National Farmers Federation

# Environment Protection Reform Consultation: Subordinate Legislation

June 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) regarding the *Environment Protection Reform Consultation: Subordinate Legislation* public consultation process.

**NFF does not support the current implementation direction of reforms to the *Environment Protection and Biodiversity Conservation* (EPBC) *Act 1999*, including the proposed Tranche 2 package and *National Environmental Standards* (Standards) released thus far for public comment and scrutiny.** Following the passage of the *Environment Protection Reform Act 2025,* focus and attention has now shifted toward implementation of the many arrangements established under the reformed framework. The regulatory burden that has now been placed upon farmers post-reform is significant and is creating major concern and distress. This burden is being compounded by the absence of clarifying guidance on how low-risk and routine agricultural activities are to be treated under the revised framework, including whether such activities will be exempt or otherwise clearly distinguished from actions requiring assessment. This uncertainty is particularly acute given the absence of a clear commitment to urgently update outdated agriculture-specific guidance materials, including the *2013 Significant Impact Guidelines 1.1 for Matters of National Environmental Significance* (MNES). This is despite provisions in the *Federal 2026-27 Budget* to support compliance and extension. The practical effect is that 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).

The practical operation of the new framework for agriculture will be substantially determined by how the regulations, Rules, guidance materials, Rulings, Protection Statements, Registers, data arrangements, and compliance practices are designed and subsequently implemented. NFF has always championed reforms that provide clear, efficient, and more predictable decision-making while maintaining appropriate environmental protections. We remain concerned that the proposed Tranche 2 package

has been substantially brought forward at speed. This is occurring before the full regulatory framework (i.e., *National Environmental Standards*) has been designed, road-tested, publicly consulted on as a consolidated item, or assessed for its cumulative impact on agriculture. This is despite previous indications and statements that later-2026 would be the relevant implementation horizon. Our comments, concerns, and recommendations as it relates to the proposed Tranche 2 package are addressed below.

## Data Sovereignty and Compulsion, and Interaction With Farmers' Obligations Under National Environmental Law

NFF supports the use of high-quality data to inform environmental decision-making and recognise that the *National Environmental Standard for Data and Information* is currently being drafted in preparation for public comment (imminent). It is our view that a consistent and strategic approach to collecting, holding, and utilising environmental data can improve public confidence and support better decision-making outcomes, however, this is ultimately dependant on the data itself (and the mapping products or decision-support tools that it informs) are in-fact accurate and appropriately governed. There is also a broader issue around data sovereignty and ensuring farmers' data remains in their hands.

NFF has previously raised concerns about environmental data and information arrangements in submissions to the 2024 and 2025 Senate Inquiry processes into the EPBC Act.

In those documents, we emphasised the need for the following key measures:

- *Held environmental data and information (including sensitive commercial information) must be (at the minimum) appropriately protected and de-risked (i.e., de-identified). This is necessary to build confidence among farming families and agricultural businesses that data provided to Government is properly safeguarded.*

- *In recognition of agriculture's regular interaction with the EPBC Act and broader mapping products to support compliance management, that agriculture is consulted and involved in discussions relating to environmental data system design.*

- *Provide mechanisms for landholders to challenge Government-held environmental data and information (inclusive of mapping products) in the spirit of supporting continuous improvement to National Environmental Law.*

NFF understands that the subordinate legislation does not create a general mechanism to compel farmers to provide data beyond existing statutory requirements and we seek to ensure this remain the case. Despite this, it is important to recognise that farmers may still be required to provide information as part of referral, assessment, or approval processes. Once provided to the Commonwealth, we understand that environmental data and information can then be held, shared with *Environment Information Australia* (EIA), and/or otherwise utilised to inform broader regulatory or other functions (i.e., Protection Statements, Rulings, decision-support tools, mapping products, etc.). This creates a material risk that data provided for a narrow assessment purpose may later inform broader regulatory tools or compliance settings without landholder consent (i.e., data sovereignty issue).

For example, an ecological survey may record a threatened species that was briefly present many years prior due to drought or an unusual movement event without the species occupying the property on an ongoing basis or the property otherwise being identified as critical habitat. If that record is later absorbed into Government mapping (i.e., through disclosure during an assessment process or through information-sharing arrangements associated with how the evidence was derived) without an appropriate confidence rating or risk stratification, it may incorrectly characterise the land as habitat. The end product is a worse and more uncertain operating environment for farmers seeking to understand their obligations under Federal law. If poorly contextualised data is integrated into broader mapping and/or decision-support tools, it risks embedding those mischaracterisations into future Self-Assessment and referral processes for agriculture which will increase compliance uncertainty and place further pressure on what is already a sub-optimal (at-best) system.

This risk is compounded where Self-Assessment settings are unclear and risk-adverse as it relates to what constitutes routine and low-risk farm practice which remains the case. In the absence of clarity, landholders are being pushed toward referring business-as-usual agricultural activities simply to manage legal uncertainty, even where approval should not be required. This would result in the Commonwealth receiving more farm-level ecological, spatial, and operational data and information than would otherwise have been the case. That data may then feed back into Commonwealth systems in a way that compounds the original uncertainty. In this sense, poor Self-Assessment settings are also a data-governance risk. This is particularly concerning where a landholder provides information in good-faith to satisfy Commonwealth referral or approval requirements, only for that information to later inform overly broad or risk-averse mapping and decision-support tools in a way that increases future regulatory uncertainty. Routine agricultural activity should not be pushed toward referrals because of a failure to provide clear and fit-for-purpose guidance. If the Commonwealth intends to regulate environmental matters through mapping and data-driven decision-support tools which is the case, the onus must remain on it to ensure such tools are accurate and reliable, and stratified by risk in accordance with areas of known and critical habitat.

# Protection Statements

## Clarifying Interaction With Existing Materials

Protection Statements must not become catch-all instruments that shift responsibility onto farmers to demonstrate that there is no Significant Impact. Agriculture already faces significant uncertainty in interpreting Significant Impact and what constitutes a continuous-use practice, as well as navigating ambiguous and risk-averse interpretations of known, likely, and potential habitat.

NFF recognises that the consultation material provides some explanation of the intended statutory role of Protection Statements. The Department states that Protection Statements *"can help clarify and combine aspects of existing Recovery Plans, Conservation Advices, and policies to guide decision-making under the EPBC Act"* and that other statutory documents can still be taken into *account "where relevant".* NFF also understands that Protection Statements are intended to identify what must be protected to ensure the survival and recovery of threatened species or ecological communities, including matters relevant to critical habitat and Unacceptable Impacts.

However, the practical interaction between Protection Statements and other instruments remains unclear. The consultation material does not explain how Protection Statements will interact with Significant Impact Guidelines, Bioregional Plans, mapping products and tools, or future Standards where these may overlap or conflict with one another. This distinction matters because broader habitat guidance is broadly encompassing whereas Protection Statements appear likely to carry greater weight in identifying what must be protected for a species or ecological community's survival and recovery. How these instruments are intended to operate together including what prevails under what circumstance needs to be clarified. It will be important to consider how Protection Statements interact with Unacceptable Impact definitions and how that expectation may impact on the agricultural sector.

## Protection Statement Workshops

NFF is concerned by the current process for participation in Protection Statement workshops. NFF sought involvement in the design and road-testing of the current Protection Statements. The response received acknowledged our interest but did not confirm participation nor how agricultural representation will be accounted for. This is inadequate as the proposed pilot Protection Statements will materially affect agricultural land particularly as it relates to, for example, the *Regent Honeyeater*. If these instruments are intended to support proponents and decision-makers, they must be developed with the people expected to use them.

## Scoping Parameters

A central issue is how Protection Statements will deal with habitat. If Protection Statements are intended to clarify what must be protected for the survival and recovery of a species or ecological community, they must identify those matters with precision. This includes clearly distinguishing known habitat from likely or potential habitat and identifying where habitat is genuinely critical to the survival of a species. Equally, there does not appear to be any assessment stratification between Critically Endangered, Endangered, Threatened, and Vulnerable. As we progress with implementation, the threshold species should rightly get a higher priority, and it follows that less threatened are less intrusive in the assessment process.

Recent draft *EPBC Act Information Documents* for the *Red Goshawk* and *Grey Snake* currently open for public comment highlight this exact issue. The *Red Goshawk* consultation material refers to new developments being sited away from *"known or likely breeding habitat"* with a *"minimum buffer of 4 km*[1]*"* and the *Grey Snake* material refers to concepts like *"best-on-offer"* habitat and a *"50 m buffer*[2]*"* around that. While we understand that these documents are separate from Protection Statements and serve (in theory) a different use-case, they do nevertheless demonstrate a broad and deeply

[1] May 2026, Australian Government, Department of Climate Change, Energy, the Environment, and Water: *Draft EPBC Act Information for the Red Goshawk (Erythrotriorchis radiatus)*

[2] May 2026, Australian Government, Department of Climate Change, Energy, the Environment, and Water: *Draft EPBC Act Information for the Grey Snake (Hemiaspis damelii)*

concerning preference on ambiguous catch-all habitat language and buffer-based approaches to environmental assessment and compliance risk management.

NFF is also aware that Pilot Workshop discussions have discussed in-depth consideration of buffers around likely habitat and attributes in the landscape (i.e., buffer-on-buffer approach). This is significantly concerning. If Protection Statements are intended to identify what must be protected for survival and recovery, they should properly identify habitat that is critical to that purpose. They should not place buffers around broad or poorly defined likely habitat and present that as certainty for proponents seeking to engage in good-faith. **If this approach is adopted, it is unclear what value Protection Statements will add beyond existing materials (i.e., Recovery Plans, Conservation Advice, etc.).** It would also shift the burden onto landholders to disprove a Significant Impact or a habitat value, rather than requiring the Commonwealth to identify and ground truth the habitat as genuinely critical to ensure it is based on *"accurate and high-quality information"* as stated under Draft Regulations 8AA.01(c). This would impose significant additional financial and administrative costs onto producers to hire expertise to disprove existence of an Unacceptable Impact (the statutory test), so that development can proceed.

On this point, NFF is concerned that broad Recovery Plan habitat concepts may be incorporated into Protection Statements without sufficient refinement in scope. If this occurs, large areas of land may become practically constrained from development or land-use change without a clear evidentiary basis. This would be an extremely poor outcome for agriculture and regional development more broadly and is best showcased by the example of the *Regent Honeyeater.*

The distribution map provided in the relevant National Recovery Plan for the *Regent Honeyeater* articulates an extremely large and expansive potential range of habitat spanning across multiple States and much of the Eastern Seaboard despite species distribution being extremely small at no greater than 300 pairs **(Figure 1).**

If broad potential distribution material of this nature is carried forward into Protection Statements without any ground-truthing, risk stratification, or attempt to clearly delineate between potential habitat and critical habitat for survival, it risks embedding broad habitat assumptions into future Self-Assessment and referral processes in a way that materially expands regulatory uncertainty and cost for producers. Put simply, overestimating the range visually not only dilutes the importance of the protected matter but also creates significant perverse outcomes for those seeking to operate under *National Environmental Law* in good-faith.

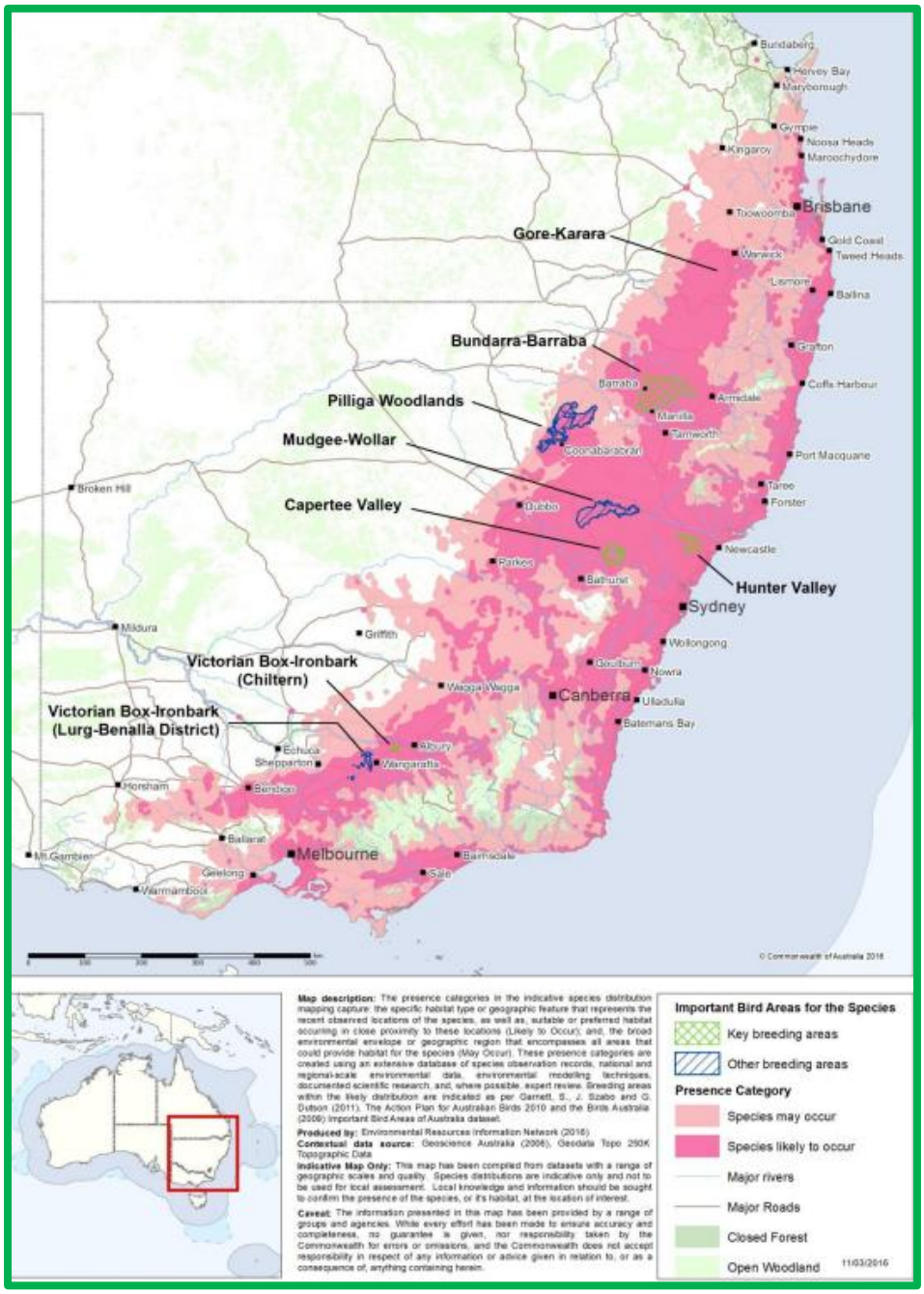


**Figure 1:** *Regent Honeyeater distribution*[3].

For many species (particularly birds and highly mobile species), a tree or patch of vegetation may be used incidentally without being habitat that is critical to breeding, foraging, roosting, sheltering, or persistence. Protection Statements must avoid treating every possible occurrence or habitat attribute as a regulatory trigger. A bird landing in a tree does not automatically make that tree critical habitat to the survival of that species. At present, we are not confident that this distinction is sufficiently understood or being

[3] April 2016, Australian Government, Department of the Environment: *National Recovery Plan for the Regent Honeyeater (Anthochaera phrygia)*

stratified in any sense to provide certainty and clarity for proponents and assessment offers (i.e., decision-makers) seeking to operate under *National Environmental Law.*

NFF continues to seek guidance materials and mapping resources (whether than include Protection Statements) that apply a risk-stratified approach to habitat and threatened species and ecological communities. This should be first prioritised for species that commonly interact with agricultural land-use and frequently give rise to the Act as this is where clearer guidance would provide the greatest practical value for producers.

Separate to this, NFF also raises the issue of information asymmetry between the Commonwealth and individual landholder proponents. The Commonwealth holds substantial environmental data and information regarding the location and extent of threatened species and ecological communities. Where this information is relevant to a landholder's obligations under *National Environmental Law,* the Commonwealth should commit to better and more targeted information-sharing with affected landholders, specifically in circumstances where such information has not been publicised for whatever reason.

This is ultimately an equity and natural justice issue. Landholders are expected to understand and comply with obligations under the EPBC Act yet may not have access to the same information held and used by the Commonwealth to inform assessment and compliance processes. The Commonwealth cannot fairly require landholders to manage legal risk under Federal law while withholding, or failing to make available, information that is directly relevant to the presence of protected matters on or near their land.

NFF acknowledges that this is a nuanced issue, particularly where information relates to high-value or critically endangered species and may need to be managed carefully to prevent illegal disturbance or other harm. However, that does not remove the Commonwealth's obligation to ensure landholders have access to the information reasonably necessary to understand and comply with the law.

# National Environmental Protection Agency

## Compliance Powers

NFF does not support the proposed acceleration of NEPA compliance powers, increased penalties, and auditing arrangements to 1 July 2026. These arrangements should not commence until the broader reform package is sufficiently developed, including supporting guidance, education and awareness activities, implementation materials, decision-making tools, and assessment of impacts on agriculture. Farmers must have practical clarity about their obligations, compliance expectations, and regulatory exposure before these powers are activated.

## Advisory Group Function

Consistent with previous reform recommendations made under the Craik Review and prior NFF submissions, it remains our position that agricultural expertise must be represented across all existing and newly established advisory mechanisms operating under the EPBC Act, including through the NEPA *Advisory Group* function. This is necessary to ensure the functions conferred on NEPA through the transitional amendments are informed by agricultural land management realities and do not give rise to poor regulatory practices. The agriculture sector is heavily exposed to the practical operation of *National Environmental Law.* Farmers and landholders are expected to understand and manage complex obligations relating to MNES, Significant Impact, habitat, threatened species, ecological communities, referrals, approvals, and compliance risk often in circumstances where available decision-support tools remain unclear or incomplete. It is therefore essential that NEPA's advisory arrangements include expertise that reflects the realities of agricultural production and land management practice.

## Minister's Statement of Expectations

The *Minister's Statement of Expectations* should be the primary avenue for giving effect to this requirement unless a separate binding or equivalent mechanism is established. The Statement should expressly recognise that farmers are responsible environmental stewards of a significant proportion of Australia's landscape (approximately 50%) and that agriculture is to be represented on the *Advisory Group,* should it be established, to inform NEPA's decision-making and compliance approach.
The Statement should also make clear that the NEPA *Chief Executive Officer* and relevant decision-makers are to have regard to and act consistently with existing and emerging agriculture-specific guidance materials when making decisions or developing compliance approaches relevant to agricultural land-use. This should include at a minimum the *EPBC Guide for Agriculture* currently being developed with the sector together with any other guidance materials developed for agriculture. It would otherwise be counterproductive and may set a poor precedent if NEPA's decision-making and compliance settings were to develop in a way that is disconnected from these materials, particularly given their purpose is to address longstanding uncertainty regarding treatment of continuous-use especially under these reforms.

NFF also seeks the inclusion of, or requirement to develop, a dedicated *Code of Compliance Conduct* through the *Minister's Statement of Expectations* or an equivalent binding mechanism. This Code should set clear expectations for how NEPA will undertake compliance activities involving farmers and landholders. It should support a proportionate, risk-based, and cooperative compliance approach to avoid an unnecessarily punitive or adversarial posture and should be framed by recognition that food and fibre production is a national strategic priority. The Code should also require NEPA's compliance approach to be consistent with the principles of *Ecologically Sustainable Developmen*t (ESD). This is necessary given the significant deficiencies identified in our submission on the proposed Standard for MNES regarding the Principles-led approach to implementation, particularly, the absence of any pathway to ensure ESD is given practical effect in decision-making, consistent with the Objects of the EPBC Act **(Attachment 2).**

A *Code of Compliance Conduct* is necessary to ensure NEPA's compliance posture is transparent from commencement and does not transfer unresolved uncertainty in the framework onto farmers and landholders. In particular, the Code should recognise that many farmers will be seeking to comply with complex obligations in circumstances where agriculture-specific guidance remains either ambiguous or under development. Compliance activity should therefore distinguish between deliberate non-compliance and good-faith attempts to understand and apply unclear legal obligations.

## Register of Registrable Decisions and Register of Prescribed Matters

NFF raises significant concerns regarding the proposed *Register of Registrable Decisions* and *Register of Prescribed Matters*. NFF understands that the establishment of Registers is provided for under the Act and that the scope and content of information to be published will be addressed through subordinate Rules. This is an important distinction because the Rules will determine whether publication operates as a proportionate transparency measure or creates unfair consequences for farmers and landholders. It is therefore critical that the Rules are carefully balanced and include appropriate safeguards.

NFF supports (in-principle) measures that aim to improve transparency. However, publication settings must not expose farmers and landholders to unfair reputational harm, activist targeting, privacy risks, or commercial damage where no breach of National Environmental Law has been established. A matter should not be published in a way that implies wrongdoing where it remains unresolved, is subject to review or appeal, does not involve an admission of liability, or reflects cooperative engagement between the regulator and landholder. This is an important consideration because publication on a Commonwealth Register gives a matter an official character. Even where a matter is procedural or being worked through in good-faith, a public listing can create a perception that wrongdoing has occurred. Similarity, audits, notices, and directions (as referenced in Consultation Paper 1 for instance) may also identify matters for investigation or clarification without establishing an actual breach.

A public Register that fails to account for or clearly state this nuance upfront risks misleading the public and unfairly exposing landholders to targeted external scrutiny and reputational harm. It may also enable third parties to use published information for their own advocacy purposes, placing additional pressure on the Department and NEPA to divert critical resources away from assessment and toward compliance activity even where no breach has been established.

This creates a lose-lose outcome as landholders are exposed to unnecessary scrutiny while finite regulatory resources are drawn away from assessment processes, meaning further delays. This risk is heightened where the published matter does not establish wrongdoing or remains part of a good-faith process between the regulator and landholder. It may also undermine cooperative compliance work between the Department, NEPA, and individual. The result may be a more adversarial compliance culture where parties are less willing to engage constructively to resolve issues. Accordingly, we seek to ensure that such matters of detail are carefully scoped in balance of these risks.

## Rulings Capability

NFF has significant concerns about the early commencement of Rulings capability. Rulings should be used as intended which is to serve as a reactive tool to clarify matters in need of guidance following implementation of the new Act and establishment of all supporting instruments. Rulings must not be used pre-emptively to lock-in contested regulatory interpretations before the full framework has been publicly consulted on and finalised which we note remains the case at-present.

This concern is significant as key elements of the reformed framework remain unresolved. For instance, Standards are still being developed in their totality and agriculture guidance materials remain incomplete, not yet fit-for-purpose, and subject to continual improvement through discussions ongoing with the Department. Additionally, Self-Assessment processes and compliance settings have not yet been demonstrated in-practice. In this context, early Rulings risk answering questions before the system has been properly established and tested and this is not supported. While we do see value in Rulings from a compliance risk perspective, again, such matters must be designed in partnership with the sector to address real observed issues that become self-evident post-commencement (likely after 1 July given where we are at).

# 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 (November 2025): Senate Inquiry Into the Environment Protection Reform Bill 2025 and Six Related Bills.***
2. ***NFF Submission (May 2026): National Environmental Standard for Matters of National Environmental Significance.***

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Leading Australian Agriculture

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