a decision-maker will be taken to be satisfied…".* Together, this creates uncertainty about how consistency with the Standard is to be demonstrated, particularly as the legislative framework requires decisions to be consistent with the Standard as a whole and not part-thereof. NFF prefers a minimal and cautious approach to allow a just and smooth transition.

Specifically:

- *The Minister must not approve the taking of an action unless the Minister is satisfied that, taking into account any conditions to be attached to the approval,* ***the approval of the taking of the action is consistent with any National Environmental Standards*** *prescribed by the regulations for the purposes of this subsection.*

We also note that many of the Objectives and Outcomes are framed at a broad system or landscape scale that individual proponents and controlled actions cannot reasonably adhere to. This creates risk in the context of future Reviews and the non-regression requirement. If the Standard is reviewed against broad Objectives and Outcomes that are far removed from what individual actions and the Principles can practically achieve, there is a real risk that the Standard will be assessed as not achieving its intended purpose and thus be tightened to the detriment of business and development.

# Matter Specific Objectives

## Wetlands of International Importance (Ramsar Wetlands)

The proposed Objective for *Wetlands of International Importance* extends beyond Australia's obligations under the *Ramsar Convention on Wetlands* as it introduces a requirement to restore the ecological character of a declared wetland where it is in decline. The Convention requirement is to halt the worldwide loss of wetlands and ensure the conservation and *"wise use"* of remaining ecosystems through local actions and international cooperation. The framing of the Objective needs to be adjusted to ensure consistency with Australia's international obligations. The current framing will place an

unreasonable burden on actions beyond that what is reasonably expected and is not supported.

## World Heritage Places

The proposed Objective for *World Heritage Places* provides that the *World Heritage values* of a declared *World Heritage* property are *"protected, conserved and (where appropriate) restored in a manner consistent with Australia's obligations under the World Heritage Convention"*.

While we support alignment with obligations under the Convention, the Objective must be clarified to ensure that the reference to restoration is appropriately conditioned and not interpreted as a broad requirement. Under Article 5 of the *World Heritage Convention,* State Parties are required to endeavour, *"in so far as possible"* and *"as appropriate",* to take measures for the protection, conservation, presentation, and rehabilitation (not restoration) of heritage. The Objective must therefore be reframed to make clear that rehabilitation (not restore) is not a default requirement but a context-specific response to be considered only where it is practical and appropriate, consistent with the terminology and requirements outlined under the Convention.

## National Heritage Places

As stated in our prior submission, NFF recognises the importance of protecting *National Heritage Places* and their associated values. However, the current Standard includes drafting that imposes a behavioural obligation, specifically, the requirement that *"Indigenous Heritage values of a National Heritage place be treated in a manner respectful of Indigenous traditions and beliefs".* This language introduces a subjective requirement and is arguably out-of-place as it departs from the measurable and outcome-based Objectives applied to the other categories.

As the foundational Standard, the MNES Standard sets the broader architecture for decision-making with relevant detail addressed through subsequent Standards. It is our view that such Indigenous engagement requirements be removed entirely (including under Principle 4) and deferred to the development of the relevant Standard to be developed (subject to public consultation) for purposes of clarity and detail.

## Protection of Water Resources From Unconventional Gas and Coal Mining Development

NFF notes the proposed Objective provides that the function and integrity of water resources are protected and conserved, including *"provisioning, regulating, cultural, and supporting services provided by the water resource".* We understand that similar concepts have previously appeared in Commonwealth guidance relating to the Water Trigger (specifically *Significant Impact Guidelines 1.3*).

We note that this Standard is intended to operate as a statutory instrument and form part of the benchmark against which decisions are assessed. Concepts that may have previously operated as guidance should not be elevated into an Objective-level requirement without clear explanation of their intended legal and practical effect (even if they are presented as suggestions (i.e., *"such as the…"* on Page 11)).

We therefore seek clarification on whether the reference to *"provisioning, regulating, cultural, and supporting services"* is intended to reflect existing guidance or alter the practical application of the Water Trigger under the Standard. If the latter is correct, the Department must very clearly explain how these services are to be identified and weighed in decision-making. This is particularly important in relation *to "cultural services"* which may be capable of broad interpretation.

## Principle 1: Actions Appropriately Apply the Mitigation Hierarchy

The *Mitigation Hierarchy* must be practical in an agricultural setting. The Government needs to road-test its application with the sector to ensure the Standard does not inadvertently capture ordinary farm practices or impose disproportionate assessment expectations.

### Step 1: Avoidance

NFF notes that the requirement to avoid impacts *"to the extent possible"* risks establishing an impractically high threshold, as almost all impacts are theoretically avoidable if an activity does not proceed. NFF considers that the more appropriate construction *is "to the extent reasonably practicable"* as this better reflects proportionality and feasibility of implementation. Other steps of the *Mitigation Hierarchy* must also include similar clarifying language.

### Step 2: Mitigation Below Significance

We also hold concern that the draft Standard requires proponents to mitigate residual Significant Impacts below the level of Significance wherever possible. Applied strictly, this would create an impractical expectation that proponents continue pursuing mitigation measures irrespective of feasibility, proportionality, cost, or the additional environmental benefit likely to be achieved. This would be inconsistent with the principles of ESD which are reflected in the Objects of the EPBC Act and as an Outcome in the draft Standard.

The assessment and approval framework must remain focussed on whether the impacts of an action can be appropriately avoided, mitigated, repaired, or offset having regard to the nature and scale of the action. It must not impose an open-ended expectation that every residual Significant Impact be reduced below the threshold of Significance where this is not reasonably practicable or proportionate to the scale of the impact. NFF considers that the relevant test be whether further mitigation is reasonably practicable and capable of delivering a meaningful environmental benefit under the *Mitigation Hierarchy.*

### Step 3: Achieving Repair

It is our view that the circumstances in which repair is recognised as a generally viable option within the draft Legislative Instrument are overly narrow.

Specifically:

(5) *Repair will generally be a viable option only where:*
   a) *repair can be done in a timely manner; and*
   b) *repair activities are feasible and sustainable in the long term for the protected matter.*

**We also note inconsistencies between the draft Legislative Instrument and Policy Paper, with the latter identifying broader circumstances where repair may be viable.*

A constrained approach to repair may have the unintended consequence of increasing reliance on environmental offsets including in circumstances where repair measures are practical and available. It is our view that the Standard adopt a broader and more flexible set of circumstances. This is particularly important given the practical challenges associated with delivering environmental offsets. Experience from existing biodiversity offset frameworks including in *New South Wales* (*Biodiversity Conservation Trust*), for example, demonstrates the difficulty of finding and securing suitable equivalent offsets in the landscape. Where practical repair options are available, the Standard and accompanying Policy Paper must not constrain their use by way of limited guidance in a manner that increases reliance on offsets as the default response. Broadly, there seems to be little if any recognition of the challenge of utilising offsets contribution even without the extra thresholds such as like-for-like (where possible).

### Step 4: Environmental Offset

NFF notes that Step 4 regarding environmental offsets duplicate obligations already established under the EPBC Act.

As stated by the Department on its 2023 (last updated) Direct and Indirect Offsets webpage:

- *Environmental offsets compensate for residual Significant Impacts from actions, such as developments, that cause harm to protected matters (including nationally significant plants, animals, ecological communities and places). They make up for Significant Impacts that cannot be avoided or mitigated.*

This reference within Principle 1 should therefore be limited to a high-level reference linking back to the Act specifically.

## Principle 3: Actions With Residual Significant Impacts to Affected Protected Matters Are Compensated

The contents of Principle 3 unnecessarily duplicate against Step 4 of *Mitigation Hierarchy* outlined in Principle 1 and matters intended to be addressed through the dedicated Standard for Environmental Offsets currently open for consultation. The inclusion of detailed requirements relating to offsets here in the MNES Standard risks undermining the integrity of that process while adding unnecessary legal risk and uncertainty. We therefore recommend that Principle 3 be removed in its entirety.

# Principle 4: Appropriate Evidence, Indigenous Engagement, and Consultation

## Removing Duplication

NFF supports the intent of Principle 4 that actions are supported by appropriate evidence. Robust evidence is essential for transparency and facilitating consistent decision-making under the EPBC Act. However (and as noted above), NFF remains concerned that Principle 4 duplicates and may pre-empt future consultation processes relating to the development of other Standards. This is because the Principle contains requirements relating to evidence, consultation, and Indigenous engagement even though dedicated Standards will be developed to address such matters. The MNES Standard must not prescribe detailed expectations for matters intended to be addressed through those dedicated avenues. This includes requirements relating to the adequacy and manner in which consultation and engagement are required to be conducted and how Indigenous 'interests' are to be accounted, including whether engagement is *"effective"* or *"genuine"* as referenced in the Policy Paper. Again, such matters must be addressed through those dedicated Standards where they can be properly tested with stakeholders in respect of the consultation process. It would be inappropriate for the MNES Standard to pre-empt those processes and doing so will create overlapping requirements and legal uncertainty that cannot be easily resolved through amendment post-establishment, especially in consideration of the novel non-regression requirement. We therefore seek the release of all Standards together as a consolidated package so industry can understand the full regulatory, operational, and economic implications of the proposed framework.

Principle 4 must therefore be removed entirely. Absent this, this Principle (including the contents in the Policy Paper) should contain at maximum a high-level reference that actions are to be supported by evidence (data and information), community engagement, and consultation, with the actual detail and descriptive language deferred to the relevant processes.

## 'Actions Being Supported By Evidence'

### Appropriate Documentation

The Policy Paper identifies documents and tools such as Ramsar information sheets, *Recovery Plans, Conservation Advice, Threat Abatement Plans, Protection Statements,* and the *Protected Matters Search Tool* (PMST) as a form of appropriate documentation and evidence to support the undertaking of an action. While these materials may be useful starting points, it is unclear whether they are considered sufficient to inform a compliance decision. This distinction is important because either these tools are sufficient to inform a decision as to whether a Significant Impact is likely or they are not. This is particularly evident for agriculture as existing tools like the PMST have a high-risk tolerance as they identify indicative ranges of potential habitat, do not provide the clarity that is required, are often error-prone, and cannot be relied upon to support a definitive compliance decision.

Our submission to the *2024 Nature Positive Senate Inquiry* **(Attachment 2)** identified several examples of incorrect mapping and identification of threatened species and ecological communities derived from the PMST. On a separate yet not unrelated point, we note that incorrect mapping of native vegetation on public and private land is also a common issue.

This is a reality recognised by the Department in discussions regarding the implementation of continuing-use provisions, where officials have clearly stated that the PMST is not a definitive product from a compliance risk perspective. This places the administrative and financial burden on agricultural proponents to resolve uncertainty and, in effect, disprove the likelihood of there being a Significant Impact. As a logical consequence, the PMST must therefore not be treated as a sufficient documentation piece for landholders seeking to determine their obligations under the EPBC Act (i.e., undertake an action supported by evidence) – which begs the question what if any mechanism exists for agriculture that can be relied upon with confidence. This deficiency reinforces the need for updated and agriculture-specific guidance to support application of the MNES Standard. This must include commitments to update *Significant Impact Guidelines* (which is overtly technical and out-of-date (last updated in 2013)), have clearer and improved definitions of key concepts, practical decision-support tools, and better communication of expectations including when a referral is or is not required for activities that are low-risk.

The proposal to consider updates to *Significant Impact Guidelines* on Page 20 of the Policy Paper falls short of the commitment that agriculture requires. On this point, we note that NFF been advised by Department officials that funding allocated under the *2026-27 Federal Budget* for the establishment of NEPA, including support for compliance and enforcement functions, will be the avenue through which updated guidance may be developed. We continue to seek a formal commitment and timeline to doing so with urgency.

**Balancing Competing Interests and Integrating the Principles of ESD**

The Policy Paper states that evidence provides a common reference point for balancing competing interests, including environmental, social, cultural, and economic values. While we support this intent, the Standard does not clearly explain how economic and productivity impacts for instance are to be considered in-practice despite ESD being a listed Objective and Outcome. This lack of clarity is a significant concern because at-present, and in the absence of definitive guidance, the burden falls on producers to self-assess whether everyday farm practices require referral and/or approval. These processes are costly with self-assessments understood to range anywhere upward of $160,000 in some cases. Without clear guidance and a defined mechanism for considering economic and productivity impacts, the Standard risks being unworkable for agriculture and may unnecessarily constrain food and fibre production.

As discussed earlier, the proposed Principles are overwhelmingly environmentally focused and do not adequately reflect the broader Objectives and Outcomes of the Standard including ESD. There is no mechanism for balancing environmental considerations with social, economic, and productivity impacts, or for explaining how ESD will be operationalised in decision-making. This is a significant deficiency.

Given the absence of any dedicated ESD Principle, it is unclear how the Minister can be satisfied that decisions made under the Standard will properly give effect to ESD obligations under the Act. A dedicated ESD Principle must be inserted into the Standard. Without this, the proposed Principle-led approach is (put simply) materially incomplete and does not give practical effect to the Objects of the Act.

**Other Forms of Evidence**

As stated in the Policy Paper:

- *Evidence is not limited to scientific evidence; the knowledge and experience of First Nations people and other stakeholders are equally important to effective assessment of impacts.*

While NFF acknowledges efforts to bring Indigenous experience into the evidence-base, it remains our consistent position that Indigenous-derived evidence is considered and treated individually on its merits in an equal manner to any other information, science, or input that is provided. It is important to recognise that not all evidence provided into a decision-making process (irrespective of the source) holds the same weighting, importance, or validity. Evidence must be scrutinised. To this effect, NFF does not support approaches that would require Indigenous knowledge systems to be granted *"equal"* weighting in all circumstances without regard to their relevance and evidentiary basis in the specific decision-making context.

# Closing Remarks

Please do not hesitate to contact Warwick Ragg, General Manager, Natural Resource Management, via e-mail: WRagg@nff.org.au at the first instance to progress this discussion.

## Attachments List

1. ***NFF Submission (January 2026): National Environmental Standards for Matters of National Environmental Significance (MNES) and Environmental Offsets.***

2. ***NFF Submission (July 2024): Senate Inquiry into Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and Related Bills.***

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National
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Federation

# National Environmental Standards for Matters of National Environmental Significance and Environmental Offsets

February 2026

## The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

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## NFF Member Organisations

# Executive Summary

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Department of Climate Change, Energy, the Environment, and Water (Department) to inform the development of proposed National Environmental Standards (Standards) for Matters of National Environmental Significance (MNES) and Environmental Offsets. NFF supports the development of Standards as a core element of reform to National Environmental Law. Properly designed and implemented, Standards have the potential to improve environmental outcomes and establish clear decision-making parameters and rules for assessment and approval processes that impact regulated sectors, including agriculture.

NFF understands that a robust and agreed set of Standards is a prerequisite to negotiate bilateral agreements with jurisdictions for decision-making for agricultural land-use. Appropriate time must be undertaken to ensure that they are properly developed, practical, and fit-for-purpose. Given the likely complexity and impact of the Standards, they should also be subject to 'road-testing' to ensure they provide the anticipated outcomes.

As a general principle, and consistent with the recommendations of Professor Graeme Samuel AC, specificity in legislation is critical, and Standards need to be granular, detailed, explicit, and supported by relevant guidelines and rulings. NFF notes the following remark by Prof. Samuel during the 14 November 2025 Senate Inquiry hearing: *"Anything that might look a bit vague in legislation is intended to be completely overcome by the instruments which are Standards which will be part of regulations"*[1].

It is against this benchmark that NFF has assessed the draft Standards for MNES and Environmental Offsets. While we support the intent underpinning the Standards, further refinement is required to ensure they deliver the clarity and safeguards necessary for effective decision-making and the agricultural sector. The proposed MNES Standard should also be aligned with the recommendations of the Samuel Review to ensure there is a stronger and more explicit embedding of the principle of Ecologically Sustainable Development (ESD) throughout the entirety of the Standard.

# National Environmental Standard for Matters of National Environmental Significance

## Ecologically Sustainable Development

This Standard is intended to safeguard the protection and conservation of MNES in a manner consistent with the principles of ESD, a key Object of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). However, as currently drafted, the Standard does not provide this outcome.

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[1] November 2025, Senate Environment and Communications Legislation Committee: Environment Protection Reform Bill 2025 and Six Related Bills Senate Inquiry Hearings

While ESD is referenced in the Objects of the draft legislative instrument, it is reflected in only a single Outcome and there are no corresponding Principles to guide how environmental, social, and economic considerations are to be balanced in decision-making. Given that decisions made under the EPBC Act must not be inconsistent with Standards, NFF considers that this balance should be more explicitly reflected within the legislative instrument. In the absence of such guidance and specificity, the Standard risks skewing regulatory outcomes toward one Object of the EPBC Act at the expense of others, resulting in decisions that may prioritise conservation without due regard for sustainable land-use, food, and fibre production. This contrasts with Prof. Samuel's Standard proposed outlined in the Samuel Review which clearly embeds the principles of ESD within actions, decisions, plans, and polices relating to MNES.

## Clarifying Scale of Obligations

The Objectives outlined in the Standard are framed in a way that implies individual actions are responsible for delivering landscape-scale conservation or recovery outcomes. This does not reflect the cumulative nature of biodiversity outcomes and places unrealistic expectations on individual landholders and proponents. Standards must resolve rather than perpetuate uncertainty. It is on this basis that we seek further refinement and distinction between outcomes expected to be delivered at the individual level and collectively across the landscape.

## Indigenous Heritage Values

National Heritage Places are a MNES under the Act, and NFF recognises the importance of protecting these places and their associated values. However, the current Standard includes drafting that imposes a behaviour obligation, specifically, the requirement that *"Indigenous Heritage values of a National Heritage place be treated in a manner respectful of Indigenous traditions and beliefs"*. This language introduces a subjective requirement and is arguably out-of-place as it departs from the measurable and outcome-based objectives applied to other protected matters (which are framed *around "environmental protection"*, *"conservation"*, *"restoration"*, *"rehabilitation"*, and *"sustainable management"*). Separately, we also note that National Heritage Places contain multiple values beyond Indigenous Heritage, including but not limited to natural and historical value.

Indigenous engagement requirements should be confined to a single, high-level reference within the MNES Standard to maintain clarity and consistency. As the foundational Standard, this Standard sets the broader architecture for decision-making with relevant detail addressed through subsequent enabling Standards (i.e., Data and Information, Community Consultation, and First Nations Engagement in Decision-Making). Principle 4 already performs this function as it outlines general requirements for Indigenous engagement while deferring detail (the Policy Paper does) to the forthcoming First Nations Standard.

The Objective relating to Indigenous Heritage values in Section 5 introduces a level of specificity that is inconsistent with this structure and risks creating uncertainty through duplication. It is on this basis that we seek removal of its reference. Consideration of Indigenous Heritage engagement would be more appropriately addressed through the forthcoming First Nations Standard which is being developed to address and define such expectations.

## Developing National Environmental Standards

As stated in the draft legislative instrument:

*Principle 4: Appropriate Evidence, First Nations Engagement, and Consultation*
*Actions should be supported by appropriate and suitable:*

- *(a) data and information;*
- *(b) consultation with Aboriginal and Torres Strait Islander people and contribution of their knowledge; and*
- *(c) consultation with other interested parties.*

NFF understands that subsequent enabling Standards are under development. We look forward to consultation on these Standards alongside the MNES Standard and prior to its finalisation to ensure alignment across the broader framework.

## Principle 4 (Actions Are Supported by Evidence) and Social Licence

NFF supports the intent of Principle 4 that actions are supported by scientifically sound, legally defensible, transparent, and adaptive data and information. However, the inclusion of the reference within the Policy Paper to securing a proponent's *"social licence to operate"* as part of the description of what it means for actions to be supported by evidence raises concerns. This reference should be removed to ensure that the policy contents underpinning Principle 4 remains strictly confined to evidence only.

Social licence is not a defined concept under the EPBC Act and does not constitute a recognised evidentiary or legal threshold. While included as an example, its placement within an evidence-based Principle risks shifting the focus of assessment from the question of whether the evidence is sufficient to support a lawful decision, to whether an action has achieved broad public acceptance. This introduces a subjective consideration into what is intended to be a simple and clear-cut evidence-based decision-making framework and creates a risk that opposition from single-issue stakeholder groups could be treated as a deficiency in evidence, rather than a reflection of differing values or preferences.

# National Environmental Standard for Environmental Offsets

## Defining Net-Gain and Measurable Improvement

NFF supports defining net-gain as a 'measurable improvement'. This provides flexibility and avoids the need for fixed numerical targets. The Standard, however, does not clearly state that 'measurable improvement' is the mechanism through which the statutory net-gain test requirement is to be satisfied. This needs to be made explicit in the legislative instrument.

## Security Principle (Principle 2)

NFF supports the principle that environmental offsets are secure and protected from degradation or loss. Security mechanisms, including active management, play an important role in underpinning and safeguarding the integrity and effectiveness of environmental offsets and preventing perverse outcomes at the broader landscape level.

As stated in the Policy Paper:

> *'In the context of offsets, secure means that the offset is legally, practically or administratively (in order of preference) protected such that there is high certainty that outcomes will be achieved and maintained'.*

**Land Covenants**

While land covenants are voluntary, NFF is concerned that the proposed approach may normalise covenants as the preferred or default mechanism for securing environmental offsets. This may create a de-facto expectation that offsets are to be secured through permanent or long-term obligations on land title. Covenants, particularly those that operate in perpetuity or over extended timeframes can materially impact land value, flexibility around future land-use, succession planning, and may create tax implications which are significant issues for landholders. Where such mechanisms are utilised, landholders must be provided with clear and upfront information about the legal obligations and implications of entering into long-term or permanent agreements.

**Maintenance Period**

It is our position that maintenance periods should be sufficient to deliver and safeguard outcomes while not being so onerous as to compromise land tenure and/or discourage proponent development. The draft legislative instrument proposes maintenance periods of at least 25-years for temporary impacts and up to 100-years for non-temporary impacts, with maintenance obligations linked to when offset outcomes are considered 'self-sustaining'. In cases involving non-temporary impacts, the maintenance period may conclude earlier where the Minister determines that outcomes are 'self-sustaining'.

It is important to recognise that environmental offsets under the EPBC Act are intended to deliver biodiversity outcomes rather than carbon storage. Permanence periods of 25- and 100-years are commonly associated with Australian Carbon Credit Unit (ACCU) sequestration projects where long-term carbon storage must be guaranteed. Biodiversity restoration, however, is different as it occurs through ecological processes that can become established and self-sustaining well before these timeframes depending on ecosystem type, landscape and baseline condition, and the nature of the management intervention undertaken. The Department should therefore review the proposed maintenance settings to better balance recognition of self-sustaining restoration outcomes with management requirements to avoid unintended landscape impacts on adjoining agricultural land.

## Relevant Area (Principle 7)

NFF supports the intent of Principle 7 to ensure offsets are delivered in areas that are ecologically and geographically relevant to the affected protected matter. The draft Policy Paper defines bioregion' by reference to the Interim Biogeographic Regionalisation for Australia (IBRA) framework. NFF has consistently raised concerns about the use of IBRA subregions as a planning and delivery framework (particularly in the context of Regional Planning) as boundaries can cross jurisdictional borders (introducing governance and implementation complexity).

The Policy Paper indicates that offsets should be delivered within the same bioregion as the impact, while also stating that offset activities should be situated within the same State or Territory as the impact. These requirements may conflict in-practice where IBRA regions extend across jurisdictional boundaries. NFF considers that other regional approaches such as Natural Resource Management (NRM) regions provide a more practical basis for coordinating offset delivery. NRM regions are already widely used as a basis for landscape-scale environmental planning and are generally well understood and aligned with existing regional governance arrangements.

## No Duplication Principle

NFF recommends the inclusion of an additional Principle in the legislative instrument to avoid duplication between Commonwealth and State or Territory offset requirements. Existing State and Territory offset frameworks that deliver equivalent outcomes should be recognised under the Standard.

# Conclusion

NFF remains committed to constructive engagement with the Commonwealth to support the development of robust Standards that provide clarity, certainty, and appropriate safeguards for decision-makers and agricultural proponents operating under National Environmental Law.

Please do not hesitate to contact Warwick Ragg, General Manager, Natural Resource Management, via e-mail: WRagg@nff.org.au at the first instance to progress this discussion.

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National Farmers Federation

# Senate Inquiry into Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and Related Bills

July 2024

# The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade, and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

## NFF Member Organisations

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15 July 2024

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**RE: Inquiry into Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and Related Bills**

Dear Committee Secretariat,

## Overview

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Senate Standing Committees on Environment and Communications. On 29 May 2024, Environment Minister Hon. Tanya Plibersek introduced separate Bills to establish two new independent entities of Environment Protection Australia (EPA) and Environment Information Australia (EIA). A third Bill to amend environmental laws and provide transitional measures to enable EPA and EIA to function alongside other related measures was also introduced. These Bills are as titled:

1. ***Nature Positive (Environment Protection Australia) Bill 2024.***
2. ***Nature Positive (Environment Information Australia) Bill 2024.***
3. ***Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024.***

This submission outlines the NFF's concerns with the legislative component of Tranche 2 of the Nature Positive Plan. Several recommendations and consequential amendments are presented to improve the Nature Positive Bills for EPA and EIA to ensure industry expectations are achieved and unanticipated impacts on the agriculture sector are avoided.

## Initial Engagement and Formal Consultation Opportunities

The NFF have engaged in all close-door stakeholder engagement sessions with the Department dating back to December 2023 on National Environmental Law reform (including EPA and EIA). Although an online 'Have Your Say' feedback portal and invitation to provide direct comment to the Department was conducted in parallel to this process; it was the expectation of industry that a separate and more formal targeted consultation would be conducted ahead of the Parliamentary process. This has not been the case as there will be no discreet public consultation opportunity on either Bills presented in Tranche 2 other than this Senate Inquiry.

It remains unclear whether DCCEEW has incorporated feedback gathered from the *Have Your Say* portal and direct submission process into the design of these Bills. A significant volume of feedback on the broader reform discussion (2,500+ responses) has been

received from this process, consuming significant Department time and resources. In addition, several iterations of Policy Papers and Exposure Draft Legislation for EPA and EIA were presented during the close-door process without track-changes.

# Nature Positive (Environment Protection Australia) Bill 2024

**Unless all proposed NFF recommendations and amendments are agreed to, the NFF cannot support the passage of this Bill.** We retain significant concerns over the governance, accountability, and review structure of the EPA, in addition to the eligibility and termination criterion for its accountable authority (the Chief Executive Officer).

## Governance Structure

This Bill will establish EPA and create an independent statutory officer who holds the position of Chief Executive Officer (CEO) to oversee the implementation of National Environmental Law. The CEO is the accountable authority of EPA. Although the NFF does not support the concept of creating an independent regulatory entity to undertake a role previously enacted by the Federal Government, we do support and seek to maintain the requirement that the accountable authority be a single statutory officer as opposed to a board structure. In theory, this will ensure greater consistency and timeliness in decision-making outcomes are achieved for industry, as board interpretations over technical aspects of assessment processes will be avoided entirely. It is critical, however, that the CEO be held accountable by a higher authority for his/her performance, and that projects are not unnecessarily delayed. This imperative is discussed in further detail in the subsequent sections of this submission.

Part 5 of the Bill outlines the appointment requirements for the EPA CEO. Appointment qualifications are broad reaching as the Minister must be satisfied that the CEO has knowledge of, or experience in, public sector administration or governance, and regulation in addition to one or more of the following:

**Eligibility criteria including NFF consequential amendments (in red). Part 5, Division 2, Section 44(2)(b):**

**(b) *The Person has knowledge of, or experience in, one or more of the following:***

- **i.** ***Conservation of biodiversity;***
- **ii.** ***Ecologically sustainable development;***
- **iii.** ***Heritage;***
- **iv.** ***Indigenous affairs;***
- **v.** ***Law;***
- **vi.** ***Law enforcement;***
- **vii.** ***Natural resource management;***
- **viii.** ***Agriculture;***
- **ix.** ***Land management;***
- **x.** ***Any other matters prescribed by the rules.***

The qualifications for CEO appointment should be expanded accordingly. This creates an equal pathway whereby the statutory officer responsible for administering project decisions under National Environmental Law is required to be well versed in agriculture,

ensuring the complexities of the sector are appropriately understood and accounted for. This is a non-controversial measure as the agriculture sector regularly interacts with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) through the referral process and continuing-use exemption provision. This recommendation is also a consistent measure that aligns against the eligibility criteria for members to the Threatened Species and Scientific Committee.

## Advisory Group Body

Division 4 establishes the capability for the CEO to establish an Advisory Group (which may be comprised of unlimited members) to advise and assist the CEO execute his/her functions and powers. The policy intent of this measure is to ensure environmental decision-making is evidence-based. Although the establishment of an Advisory Group is a sound concept, in practice, there exists a strong material risk that the Group will become an outward extension of the CEO's disposition as members are appointed by the CEO directly. Subsequently, decision-making advice by the broader Group is likely to be the product of minimal negotiation, debate, or diverse perspective.

Secondly, as the CEO can unilaterally determine the Group's Terms of Reference and is not bound to acting upon advice received, it is difficult to envisage the necessity of this Group other than to create a perception that the CEO is independent, and environmental decision-making is the product of independent expert advice. The NFF notes that under the *Nature Positive (Environment Law Amendments and Transitional Provisions Bill) 2024,* several provisions of the existing EPBC Act will be amended to provide the CEO the ability to request advice from the already-established advisory committees:

- *Advice from the Indigenous Advisory Committee on matters relating to the CEO's functions under the EPBC Act; and*
- *Scientific advice from Threatened Species Scientific Committee in relation to a protected matter.*

It is therefore unclear what additional benefit the creation of a new, separate Advisory Group for the EPA CEO will provide that could otherwise not be provided under existing EPBC Act arrangements. In recognition of this, the Committee should investigate the necessity of Division 4, or reform the Bill to ensure:

**NFF Recommendations**

1. ***Representation of members cover all criterion aspects for CEO employment eligibility including additional measures recommended by the NFF; and***

2. ***Advice or assistance can only be received from the Group as a whole.***

## Termination of Employment

**Division 2, Section 44, Appointment of the CEO:** *"The CEO holds office for the period specified in the instrument of appointment. The period must not exceed five-years".*

**In recognition that the office of EPA CEO is one of significant national importance, weight, and responsibility, and the appointment tenure extends beyond those of comparable senior positions in the Australian Public Service including the heads of statutory**

**authorities (three-years), it is extremely concerning that there are no provisions that enable the termination of CEO employment by the Governor-General based on poor performance.**

An appropriate balance between maintaining the independence of the CEO while ensuring accountability for his/her actions has not been struck in this Bill. The policy intent to preserve the independence of the CEO and decouple environmental decision-making away from the Minister has resulted in there being limited accountability measures. **This deficiency must be addressed.**

**NFF Consequential Amendments to Division 2, Section 51, Termination of Appointment**

Consequential amendments detailed (addition) in red:

***The Governor-General may terminate the appointment of the CEO:***

- **a)** ***For misbehaviour; or***
- **b)** ***If, in the opinion of the Public Service Commissioner, the EPA CEO is not achieving key performance indicators as outlined in Part 6, Section 60(2)(a)(b)(c), including:***
  - **i.** ***Non-performance, or unsatisfactory performance, of duties for a significant period of time; or***
  - **ii.** ***A demonstrated lack, or loss, of the knowledge required for appointment under Section 44;***
- **c)** ***If the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity; or***
- **d)** ***If the CEO:***
  - **i.** ***Because bankrupt; or***
  - **ii.** ***Applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or***
  - **iii.** ***Compounds with the CEO's creditors; or***
  - **iv.** ***Makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or***
  - **v.** ***If the CEO is absent, except on leave of absence for 14 consecutive days or for 28 days in any 12 months; or***
  - **vi.** ***If the CEO engages, ~~except with the Minister's approval,~~ in paid work outside the duties of the CEO's office (see Section 49); ~~or~~***
  - **vii.** ***If the CEO engages in unpaid or volunteer work outside the duties of CEO's office that is either a real or potential conflict of interest; or***
  - **viii.** ***If the CEO fails, without reasonable excuse, to comply with Section 29 of the Public Governance, Performance, and Accountability Act 2013 (which deals with the duty to disclose interests) or rules made for the purpose of that section.***

**These amendments reflect appropriate termination grounds as they are *"sufficiently serious and involve a level of misfeasance as to warrant a termination of an appointment"* (Explanatory Memorandum policy intent for this Section). They are also consistent with provisions outlined in the Australian Constitution, Australian Public Service (APS) employment requirements, and other oversight requirements.**

**Poor Performance**

**The Explanatory Memorandum states the *"the EPA Bill would provide the CEO and EPA with the appropriate legislative settings to ensure it operates independently, transparently, and effectively, <u>with a culture of continuous improvement."</u>***

It remains unclear how the policy intent for a culture of continuous improvement will be achieved if the accountable authority of the statutory entity (EPA CEO) cannot be removed for poor performance. Unlike the CEO, all EPA staff are persons engaged under the *Public Service Act 1999* and are therefore subject to upholding the APS Code of Conduct and strict values of being apolitical, and open and accountable to the Australian community. EPA staff are also subject to a broader set of termination grounds including but not limited to:

- *"Non-performance, or unsatisfactory performance, of duties"; and*
- *"The employee lacks, or has lost, an essential qualification for performing his or her duties".*

All EPA employees, including its accountable authority, must be subject to upholding the same employment values and termination grounds. This will ensure consistency in employment conditions, while ensuring the CEO is held accountable for poor or unsatisfactory performance to the same standard as his/her staff. All public officials must be held accountable for their actions by a higher authority. This is common practice; it is not a novel concept. For example, even the Australia Prime Minister can be dismissed for poor performance. The absence of a strong check and balance on public officials increases the likelihood of abuse in office.

The NFF notes that under several existing pieces of Federal legislation, Federal ministers are empowered to remove a ministerial appointee to a statutory body if the minister is of the opinion that the performance of the individual has been unsatisfactory for a significant period of time. Examples are outlined below. Based on this legal precedent, NFF argues that poor performance become a criterion for EPA CEO removal.

**Table 1:**

| **Title** | **Relevant Termination of Appointment Condition** | **Corresponding Section** | **Corresponding Minister** |
|---|---|---|---|
| **Agricultural and Veterinary Chemicals (Administration) Act 1992** | The Minister may terminate the appointment of an appointed Board member (of the APVMA):<br>If the Minister is satisfied that the appointed Board member's performance has been unsatisfactory. | Part 3, Division 2, Section 25 | Minister for Agriculture, Fisheries, and Forestry |
| **Air Services Act 1995** | The Minister may terminate the appointment of an appointed member (of Airservices Australia) if:<br>○ The Minister thinks that the performance of the member has been unsatisfactory for a significant period of time. | Part 3, Division 3, Section 32 | Minister for Infrastructure, Transport, Regional Development and Local Government |
| **Asbestos and Silica Safety and Eradication Agency Act 2013** | The Minister may terminate the appointment of the CEO:<br>If the Minister is satisfied that the CEO's performance has been unsatisfactory. | Part 3, Division 3, Section 23 | Minister for Employment and Workplace Relations |
| **Australian Communications and Media Authority Act 2005** | The appointer must terminate the appointment of a member (in this case the appointer is the Governor-General) or associate member (Minister) if the Minister is of the opinion that the performance of the member or associate member | Part 3, Division 3, Section 34 | Minister for Infrastructure, Transport, Regional Development and Local Government |

| | | | |
|---|---|---|---|
| | has been unsatisfactory for a significant period of time. | | |
| **Civil Aviation Act 1988** | The Minister may terminate the appointment of a Board member if:<br>o The Minister thinks that the performance of the Board member has been unsatisfactory for a significant period of time. | Part 7, Division 2, Section 60 | Minister for Infrastructure, Transport, Regional Development and Local Government |
| **Dairy Produce Act 1986** | The Minister may terminate an ordinary Dairy Adjustment Authority member's appointment if the Minister is of the opinion that the member's performance has been unsatisfactory. | Part 2, Division 6, Section 68 | Minister for Agriculture, Fisheries, and Forestry |
| **National Health Reform Act 2011** | The Minister may terminate the appointment of the Funding Body CEO if the Minister is satisfied that the Funding Body CEO's performance has been unsatisfactory.<br>o Before the Minister terminates the appointment of the Funding Body CEO under subsection (1) or (2), the Minister must consult the Administrator. | Part 2.3, Division 2, Section 26 | Minister for Health and Aged Care |

As stated in the *2022 Nature Positive Plan: Better for the Environment, Better for Business*[1], Federal Government's Reform Agenda to National Environmental Law will be guided by three essential principles, one of which includes *"restoring integrity and trust to systems and environmental laws".* **Expanding the CEO's termination grounds to include the above measures contributes to Government's Reform Agenda commitment and policy intent to establish a culture of continuous improvement to no detriment of independence.** This is because strong accountability measures build trust in government, discourages misconduct, and incentivises officials to act in the public interest and strive for excellence in their responsibilities.

The NFF therefore propose that that the performance of the CEO be subject to regular review (at least once annually) consistent with best-practice and APS conditions. Performance review and oversight responsibility could be delegated to the Head of the Department of Prime Minister and Cabinet or the Australian Public Service Commissioner. This would avoid direct Ministerial involvement which appears to be the policy intent of this Bill and the Government more broadly. Key performance criterion for the EPA accountable authority should include but not be limited to approval timing processes. This will ensure that if the CEO is not meeting stipulated timeframes for assessing developments, their actions are held to account by a higher authority. The NFF recognises that one of several headline objects in the developing *Nature Positive Act* is to streamline and make approval processes more efficient. It is therefore prudent that accountability measures are built into this Bill to lay the foundation for this realisation and safeguard the approval processes from potential abnormal or unnecessary delays.

[1] Department of Climate Change, Energy, the Environment, and Water, December 2022: Nature Positive Plan: Better for the Environment, Better for Business

**Paid and Volunteer Work**

Given the gravity of the position of EPA CEO, there is no justification for the CEO to undertake other paid work duties. If the CEO engages in other paid work, this should be immediate grounds for termination and not subject to a decision of the Minister. As previously articulated, the office of EPA CEO is one of significant national importance and responsibility. The CEO must remain undivided in his/her attention in executing the responsibilities of the office. This will ensure the CEO is best positioned to be acting competently in a timely manner while building public trust. NFF notes that it is also reasonable for the Minister to seek no oversight or engagement in directing the EPA undertake its responsibilities while retaining an ability to approve whether the CEO may undertake other paid work. This is an inconsistency that must be addressed and rectified.

The CEO should also be terminated if he/she engages in other unpaid or volunteer work that is either a real or potential conflict of interest. This is because as stated in the Explanatory Memorandum, the policy intent of Clause 49 is to support the independence of the role of the CEO by avoiding conflicts of interest and ensuring the integrity of the position.

## Statutory Independent Review Process

At present, proposed measures under the broader National Environmental Law reform package delegate Ministerial authorities to EPA with no review processes other than Ministerial Call-In (which is limited to the date of a decision made), change of CEO every five-years, or period reviews of at least once every five-years.

**The NFF supports the requirement that the administration of EPA be subjected to periodic review as outlined in Part 6, Section 60. We propose, however, that the first review, and each subsequent review, be conducted within 12 months of one another as opposed to the at least once every five-year period requirement. This will ensure there is an orderly transition to the new rules and a fast-track ability to overcome unintended consequences early on.**

Reviews into EPA administration will be independent, and if recommendations are outlined, the CEO is required to prepare a response to each point and arrange for this to be tabled in the House of Representatives and published online. Although this is an important accountability measure, it is flawed for several reasons. Firstly, there is no requirement for the CEO to be bound to implement recommendations provided in an independent review. As the Minister cannot direct the CEO, the CEO can effectively ignore recommendations and continue to exercise poor performance without ramification or possibility for termination. This reduces the significance and importance of this process. Reviews into EPA administration must, therefore, include CEO performance in administering National Environmental Law in addition to the mandatory measures outlined in Part 6, Section 60(2). To support this process, there must be an in-built mechanism whereby data and submissions from the public are able to inform the direction of such reviews.

**NFF Recommendation: Amend Part 3, Division 2, Section 16 to read as follows:**

***(2) A statement of expectations cannot direct the CEO in the performance or exercise of the CEOs functions or powers except for implementing a specific recommendation/s provided in an independent review into the administration of EPA.***

***(3) In preparing a statement of expectations, the Minister must:***

a) ***Have regard to any matters prescribed by the rules; and***
b) ***Have regard to recommendations provided in independent reviews into the administration of EPA.***
c) ***Prepare the statement in accordance with any requirements prescribed by the rules; and***

In addition, recognising that the CEO is appointed on a five-year basis, unless dismissed (extremely unlikely) or the Minister decides to undertake a review on a more regular basis, reviews will coincide with the closure of a CEO's term. This is a problem most likely unintended and can be easily rectified by prescribing a requirement for reviews to be conducted within a 12-month cycle.

# Nature Positive (Environment Information Australia) Bill 2024

**Unless all proposed NFF recommendations and amendments are agreed to, the NFF cannot support the passage of this Bill.**

Further clarity on how Nature Positive is defined and measured against a baseline is required. There also needs to be an in-built capability to challenge the quality of environmental data and information held by EIA (e.g., environmental mapping). This will mitigate the risk of perverse assessment outcomes and decisions from being made against landholder groups and project developers. This section also outlines discussion on the need for a greater-defined scope for EIA and the risks of changes to State of the Environment (SOTE) reporting requirements.

## Improving the Environmental Information Supply Chain

The provision of a consistent and strategic approach for collecting and holding environmental data and information will increase public confidence in the environmental assessment process and improve decision-making outcomes. It is the view of NFF that any mechanism that provides decision-makers with high-quality information and data is a positive outcome. However, there is a risk that the data system held by EIA will become a silo and there will be restrictions on the flow of data from EIA to industry and the public. **Held environmental data and information (including sensitive commercial information) must be appropriately protected and de-risked (i.e., de-identified) to build community confidence and support for EIA.** This must be the minimum standard, it remains unclear otherwise how data provided by private landholders, corporations, and farming families will be adequately protected and safeguarded. NFF understands that the EIA Head will work in partnership with Governments, academics, and other stakeholders to improve the environmental information supply chain. As primary producers regularly interact with the EPBC Act, and there currently exist several deficiencies in mapping data held by the Department with respect to land title held by primary producers, such discussions are critical and must involve the agriculture sector. Farmers should not be required to provide data.

## Capacity to Challenge Held Environmental Data and Information

**The NFF argues that there needs to be a mechanism, preferably in-built into the legislation, that enables individuals to challenge the underlying environmental data and information held by EIA (i.e., environmental mapping and spatial boundaries) regarding held land title.** NFF notes that the confidence of vegetation mapping outputs developed using satellite imagery within a Geographic Information System is limited as models are reliant upon assumptions (i.e., pixel classification) and defined category inputs. Consequently, data issues involving incorrect classification and/or distinction between landscape features and environmental attributes can emerge.

The Department has developed several publicly accessible tools to support and inform project planning under the EPBC Act. Several databases have been developed including:

- **Protected Matters Search Tool (PMST).** An online tool to identify potential protected matters on or near a project site Informed by species location maps, world heritage and national heritage places, and Ramsar wetland maps.
- **Ecological Communities of National Environmental Significance Distributions Map.** Contains spatial information and data on the distribution of EPBC Act listed ecological communities. Informed by ecological data, research information, observation records, vegetation mapping and other software modelling.

Despite the development of such tools, there are many examples and case studies that can be drawn upon that demonstrate incorrect mapping and identification of threatened species and ecological communities (i.e., Protected Matters) on held land title. For example, NFF are aware of several circumstances where satellite imagery in the PMST has failed to distinguish between a threatened ecological community and on-farm infrastructure/cultivation paddocks. Incorrect mapping of native vegetation on public and private land is also a common issue. These errors reflect underlying problems in environmental data and information held by Government and highlight the importance of there being a mechanism to challenge EIA.

It is important to distinguish that these errors are a major concern for the agriculture sector. Errors in environmental data and information can result in perverse assessment outcomes for landholders or require landholders to engage in a lengthy assessment process at their individual expense that would otherwise not be required. As farmers mostly interact with the EPBC Act in relation to the listing process for nationally threatened species and ecological communities (MNES)[2], this is a real, significant concern. The onus must be on EIA to demonstrate that environmental data and information held in its possession is correct.

Furthermore, noting that new ecological species and communities are constantly being discovered, correctly mapping Critical Protection Habitat Area is challenging and prone to under/over-estimation. EIA must be adequately resourced to face these challenges.

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[2] Wendy Craik AM, September 2018: Review of Interactions Between the EPBC Act and the Agriculture Sector – Final Report

## Nature Positive Definition and Parameters

**Nature Positive Definition**

**Nature Positive has been defined to be *"an improvement in the diversity, abundance, resilience, and integrity of ecosystems from a baseline".*** NFF oppose the proposed definition for Nature Positive, this definition is unfit-for-purpose. Key definitional terms are lacking and need to be clearly defined upfront in EIA legislation. The defining of baselines must only occur at the national scale, baselines must not be used as a regulatory tool for biodiversity recovery (there are other mechanisms that may be used for the later role, for example, a biodiversity market). The threshold established for achieving Nature Positive is also too ambitious and limiting; it will be virtually impossible to achieve all four conditions simultaneously.

Nevertheless, the NFF welcomes the Section 6(3) provision that Nature Positive can be achieved by reducing the abundance of a species (e.g., key threatening process including feral cats). It remains unclear, however, whether such species needs to be identified as a key threatening process in a Conservation Planning document or Recovery Strategy, or whether broader environmental data will suffice. We appreciate this is a separate discussion beyond the scope of this Inquiry. This will need serious consideration in Tranche 3 of the Nature Positive Plan.

**NFF Recommendation:**

**Part 1 Section 6**

**(1)** ***Nature Positive is a national-level improvement in the diversity, abundance, resilience and integrity of ecosystems from a baseline.***
***Note: The Head of Environment Information Australia must determine a national baseline for nature positive (see subsection 13(2)).***

**Nature Positive Baseline**

As outlined in the Environment Law Amendments and Transitional Provisions Bill, the EIA Head must develop a monitoring, evaluation, and reporting framework, and determine a baseline for the purposes of defining Nature Positive under Subsection 6(1) of the EIA Bill no later than 31 December 2025. The NFF argues that a baseline should not be retrospectively established, it will be challenging to establish a baseline supported by high-quality data that accurately represents a historical state of national biodiversity as baselines can be positively and negatively influenced off a broader trajectory due to anomaly events. This must be factored into consideration by the EIA Head in consultation with other experts.

**We seek clarification on what a baseline means and how it will apply and at what scale. Nature Positive must apply at the national scale and not for individual projects or properties. No definition for baseline has been provided by the Department. It remains unclear what data will be used to underpin a baseline. As Australia's nature and biodiversity are reported to be on a declining trajectory, it will be challenging to demonstrate progress against a retrospective baseline** reflective of a point in time (which is currently being proposed in the House of Representatives). This reality needs to be recognised and supported through meaningful co-design between regulated industries and

the EIA Head to determine what an appropriate baseline should be. This process cannot be unnecessarily rushed or pre-determined.

**NFF Recommendation:**

**Part 1 Section 6**

***A national baseline is a national data set developed by the EIA for the sole purpose of State of the Environment reporting, which gives a moment in time assessment of biodiversity information.***

**Part 2 Section 13**

**(2)** ***The Head must determine a national baseline for the purposes of State of the Environment reporting and for Subsection 6(1) (definition of Nature Positive).***

**Explanatory Memorandum**

***The national baseline will not be used to assert performance requirements at the project, property or other subnational scale. It is only to be used as a national output and global input.***

Separately, the Bill does not clarify whether the Nature Positive baseline can be adjusted once established. This may be necessary if the original baseline is too ambitious, and successive SOTE reports demonstrate poor progress outcomes despite there being measurable year-over-year gains in either of the four above conditions.

## State of the Environment Reporting

The NFF holds concerns with the requirement for SOTE reports to be prepared and published on a two-year period as opposed to a five-year basis. Although an increase in reporting frequency will ensure SOTE reports are more clear-cut and data-centric, there is a risk that this will render SOTE reporting less comprehensive and reflect more of a tabular update. There needs to be confidence that data included for each relevant section in a SOTE report is of high quality and addresses all aspects of the natural environment. This will ensure a linear progression on the SOTE can be determined, measured, and assessed.

SOTE reporting must be an entirely data-driven process and not reflect the views of committees including the views of limited representation of individual subject-matter experts. This will ensure reporting is grounded by a robust, defensible evidence-base and reporting outcomes are not the product of individual bias but rather a reflection of scientific certainty.

SOTE reporting must also draw upon and reflect the knowledge and insights of groups beyond Aboriginal and Torres Strait Islander peoples. This is an important accounting process that reports against a range of environment subject material. This cannot become a process whereby the views of certain stakeholder groups are given reserved preference over others.

**NFF Recommendation: Part 2, Section 14(3) be expanded to read as follows:**

**(3)** ***In particular, a State of the Environment report is to draw on and reflect the knowledge and insights of:***

**a.** ***Persons with scientific expertise in relation to the state of the environment; and***

b. ***Persons with knowledge and expertise in agriculture and biodiversity; and***
c. ***Aboriginal and Torres Strait Islander peoples, recognising the significance of Aboriginal and Torres Strait Islander peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity.***

# Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

**Unless all proposed NFF recommendations and amendments are agreed to, the NFF cannot support the passage of this Bill.**

This Bill outlines transitional arrangements to amend relevant sections of the EPBC Act and nine existing Federal Environmental Laws to provide the responsibilities and provisions necessary to enable EPA and EIA to function. The Bill also expands auditing powers, introduces new Environment Protection Order abilities, increases in criminal and civil penalties for serious contraventions to National Environmental Law, and a new civil penalty formula for calculation purposes.

## Auditing Powers

The expansion of circumstances and matters for which directed environmental audits are available under the EPBC Act as provided in New Division 12 is a concern to the NFF. It is troubling that the EPA CEO may direct environmental audits be undertaken without notice by an authorised officer or registered auditor in relation to authorities, exemptions, and orders granted under the EPBC Act even if a project is in compliance with obligations and other undertakings. Auditing powers and resources must be reserved for investigations of non-compliance. It is unreasonable for complying individuals and projects to be strictly monitored without undue cause.

## Environment Protection Orders

Environment Protection Orders are effectively *'stop work orders'.* As outlined in Section 474A, the Minister can issue an Environment Protection Order if he/she reasonably believes that an individual is in contravention or likely contravention of the EPBC Act or an approval condition that causes or poses an imminent risk or serious damage to a prescribed matter and such issuance is necessary to address this. **Such powers will transfer to the EPA CEO upon establishment of EPA.**
**The NFF argues that there must be stronger safeguards applied against the Minister and EPA CEO regarding the ability to issue Environment Protection Orders.** In recognition that this is a significant and new power that has the potential to indefinitely shut-down development, Environment Protection Orders must only be wielded in cases where there is demonstrable, sufficient evidence that a contravention has occurred. This aligns with similar powers utilised in other State and Territory jurisdictions and the policy intent which is to ensure orders are utilised to address *"egregious offences"* and *"time-sensitive matters".*

As stated in the Wendy Craik AM *Review of Interactions Between the EPBC Act and the Agriculture Sector 2018 Final Report,* farmers mostly interact with the EPBC Act in relation to the listing process for nationally threatened species and ecological communities (MNES).

Recognising that the Bill enables Environment Protection Orders to be issued against a *"likely contravention"*, and there exist a multitude of examples that demonstrate incorrect mapping and identification of threatened species and ecological communities (i.e., Protected Matters) on private land, there is a reasonable likelihood that farmers will be unfairly targeted by this new power. As such, NFF propose the following recommendations for consideration.

**NFF Recommendations**

1. ***The current legislation does not allow an individual subject to an Environment Protection Order to have the order reviewed on its merits. NFF argues that individuals must be notified and provided formal expedited opportunity to appeal such a decision within a limited, yet reasonable, timeframe (preferably 14 days)***.

   This recommendation will mitigate the risk for incorrect application against an individual resulting in significant incurred financial and legal costs to no remedy (i.e., economic costs attributed to delay and, legal advice, foregone economic benefit, etc.). This is also a consistent measure with similar State and Territory jurisdictional powers. For example, individuals served with an Environment Protection Order by the South Australian EPA have 14 days to appeal the order.

2. ***All Environment Protection Orders must have clearly defined expiration timeframes and restrictions preventing a rolling-issuance action against the same identified contravention (unless new material evidence emerges).***

   Environment Protection Orders can only be lifted at the discretion of the decision-maker's discretion (Minister or EPA CEO once EPA is established) or if the specified time in the order has elapsed. This NFF recommendation ensures that the risk for potential abuse by the EPA CEO (whom we note there is limited oversight and no termination capability for poor performance) is checked as it removes the capability for orders to be indefinitely applied. This recommendation will also ensure that the identified action is addressed in an immediate manner to avoid undue cost incurred by the individual. Establishing clear expiration timeframes is a consistent measure utilised by other State and Territory jurisdictions. For example, the NSW EPA can issue a Stop Work order for a maximum of 40 days only.

3. **Natural Justice Hearing Rule (Schedule 11, Part 1, 474G)**
   The Minister is not required to observe any requirements of the natural justice hearing rule in relation to the issue or variation of an EPO. **NFF seek to have this provision removed.**

## 'Climate Trigger'

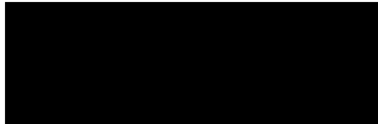
While a potential climate trigger remains speculative and not addressed in either of these Nature Positive Bills and by extension this Inquiry, given the significance of such a measure, it is prudent for NFF to articulate our policy position. The NFF does not support incorporation of a climate trigger into the EPBC Act. It is our view that any discussions relating to emissions must be considered and treated as separate from the EPBC Act that is in climate legislation. We note that this Senate Committee has opposed incorporation of a climate trigger into the *Climate Change Act 2022* on the basis that:

- Government have implemented several reforms: the Safeguard Mechanism and National Health and Climate Strategy outline priorities and action to address climate change; and
- The Safeguard Mechanism allows for direct project emissions that Australia is responsible for under the Paris Agreement to be addressed consistently to achieve targets legislated by Parliament[3].

## Conclusion

The NFF thanks the Senate Standing Committees on Environment and Communications for the opportunity to provide a submission to this Senate Inquiry. We await further engagement and coordination with the Secretariat. Please do not hesitate to contact Warwick Ragg, General Manager, Natural Resource Management, via e-mail: WRagg@nff.org.au at the first instance to progress this discussion.

Yours sincerely,



**CHARLES THOMAS**
Acting Chief Executive Officer

[3] Senate Environment and Communications Legislation Committee, July 2024: Final Report – Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023

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