National Farmers Federation

Queensland Productivity Commission Inquiry: Impact of the Australian Government's 2025 Environment Protection Reforms on Queensland

August 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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Introduction

The *National Farmers' Federation* (NFF) welcomes the opportunity to provide a submission to the *Queensland Productivity Commission* (Commission) regarding its Inquiry into the *Impact of the Australian Government's 2025 Environment Protection Reforms on Queensland* (Inquiry). Although this Inquiry is focussed on the Queensland context, it is important to recognise that the issues arising from the Commonwealth's amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) are national in-scope and will have far-reaching implications across all jurisdictions. Nevertheless, and as the Commission has pointed out, Queensland provides a clear and immediate case study of the practical implications of these reforms given the scale of agricultural, forestry, and fisheries production in the State, the extent of Commonwealth regulatory overlap, and the importance of routine land management across productive landscapes.

The environment protection reforms passed by Federal Parliament in December 2025 significantly alter the operation of the EPBC Act, continuous-use requirements, treatment of *Matters of National Environmental Significance,* and the parameters governing assessment and decision-making (i.e., establishment of *National Environmental Standards* (Standards), *National Environmental Protection Agency* (NEPA), and other statutory test requirements and functions). The reforms will also shape the operation of bilateral agreements and accreditation arrangements (in due course) and use of environmental data and information.

The primary legislation has now passed, and the agriculture, forestry, and fisheries sector must now operate within the revised statutory framework enacted by Parliament. NFF recognises that many of the formal Commonwealth consultation processes have either concluded or are well advanced towards finalisation, and that legislation will not be revisited. The immediate task is therefore to ensure that the broader framework is designed and implemented in a manner that is sensible, efficient, fit-for-purpose, proportionate, and complementary to the realities of the farm sector.

NFF has provided detailed technical submissions on each major component of the Commonwealth's *National Environmental Law* reform package including but not limited to the following:

- *Primary legislation through successive Commonwealth Senate Inquiry processes, including the Nature Positive Bills Inquiry and the Environment Protection Reform Bill 2025 and Six Related Bills Inquiry;*
- *Tranche 2 subordinate legislation package;*
- *Proposed National Environmental Standards for;*
    - *Matters of National Environmental Significance (MNES);*
    - *Environmental Offsets;*
    - *Data and Information; and*
    - *Community Engagement.*
- *Other statutory Review processes including the Independent Review of Interactions Between the EPBC Act and the Agriculture Sector (Craik Review) and the Samuel Review.*

These submissions are attached from **Attachment 1** and should be read in conjunction with this document. This submission does not seek to rehash the above arguments but rather draw together NFF's concerns as they relate to the Inquiry's focus on regulatory burden, pre-approval compliance, duplication, economic impacts, implementation risk, intergovernmental arrangements, and the practical consequences for Queensland agriculture and the national farm sector.

NFF also highlights the analysis conducted by NFF Member *AgForce Queensland Farmers Limited* (AgForce) regarding the practical and economic impacts of the reforms on Queensland producers, most recently articulated in a EPBC Report. NFF's submission should be read as complementary to that analysis.

Summary Position and Key Concerns

The central issue for the sector is that the reforms have created additional uncertainty around routine operations, land management, compliance risk, and future investment. Producers require legal certainty to continue producing food and fibre. Their obligations must be clearly articulated, proportionate, and capable of being understood and navigated without undue reliance on consultants whose involvement impose material financial and administrative costs for farm business which we note already operate on tight margins. It is our view that these reforms have not yet delivered this level of certainty.

NFF has repeatedly stated that the EPBC Act has not worked well for the environment or for business, a position reflected in successive statutory Reviews. The *Craik Review*[1] remains particularly relevant as the first and only sector-specific review of the Act. It identified longstanding issues for the sector including unclear and inaccessible guidance, deficiencies in mapping and habitat information at the farm-scale, dual consent and regulatory overlap, and the difficulty producers face in determining when routine land management activities may trigger Commonwealth obligations. These issues have not yet been resolved.

Despite over two decades of advocacy, it remains the case that the information systems that accompany this legislation are inadequate. There are three key areas of concern:

- *The mapping is developed using species occurrence records, environmental data, and expert advice about species traits and habitat requirements. It applies a precautionary approach to identify species distribution, including broader areas of potential habitat where a species may occur (resulting in a maximum possible range). This system is recognised by the Department as poor to the extent that while the Protected Matters Search Tool provides broad interpretation, it cannot be relied upon to inform decisions. What is required are mapping systems that identify where critical habitat for species are and the range of Key Threatening Processes that apply to each species. These then must be able to be relied upon by farmers to make decisions. This will substantively remove the need for farmers to engage*

[1] 2018, Wendy Craik: [Review of Interactions Between the EPBC Act and the Agriculture Sector]() *(Independent Report Prepared for the Commonwealth Department of the Environment and Energy)*

and/or employ consultants to assure them they are not likely to have a Significant Impact on MNES;

- *The above point feeds into a need for a Government/industry developed decision support tool, while there is interest this needs urgent progression to enable farmers to make informed decisions; and*
- *There is no interest or effort to stratify the threat matrix to response. It stands to reason that if something is at a high-level of threat (Endangered or Critically Endangered) then it should have more focus than lower threat level (Vulnerable or Threatened). There is no evidence of the consideration of a stratified response depending on the threat level, and this is critical when considering landscape scale impacts. It is incongruous that a variable threat level can exist but no commensurate level of response in the context of what is a Significant Impact. This needs addressing and progressing with urgency.*

At a high-level, the regulatory burden now placed upon farmers post-reform is significant and creating major concern and distress. NFF is aware of producers delaying, modifying, and/or abandoning development and land management activities entirely (including those that may deliver positive environmental or productivity outcomes) because of regulatory risk and a lack of confidence in their ability to understand and comply with their obligations. These perverse outcomes are being compounded by the absence of clear guidance on how low-risk and routine agricultural activities are to be treated, 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 firm commitment to urgently update outdated agriculture-specific guidance materials, including the *2013 Significant Impact Guidelines 1.1 for Matters of National Environmental Significance.*[2]

NFF is working with Commonwealth Department officials in good faith to develop an *EPBC Guide for Farmers* document. While the Guide will be beneficial from a communication standpoint, there is recognition that it will not be perfect in the sense that it will provide the level of specificity or legal certainty and assurance sought by producers.

Separately and in addition, NFF notes that the broader Commonwealth consultation process to-date has deviated substantially from what would ordinarily be expected for reforms of this scale and consequence. No comprehensive *Regulatory Impact Statement* or agriculture-specific assessment has been undertaken to understand or quantify the impact of the reforms to the sector. Rather, the Commonwealth has relied on broader analytical work associated with the *Samuel Review* and subsequent policy development, including an addendum to the Review which was used as an *Impact Analysis Equivalent* to inform decisions on the 2025 Reform Bills. This does not amount to a dedicated agriculture-specific assessment of the legislation ultimately enacted, or, of the combined effects of subordinate legislation, Standards, bilateral arrangements, and other administrative and compliance settings. There is a significant structural issue here whereby there was no analysis of impact, or even commentary on, due to the adjustment of Section 43B

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[2] 2013, Department of the Environment, Commonwealth of Australia: *Matters of National Environmental Significance: Significant Impact Guidelines 1.1 – Environment Protection and Biodiversity Conservation Act 1999*

continuous-use exemptions that were not contemplated in the Samuel Review nor the consultation process.

This is particularly concerning given the legislation includes an embedded (and novel) non-regression principle, while subordinate instruments relating to Tranche 2 have been brought forward with unclear timelines. The accelerated process is occurring in the new assessment and compliance context despite core regulatory functions either not yet being finalised (i.e., Standards) or consulted on in a formal public setting (i.e., *First Nations Engagement Standard*). This renders it nearly impossible to understand the full regulatory, operational, and economic implications of the proposed framework, let alone identify unintended consequences and address areas of duplication in legal drafting across Standards.

Regulatory Burden and Pre-Approval Compliance

At this stage, NFF is particularly concerned that legal and administrative burdens have been imposed before producers have been provided with the practical tools required to comply with confidence. A central concern involves the operation of the Self-Assessment process and the continuing lack of clarity about how producers are expected to proceed where information is either uncertain or incomplete including what constitutes a Significant Impact. At present, uncertainty is effectively being transferred back onto the landholder who must either accept the legal risk (noting that reforms have increased penalties), obtain costly professional advice, or refer an activity that may not ultimately require Commonwealth approval. We note that AgForce has undertaken detailed analysis of the economic and administrative costs associated with such requirements in the Queensland context, for instance, Self-Assessment can take between 30-70 hours to complete per assessment.

Farmers should not be forced or effectively compelled through regulatory uncertainty to rely on consultants or informal Departmental conversations to determine whether routine activities such as maintaining infrastructure, managing weeds, undertaking fire mitigation, controlling pest animals, or carrying out required biosecurity works may trigger Commonwealth assessment obligations. This is especially a concern for family farms and small agricultural businesses which generally do not have access to in-house expertise and are least able to absorb the cost of regulatory uncertainty. A system that can only be navigated confidently by lawyers and/or consultants is simply unacceptable and not fit-for-purpose.

For agriculture, pre-approval compliance speaks directly to whether a producer can determine whether an ordinary activity requires referral, what information or evidence is needed, whether a Significant Impact on a MNES is likely, whether Commonwealth mapping can be relied upon, how existing State authorisations are taken into account, and whether Commonwealth compliance risk remains where an activity is lawful, authorised, exempt, or required under Queensland law.

The practical operation of the reformed framework will therefore depend substantially on how the Standards, Rules, Rulings, Registers, guidance materials, data and mapping arrangements, bilateral agreements, and compliance practices are implemented and interact in-practice. In the absence of clear thresholds and clarifying guidance, uncertainty is transferred back onto the landholder, together with the associated administrative, evidentiary, financial, and legal costs. This occurs before any formal assessment process has commenced and may result in producers:

- *Delaying or abandoning necessary land management works;*
- *Deferring farm infrastructure, water, or productivity improvements;*
- *Incurring substantial legal, ecological, and consultancy costs;*
- *Referring activities that should not require Commonwealth approval; and/or*
- *Accepting an uncertain level of compliance and enforcement risk.*

These outcomes can also create perverse environmental consequences. Producers may delay pest animal control, weed management, fire mitigation, erosion control, biosecurity works, restoration activities, or infrastructure maintenance because they are uncertain whether the activity requires assessment or will attract regulatory scrutiny. This is particularly relevant in Queensland where producers operate across large and complex landscapes while interacting with extensive State vegetation management and other land management/approval frameworks.

Economic, Productivity, and Investment Impacts

The economic impact of regulatory uncertainty should not be underestimated. Agricultural businesses are capital-intensive and already operate under significant pressures arising from climate variability, commodity cycles, biosecurity threats, labour constraints, input costs, and market access requirements. Additional regulatory uncertainty compounds these pressures and may influence business and investment decisions well before an activity reaches any formal assessment process.

These impacts are not always captured through formal assessment timeframes and approval statistics, for instance, because many arise before an activity is formally referred. Instead, they are reflected in delayed decisions, risk-averse behaviour, abandoned investment, and/or foregone opportunities to name a few.

From a national perspective, the potential impacts on Queensland agriculture include:

- *Increased legal, ecological, mapping, survey, and consultancy costs;*
- *Delays to farm infrastructure, water, productivity, and land management works;*
- *Difficulty obtaining finance where uncertainty regarding land-use affects asset values or investment confidence;*
- *Foregone production and productivity gains;*
- *Higher administrative and compliance costs;*
- *Increased uncertainty for succession planning and long-term business decisions;*
- *Duplication between Commonwealth and Queensland regulatory requirements; and*
- *The delay or avoidance of routine land management activities, including activities that may deliver both productive and environmental benefits.*

National Environmental Protection Agency

NEPA commenced operations on 1 July 2026 and will play a central role in administering and enforcing the revised framework. For agriculture, stronger compliance powers and penalties have already been introduced ahead of guidance, reliable mapping, practical Self-Assessment tools, and accessible advisory mechanisms needed to support confident compliance. This sequencing creates a significant implementation risk. The immediate priority must therefore be to close that gap and ensure producers are not exposed to heightened compliance consequences while their underlying obligations remain uncertain.

As noted above, an *EPBC Guide for Farmers* document piece is being finalised with the Department via good-faith engagement. *Environment Information Australia* (EIA) is also developing improved mapping for *Species of National Environmental Significance* (from a risk stratification and narrowing perspective). These initiatives are important, but their value will depend on whether they provide producers with sufficiently accurate and practical information to operate confidently.

For agriculture, NEPA's success will depend on adopting a proportionate and risk-based approach that distinguishes serious or deliberate non-compliance from producers acting reasonably and in good faith. Rulings may assist in resolving uncertainty but should not be relied upon to plug the hole in the regulatory structure before the process is actually up and running properly. In this context, early Rulings risk answering questions before the system has been properly established and tested and this is not supported.

NEPA must also establish clear two-way communication and issue-resolution pathways so that practical matters can be addressed cooperatively as they arise. As outlined in NFF's Tranche 2 submission, the *Register of Registrable Decisions* and R*egister of Prescribed Matters* must be implemented with appropriate safeguards. Matters should not be published in a manner that implies wrongdoing where no breach has been established or remains unresolved and/or subject to review. Without this, publication is likely to expose producers to undue harm and discourage constructive engagement with NEPA, resulting in a more adversarial compliance culture.

National Environmental Standards

NFF supports the development of Standards as a core element of *National Environmental Law* reform. Properly designed and implemented, they can improve consistency, establish clearer decision-making parameters, and support better environmental and regulatory outcomes. Their effectiveness will depend on whether they are clear, proportionate, consistent with each other, and capable of practical application in agricultural landscapes.

NFF's detailed submissions on each of the four Standards released for public consultation are attached at **Attachment 1** onward. At a high-level, the principal issues relevant to the Inquiry are summarised below.

- *The staggered release of individual Standards has prevented industry from assessing the cumulative regulatory, operational, and economic effects of the reforms on agriculture;*
- *There is limited visibility as to how overlap, duplication, or inconsistency between Standards will be resolved;*
- *The Principles-led implementation model does not clearly explain the relationship between the Objectives, Outcomes, and Principles, including whether the Principles are procedural considerations or the substantive test that is to be met to demonstrate consistency with a Standard; and*
- *The Standards have not yet been sufficiently road-tested in agricultural settings or supported by practical implementation materials that address routine and low-risk activities.*

Standard for Matters of National Environmental Significance

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. Should the Commonwealth proceed with finalising its proposed 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.*

Standard for Environmental Offsets

Under the revised framework, environmental offsets can be an important mechanism through which proponents may meet their obligations under the EPBC Act. The Mitigation Hierarchy requires proponents to first avoid and mitigate impacts and, where appropriate, undertake repair before offsets are considered for any residual Significant Impact. Where an offset is required, a proponent may either deliver the offset directly or make a payment into the Commonwealth mechanism for securing an appropriate offset elsewhere in the landscape.

The proposed Environmental Offsets Standard is not yet sufficiently clear or practical for implementation in agricultural landscapes. There is a need to clearly define how key concepts will work in-practice so that landholders and proponents alike understand their obligations and have confidence to engage with the proposed framework. This includes understanding how concepts such as net-gain are to be satisfied in-practice and how the Principle-led approach to implementation will be undertaken in a manner that is actually consistent with the Objectives and Outcomes of the Standard and broader EPBC Act.

Significant amendments are required to make the proposed Standard workable and fit-for-purpose.

<u>This includes in summary:</u>

- *A commitment to publishing the full suite of proposed Standards together rather than continuing with the staggered approach to enable industry to better understand the full regulatory, operational, and economic implications of the proposed framework and identify unintended consequences and address the many areas of duplication and overlapping requirements present across them;*
- *Clarify the relationship between the Objectives, Outcomes, and Principles through consistent drafting. This includes whether satisfaction or application of the Principles is intended to be the operative test to demonstrate consistency;*
- *Make clear that environmental offsets are only required for residual Significant Impacts on MNES, and that referral or assessment does not automatically trigger an offset obligation;*
- *Develop practical examples of what avoidance, mitigation, and repair look like in an agricultural, marine, and fisheries context where environmental offsets are determined to need consideration post-referral;*
- *Clearly describe how compatible agricultural land-uses such as grazing, pest management, weed control, and other productive land management activities can operate on environmental offset sites where they are consistent with the intended environmental outcome;*
- *Clarify how the Environmental Offsets Register will address privacy considerations and questions around commercially sensitive data and information; and*
- *Ensure the Relevant Area Principle can be practically applied in a real-world context, understanding that cultural considerations make offsets substantially more challenging to identify and secure.*

Standard for Data and Information

NFF broadly supports the objective of ensuring that EPBC Act decisions are informed by credible, defensible, relevant, and interoperable data and information. The proposed Standard nevertheless requires further clarification and stronger safeguards.

<u>NFF's principal concerns in relation to the Commonwealth's proposed Data and Information Standard are that:</u>

- *Proportionality must be expressly reflected in the draft Legislative Instrument, rather than left primarily to future guidance or broad terms such as "appropriate" and "adequate";*
- *Data requirements must reflect the nature, scale, complexity, and likely environmental risk of a proposal, together with the cost and practicality of obtaining further information;*
- *Small-scale and cyclical agricultural activities are not subject to the same survey and evidentiary requirements as major greenfield developments;*

- *Lengthy or highly prescriptive survey methodologies outlined in official guidance documentation, including multi-season or multi-year surveys, should not become the default expectation where a less intensive approach would otherwise be reliable and fit-for-purpose;*
- *Commonwealth guidance should not operate as a de-facto mandatory methodology that shifts the burden onto proponents to justify any departure;*
- *Minor or unavoidable deficiencies in metadata, file formatting, or version control should not render otherwise reliable information unusable or delay decisions;*
- *Transparency must be distinguished from unrestricted public disclosure, particularly where information is commercially sensitive or relates to individual properties;*
- *The Standard must provide stronger protections for data sovereignty, ownership, custodianship, privacy, consent, access, disclosure, retention, disposal, and secondary-use;*
- *Consent provided for one regulatory purpose should not automatically authorise broader future use of the information;*
- *Ethical and governance safeguards should apply to all held data and information, including farm-level information, rather than being confined to particular categories of data; and*
- *These safeguards must also apply where information is provided to, held by, or subsequently shared with EIA or NEPA.*

Standard for Community Engagement

NFF supports meaningful engagement that is effective, accessible, transparent, and adapted to the circumstances of affected persons. The proposed Community Engagement Standard requires further clarification to ensure its requirements are proportionate and do not duplicate existing processes. For Queensland, recognition of equivalent engagement processes will be important to avoid consultation fatigue and duplicative obligations.

<u>NFF's principal concerns in relation to the Commonwealth's proposed Community Engagement Standard are that:</u>

- *The Standard must distinguish between farmers as affected persons and farmers as proponents;*
- *Farmers affected by major projects must have sufficient information and time to understand and respond to potential impacts on agricultural land, businesses, water access, biosecurity, and regional communities;*
- *Localised and/or small-scale agricultural proposals should not be subject to the same engagement expectations as major mining, infrastructure, or greenfield developments;*
- *Proportionality and materiality should be expressly reflected in the draft Legislative Instrument and not left solely to future guidance;*
- *The application of the Standard before referral or before a Significant Impact determination has been made must be clarified;*
- *The proposed 10-business day engagement period should be treated as a minimum, with the appropriate period reflecting the complexity of the proposal, harvest periods, natural disasters, connectivity, and other regional circumstances;*
- *Online consultation alone may not provide a reasonable opportunity to participate in rural and remote areas;*

- *Proponents should only be responsible for matters within their control and should not be expected to guarantee participation, agreement, satisfaction, confidence, or trust;*
- *Equivalent engagement undertaken through another Commonwealth, State, or Territory process should be recognised, with an early pathway for proponents to confirm that an existing process satisfies the Standard; and*
- *Privacy and consent requirements must clearly address the collection, use, disclosure, retention, and custodianship of personal information.*

Bilateral Agreements

A Key Opportunity Area

Bilateral agreements and accreditation arrangements can be important to Queensland because they provide the principal opportunity to address longstanding dual consent issues and reduce duplication across the Commonwealth and State regulatory system. This includes how Commonwealth requirements interact with Queensland's existing land-use, vegetation management, planning, water, biosecurity, and environmental frameworks, including the treatment of Category X areas for instance. As noted in the Commission's *Call for Submissions,* key Queensland legislation operating alongside the EPBC Act includes the *Environmental Protection Act 1994 (Qld),* the *State Development and Public Works Organisation Act 1971 (Qld),* and the *Planning Act 2016 (Qld).*

Properly designed bilateral arrangements should provide greater certainty about when Queensland assessment, approval, authorisation, or exemption processes are sufficient and when separate Commonwealth assessment or approval is not required. Poorly designed arrangements may simply transfer assessment and administrative functions to Queensland without resolving the underlying duplication and uncertainty experienced by producers.

For bilateral agreements to operate effectively, the Standards against which arrangements are accredited against must be fit-for-purpose and capable of application in agricultural landscapes. Bilateral and accreditation arrangements should recognise equivalent Queensland processes, avoid duplicate assessments, information requests, mapping, and consultation requirements, and provide clear pathways for routine, low-risk, and existing agricultural activities to be incorporated.

The Commission should recommend the importance of a negotiated bilateral and accreditation arrangement with the Commonwealth with the explicit objective of resolving areas of regulatory overlap and dual consent. These arrangements should recognise Queensland regulatory processes wherever they achieve equivalent environmental outcomes and provide practical certainty for agricultural landholders about when separate Commonwealth requirements apply.

Cost-Shifting and Queensland Fiscal Risk

The Inquiry's *Terms of Reference* ask the Commission to consider the extent to which the reforms may transfer regulatory, administrative, or financial responsibilities to Queensland, including the implications for resourcing and fiscal risk.

If successfully negotiated, bilateral agreements and accreditation arrangements are likely to require Queensland agencies to assume additional assessment, engagement, administrative, reporting, and potentially compliance functions on behalf of the Commonwealth (as intended by the legislation). While this may help address dual consent (in theory) and reduce duplication for proponents, it will also transfer significant responsibilities and costs upon the Queensland Government.

Any such transfer must be accompanied by transparent costings and adequate Commonwealth funding. Queensland should not be required to absorb the full practical and ongoing costs of administering Commonwealth reform objectives, particularly where additional staff, systems, data capability, mapping, guidance, extension, and landholder support will be required.

NFF understands that bilateral discussions are continuing across jurisdictions and that States and Territories are at different stages of contemplation and negotiation. The quantum of funding is likely to be significant and will need to extend beyond the initial funding provided by the Commonwealth through the Federal Budget process and other measures. This will be subject to negotiations.

Closing Remarks

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

Attachments List (NFF Submissions)

1. ***NFF Submission (June 2018): Independent Review of Interactions Between the EPBC Act and the Agriculture Sector.***
2. ***NFF Submission (November 2025): Environment Protection Reform Bill 2025 and Six Related Bills.***
3. ***NFF Submission (May 2026): National Environmental Standard for Matters of National Environmental Significance.***
4. ***NFF Submission (June 2026): National Environmental Standard for Environmental Offsets.***
5. ***NFF Submission (June 2026): Environment Protection Reform Consultation: Subordinate Legislation.***
6. ***NFF Submission (July 2026): National Environmental Standard for Data and Information.***
7. ***NFF Submission (July 2026): National Environmental Standard for Community Engagement.***

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National Farmers' Federation

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Submission to

The independent review of the interactions between the EPBC Act and the agriculture sector

22 June 2018

NFF Member Organisations

AGFORCE

Australian Chicken Growers' Council Ltd

Australian Dairy Farmers

AUSTRALIAN FOREST PRODUCTS ASSOCIATION afpa TREES | WOOD | PAPER

Australian Livestock Exporters' Council ALEC

ALPA

AUSTRALIAN Pork

AUSTRALIAN VETERINARY ASSOCIATION

PURE BEECHWORTH HONEY 100% Pure Australian Honey

CANEGROWERS

CATTLE COUNCIL OF AUSTRALIA

CORPORATE AGRICULTURAL GROUP

COTTON AUSTRALIA

dfa driedfruits australia

FCA FARMERS FOR CLIMATE ACTION

Future Farmers Network

Goat Industry Council of Australia inc.

GrainCorp

Grain Growers Real benefits. Real results.

NORTHERN TERRITORY CATTLEMEN'S ASSOC. N.T.C.A

nsw FARMERS

NEW SOUTH WALES IRRIGATORS' COUNCIL

The Pastoralists' Association of West Darling

PET PRIMARY EMPLOYERS TASMANIA

ppsa PRIMARY PRODUCERS SA

RICEGROWERS' ASSOCIATION OF AUSTRALIA INC

SHEEP PRODUCERS AUSTRALIA

SoilsForLife AN OUTCOMES AUSTRALIA PROJECT

Summerfruit AUSTRALIA

WAFARMERS

Victorian Farmers Federation

WOOLPRODUCERS AUSTRALIA

National Farmers' FEDERATION

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1. Introduction

The *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* is a substantial piece of environmental legislation that regulates a range of activities which may impact matters of national environmental significance (MNES) including World Heritage, National Heritage, wetlands of international importance, listed threatened species, ecological communities and others. The scope of the EPBC Act covers a range of sectors including mining, urban development and, importantly, agriculture.

This review focuses only on agriculture. This is an important inquiry for NFF as for the first time a specific focus has been provided on a sector that is significantly impacted by this legislation and has been, and continues to be, poorly dealt with. From the outset NFF states that it is concerned about how the EPBC Act applies to the agriculture sector which is responsible for managing a significant part of Australia's land mass. Almost half of Australia's land mass is managed by farmers. In that respect, the EPBC Act needs to recognise that farmers are in the best position to manage the land sustainably and protect the environment and so should be encouraged to do so. These concerns include how the listing process is applied, interpreted, communicated and reviewed. There are also concerns about how enforcement processes are applied and pursued. Finally, whether the EPBC Act operates effectively and efficiently to identify and protect particularly critically endangered, species or communities.

The EPBC Act is poorly delivered for the agriculture sector and the NFF is concerned about how it is being applied to the agriculture sector. It seems to take a precautionary principle approach, which leads to overreach in terms of targeted species and communities. Critically, when the conservation advice is poorly defined, it creates confusion, mistrust and concern. The EPBC Act puts in place a listing review mechanism where the entity (The TSSC) recommending the initial determination is responsible for reviewing the listing and essentially, marking their own homework. The EPBC Act's requirements are often unknown due to poorly implemented education and communication processes and it creates unnecessary uncertainty for farmers. There must be an increased focus on minimising non-compliance through effective communication.

The farm sector has a vital interest in working with the environment and sustaining it to ensure environmental health outcomes that allow the sector to carry out its business into the future. It is extremely important to farmers to invest in and support healthy landscapes. Inherent in this is protecting important environmental assets. Generally, farmers will willingly participate in: a process that is low cost relative to competitors (who may be international competitors, who may receive financial support, for example, for protecting biodiversity or, even better, if there is a value attributed – see chapter 6); a process they can have confidence in; a framework of operation that is reasonable, clear and certain; and is based on objective and repeatable science. Farmers are interested in protecting environmental icons and will do so given an operating environment as described. They are competent and reliable landscape managers.

The NFF Native Vegetation policy (which focuses particularly on the EPBC Act) is a key informative document of this submission and is included as Appendix A.

1.1 List of Recommendations

3) <u>Threatened Species Scientific Committee</u>

(a) That a cost benefit analysis be undertaken to determine whether the EPBC Act is being delivered as efficiently for environmental outcomes as possible;

(b) That the listing nomination process ensure that analysis of national and regional representation of a species is a component of the consideration;

(c) Establishing a less onerous referral process that recognises the low level of risk associated with most farming activities;

(d) Establishing an offsets policy that is specific to the unique nature of agriculture projects;

(e) That the scope of the TSSC expertise be amended to include at least two representatives with formal qualifications and practical experience in productive landscape management;

(f) That a formal, funded, agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident, especially in the development of conservation advice;

(g) That in developing conservation advice, social equity and economic considerations, consistent with the principles of Ecological Sustainable Development, be applied;

(h) A 'discovery process' with the TSSC, or a subset, with appropriate agriculture representatives be implemented to allow a mutual understanding of views on an issue prior to a formal request for a review of a listing; and/or

(i) The mechanism that allows the TSSC to recommend a listing, and also consider a review of that listing, be reconsidered with a goal of a more independent process being in place.

(j) That a formal agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident. Especially in the development of conservation advice and prior to public consultation.

4) <u>**Better Administration and Communication**</u>

(a) Implementing formal bilateral or trilateral (where local government is in play) negotiations to resolve how to ensure that a farmer can get a single set of advice on their particular site and be assured (protected) from sanction if the advice is adhered to;

(b) Development of accurate, multi-jurisdictional mapping that shows layers of all environmental legislative requirements on a specific site to a scale that is meaningful on the ground and is subject to challenge when ground truthed. These should be accessible through an online portal and at strategic locations;

(c) Using trusted networks to educate the broader agriculture community to as to a general range of issues they need to consider and how to go about seeking advice if land use change or intensification is contemplated. Such advice should be available in the form on non-binding consultation where it is sought; and

(d) That Hawke recommendation five is fully implemented and there is one list, one assessment methodology which presumably gives rise to one set of comprehensive maps and one compliance regime.

6) <u>**New Paradigm**</u>

(a) That the EPBC Act listings be reviewed to identify species and communities that can be valued and that a transition to a market based approach for protecting endangered and critically endangered species and communities be commenced;

(b) That the developing communication engagement capacity of the department of environment be enhanced. Including to formally and clearly partner with other jurisdictions (State and/or Local Government) to provide concise information at a single point for landholders; and

(c) That the Commonwealth commit to support protection of public biophysical assets that are endangered or critically endangered by investing $20 billion over the next decade through the creation of an Environmental Stewardship Fund.

7) <u>**Vegetation/Climate Trigger**</u>

(a) That there be no trigger of any kind incorporated in the EPBC Act or its regulations.

2. Response to the questions in the Issues Paper

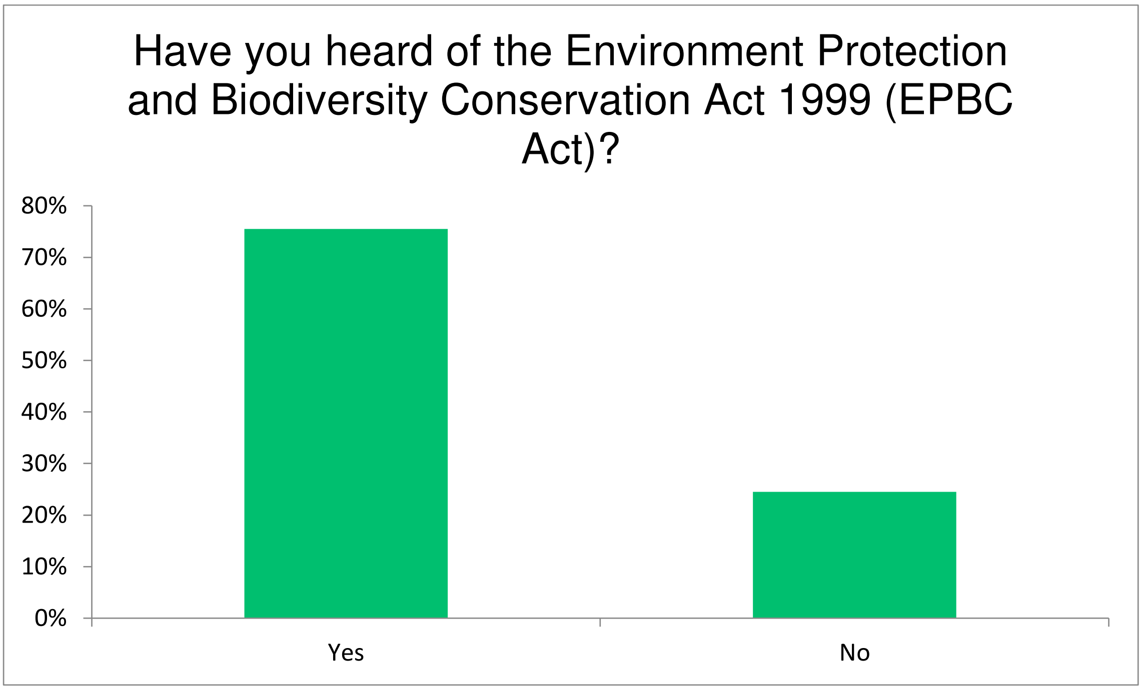
A core component of the Aither Issues Brief was a set of questions which Dr Craik and the consultants developed to focus responses. The NFF took a decision to specifically explore these questions by way of a survey that was distributed directly to farmers by NFF member organisations. The survey yielded 155 responses from across Australia, which were predominantly farmers but also included a small number of advisors to the sector.

The survey aimed to canvas farmer's experiences around compliance with the EPBC Act and understand how they want the EPBC Act to work. The responses have been used to inform this submission.

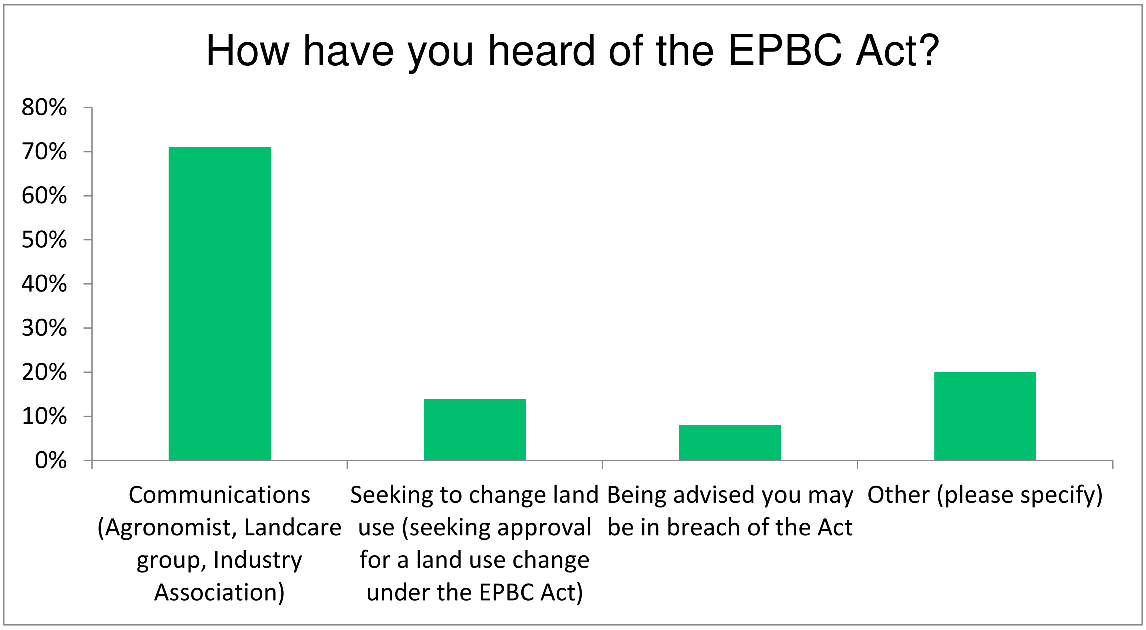
There were 155 responses to this survey. The NFF relies on evidence and data as a foundation of policy development and has a high level of confidence that the responses received have been consistent with how the NFF perceives the EPBC Act and with other feedback from members. The responses reinforce issues outlined in this submission. The survey responses while small in terms of overall sample provide direct and reliable evidence and data of farmer experience with the EPBC Act.

The questions are:

1. *Have you interacted with the EPBC Act in the past? Please be as specific as possible, including if you have previously referred actions, noting that submissions will be made public unless confidentiality is specifically requested.*

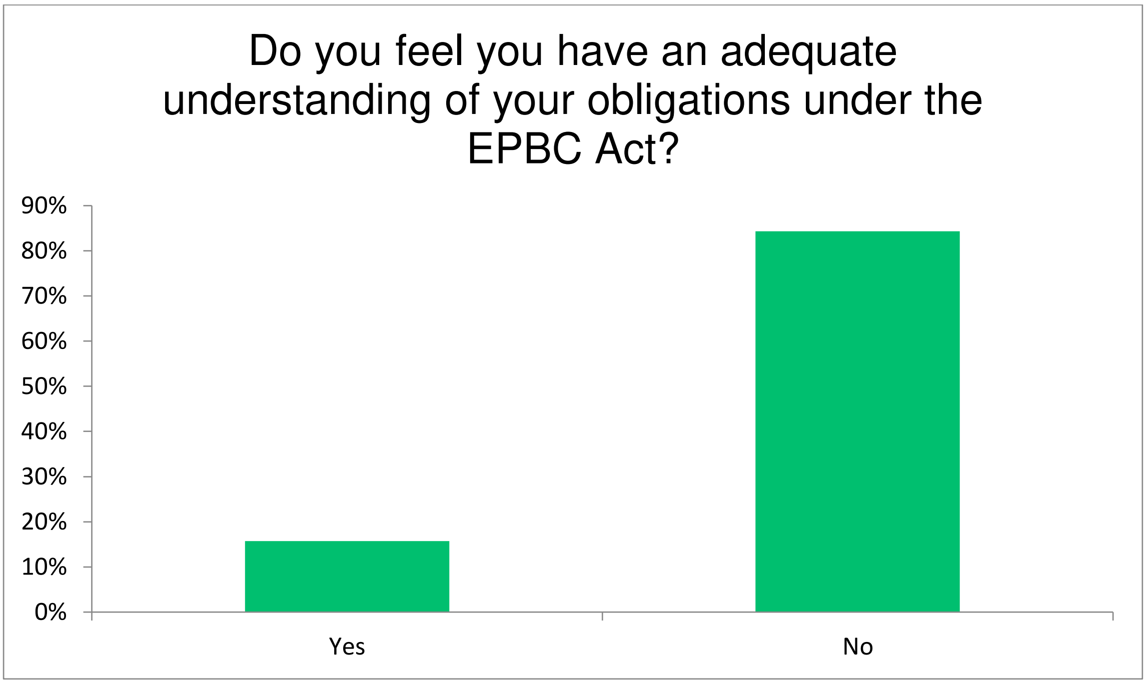


NFF comment:
While this may seem an inordinately high number, with recognition, it is anticipated that many people will have not proceeded with the survey if the subject matter was not familiar. It is, therefore, possible the high no response is likely to be due to loyal organisational members. The following responses seem to support this interpretation.

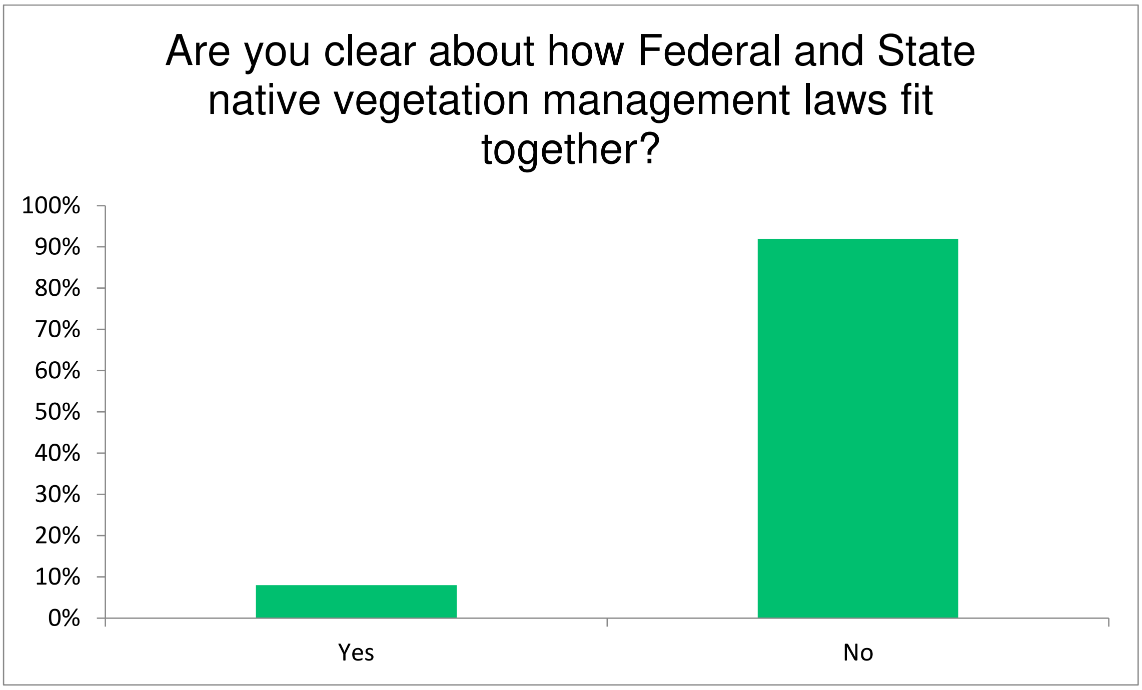


NFF comment:
This suggests the majority of farmers become aware of issues through consultation with trusted organisations. This suggests that a majority communication with farmers is through trusted organisations, who often provide expert advice. This may guide Government Departments on how and where to invest its resources to achieve better communications with farmers.

2. *Do you feel that you have an adequate understanding of your obligations under the EPBC Act?*

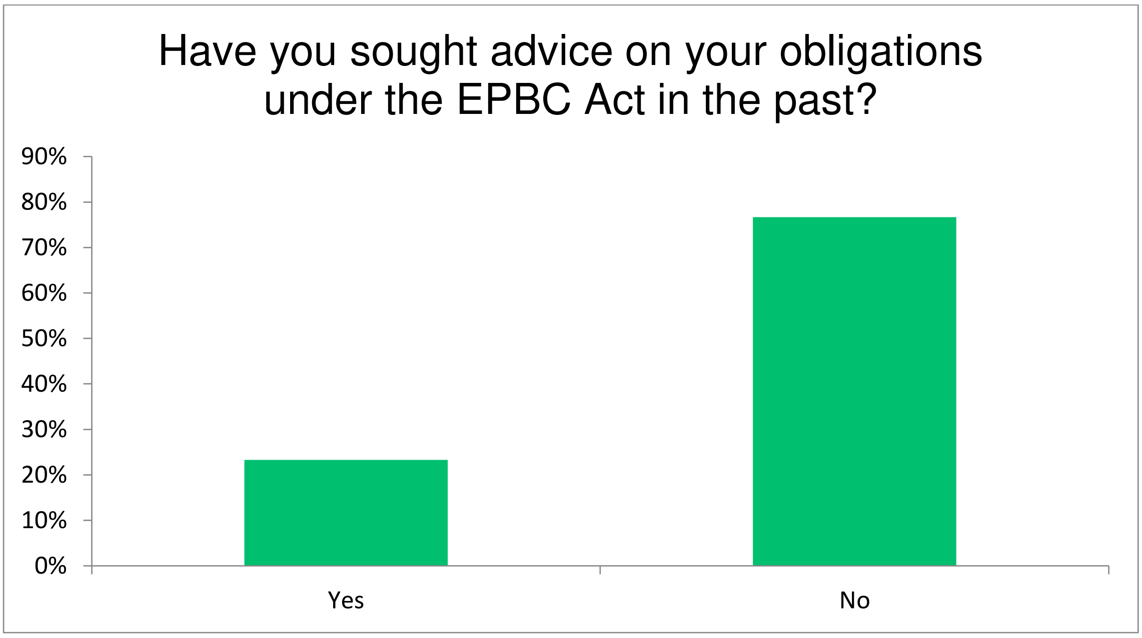


NFF comment:
Supports the view that this is a poorly understood and communicated piece of legislation. This is a general response across all states and all occupations.

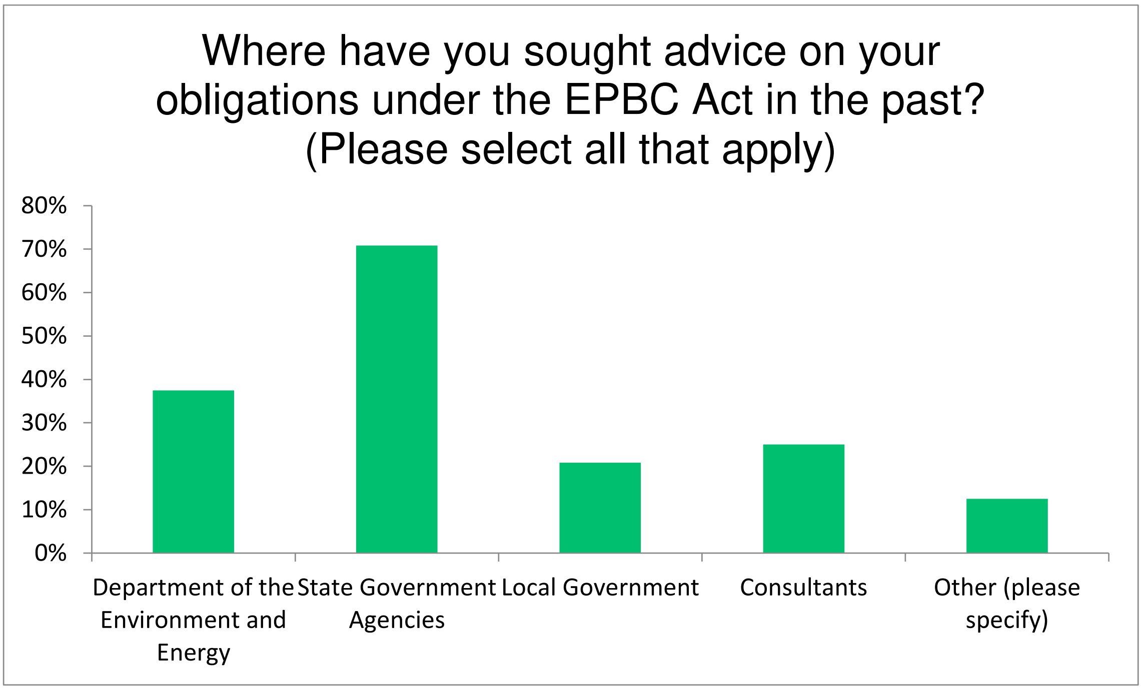


NFF comment:
Shows significant confusion and underpins the communication issue. The NFF has made several recommendations to address this issue in section 4 of the submission.

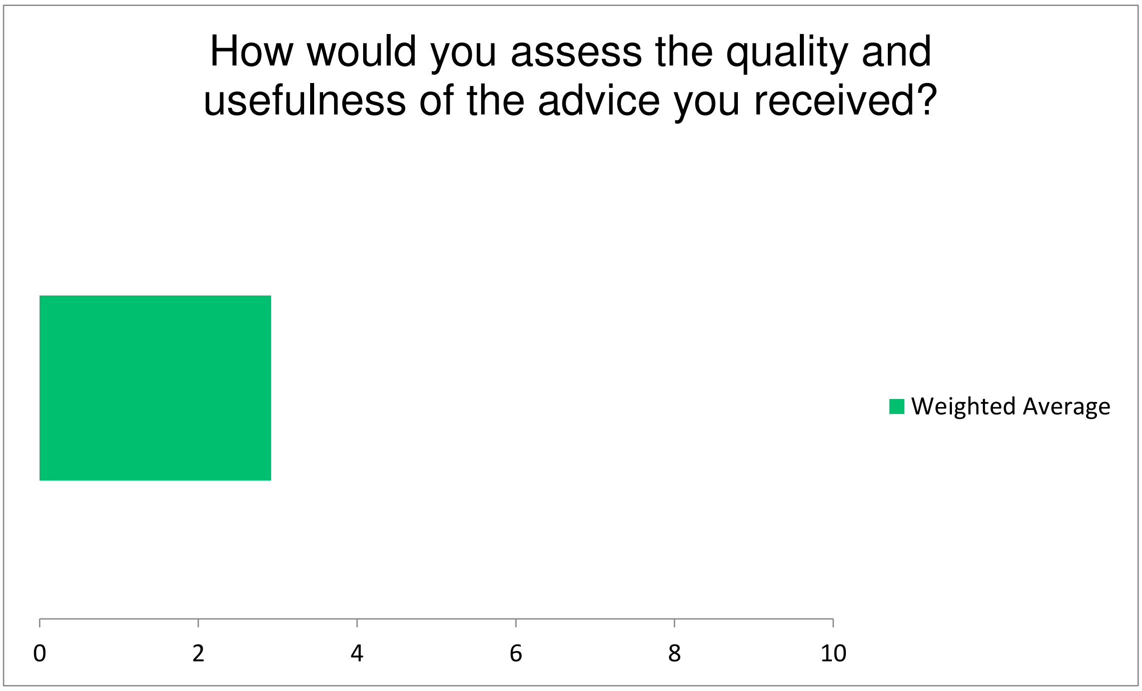
3. *Where have you sought advice on your obligations under the EPBC Act in the past (e.g. from DoEE, a State Government, a local government, a consultant, your neighbour etc.)? How would you assess the quality and usefulness of the advice you received?*



NFF comment:
This may be again be a lack of communication. It may also represent fear of being identified.

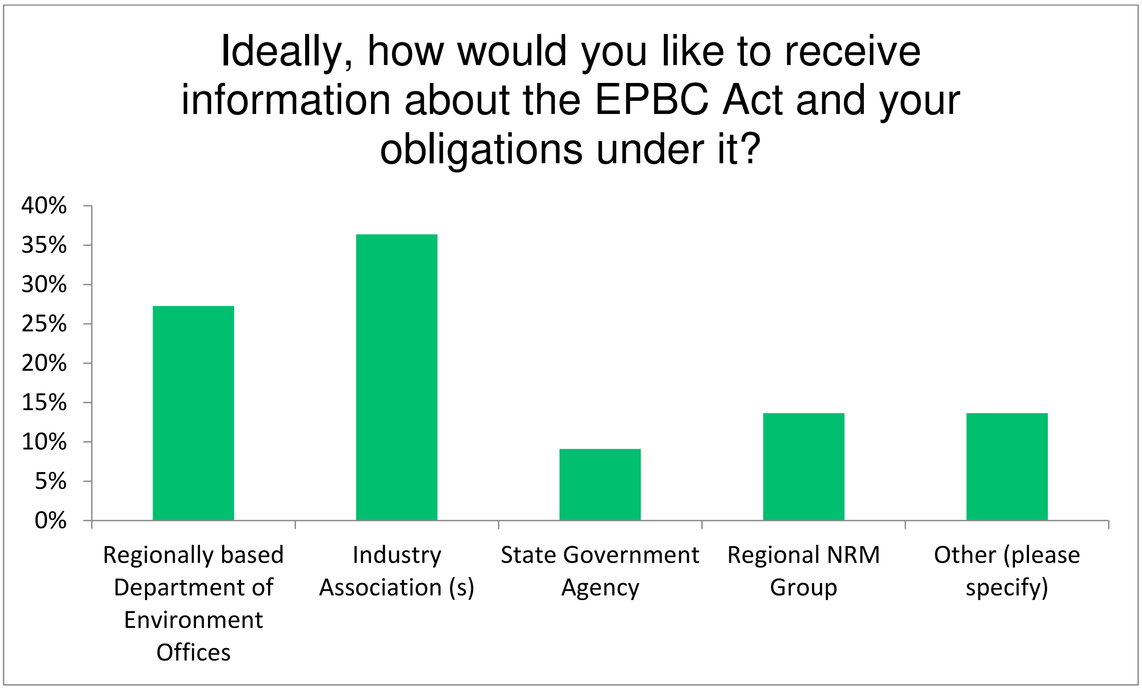


NFF comment:
Most farmers are seeking their advice from State Government. This is despite the EPBC Act being Commonwealth legislation. The key message here is that farmers do not differentiate between state and federal controls and are keen to have information provided at a single point. Section 4 makes recommendations to this effect.



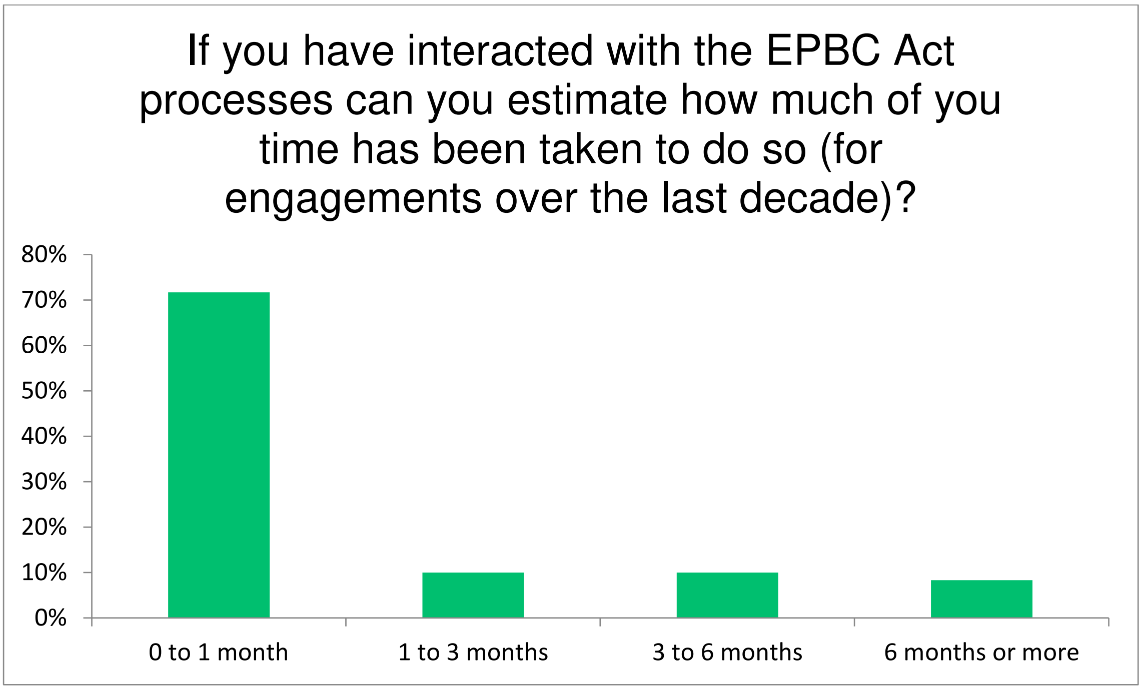
NFF comment:
0 is poor 10 is good. The view therefore is that the quality and usefulness of the advice is low. A better designed communications program is needed to address this concern.

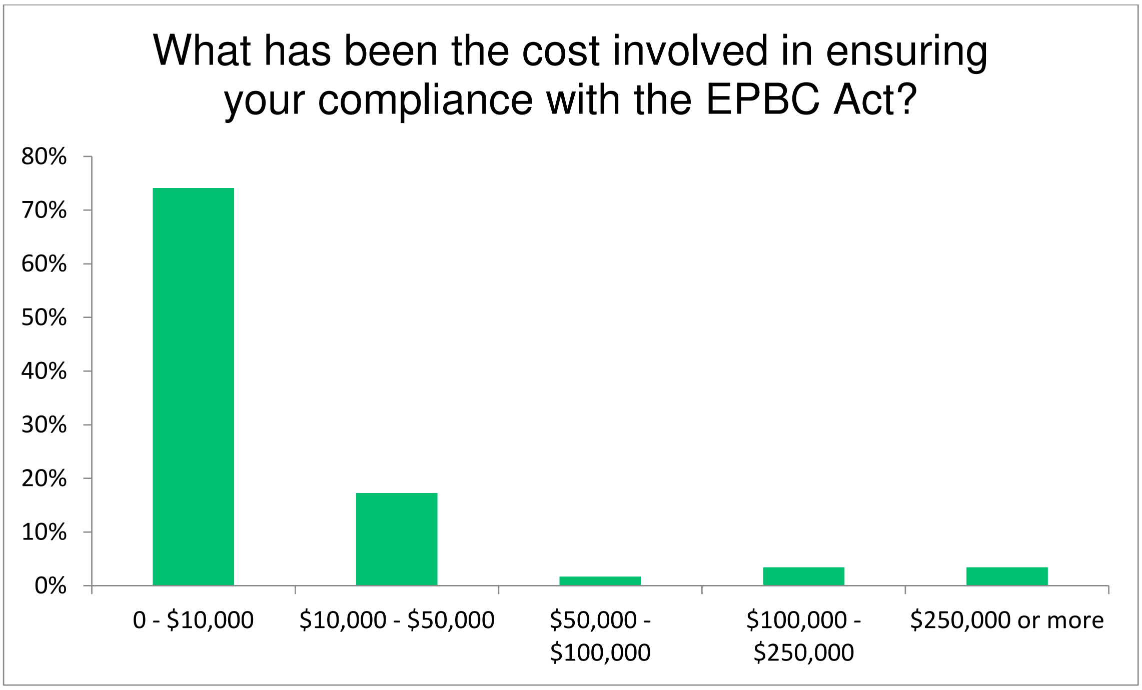
4. *Ideally, how would you like to receive information about the EPBC Act and your obligations under it?*



NFF comment:
Supports the argument that locally available information and/or trusted sources is preferred. There is a preference expressed for regionally-based (local) officers which seems to suggest a one-stop shop type of arrangement for environmental legislation information is preferred. Also, the strong support for industry associations goes to the earlier identified issues of trust.

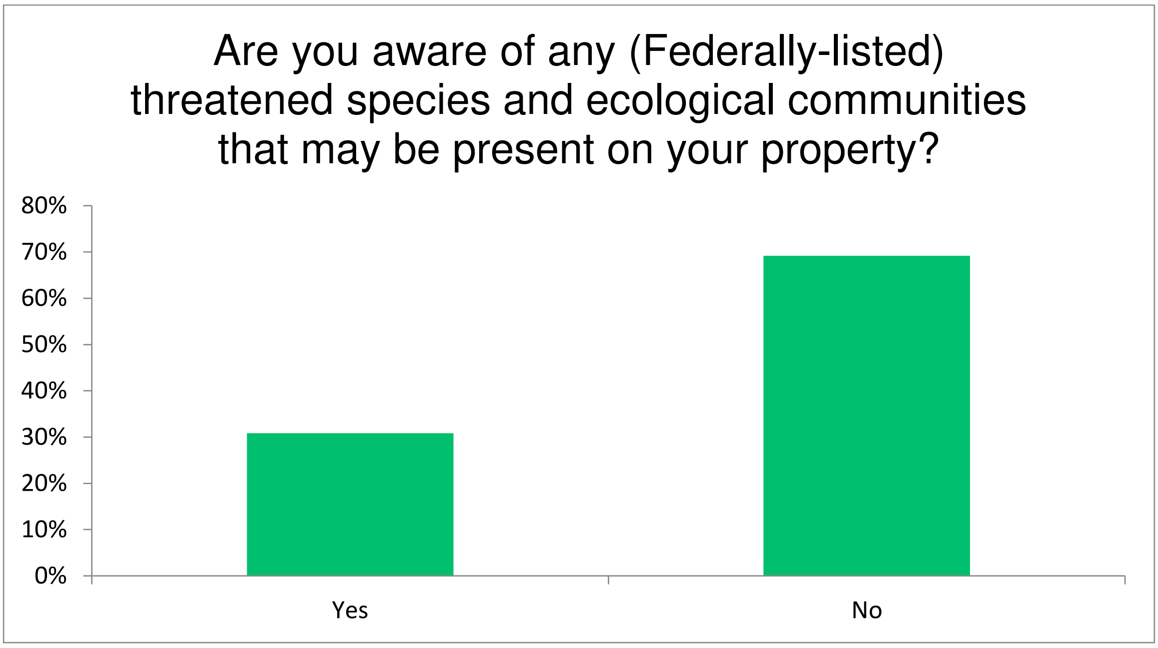
5. *What has been the time or cost involved in ensuring your compliance with the EPBC Act in the past? Please be as specific as possible.*





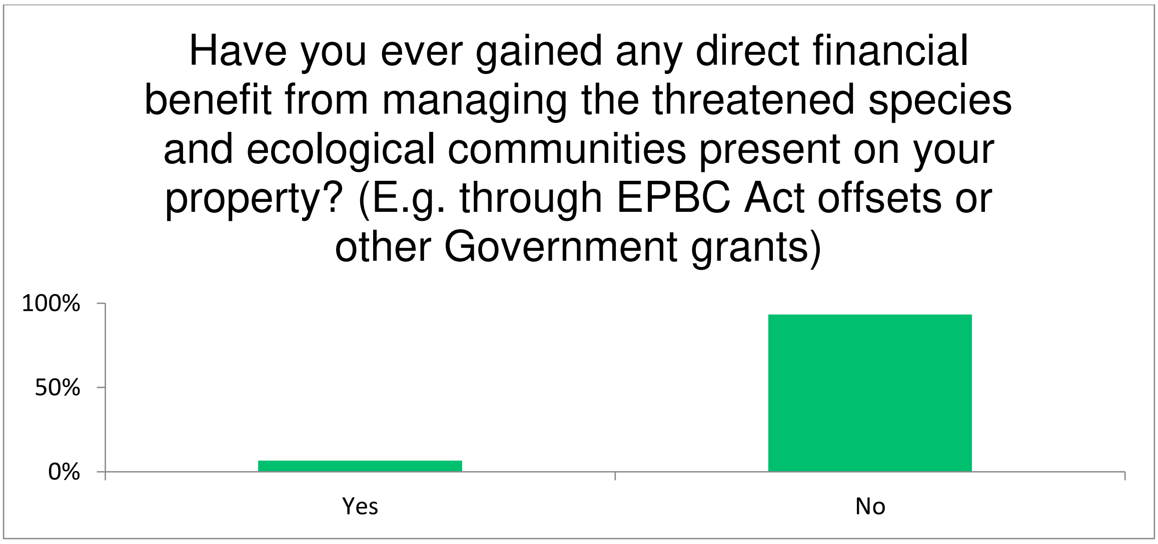
NFF comment:
There seems to be a lack of visibility as to whether there is a cohort of farmers that have not sought advice about their obligations under the EPBC Act but are impacted by the EPBC Act.

6. *Are you aware of the threatened species and ecological communities that may be present on your property? What measures, if any, do you undertake to manage your impact on these species and communities?*



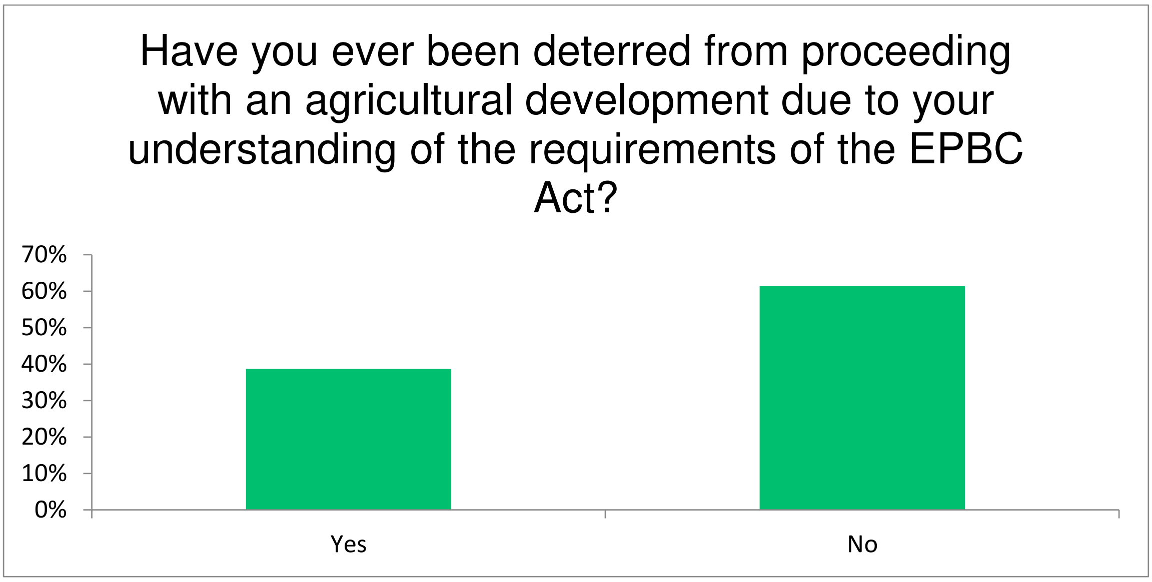
NFF comment:
Interrogation of the raw data reveals that this response is for 29 people, 11 of which sought advice. The confidential information, especially the case studies, provide more depth of this issue.

7. *Have you ever gained any direct financial benefits from managing the threatened species and ecological communities present on your property (e.g. through EPBC Act offsets or other government grants)?*

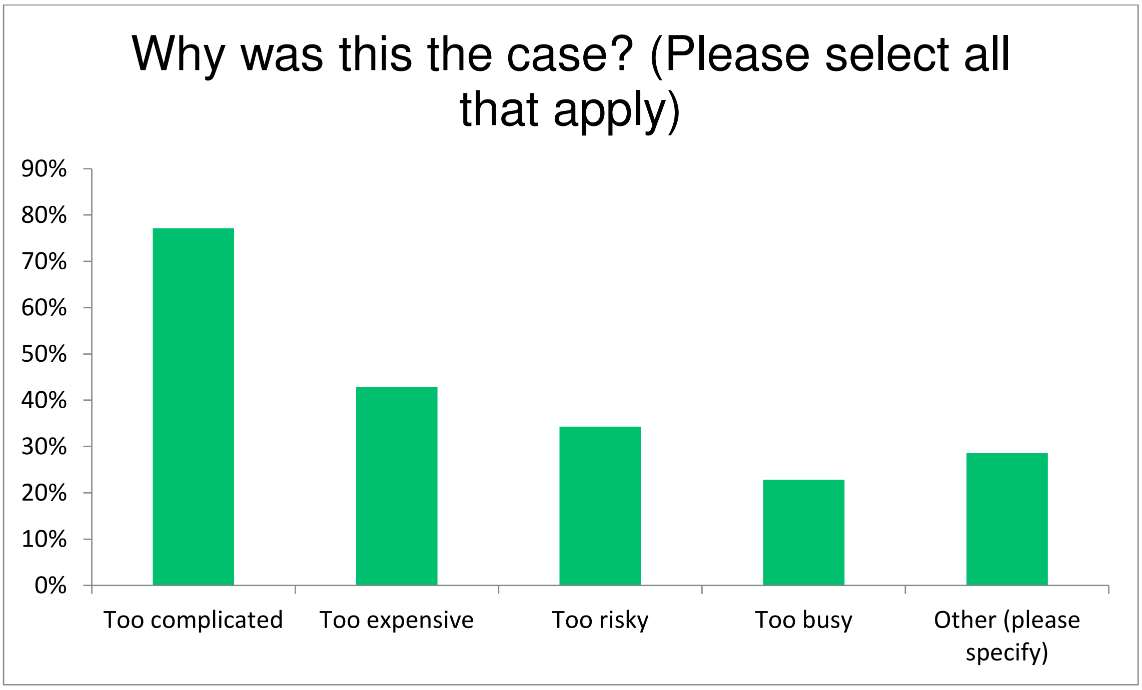


NFF comment:
This response is consistent with the limited availability of programs. NFF's proposals in section 6 promote a change of paradigm that would provide much better monetary recognition or private burden of protecting public good assets.

8. *Have you ever been deterred from proceeding with an agricultural development due to your understanding of the requirements of the EPBC Act? Have you ever withdrawn or let lapse a referral under the EPBC Act? If so, why?*



NFF comment:
The yes response is disturbingly high and supports the argument that there is concern. The graph below teases out the rationale.



NFF comment:
The first column supports the NFF's concerns over complexity and poor communication of the EPBC Act.

9. *How do you think the Australian Government can improve achievement of its environmental protection and biodiversity conservation objectives through its interactions with the agriculture sector?*

Summary of responses:
On the whole, responses were broadly constructive. The main messages and opportunities for improvement expressed through the survey include:

- Greater recognition of the role of farmers as an environmental manager through stewardship payments, that is, payments for environmental services their property provides for public good. This is not limited to stewardship payments, but there should be 'mechanisms to assist land holders that are transitioning to sustainable land management practices'.
- Greater alignment and consistency between the Federal and State (and in some States, Local) environmental management laws – avoiding duplication of approval processes and utilising local knowledge and expertise. This could help to achieve better clarity regarding triggers for referrals and requirements for approvals.
- Greater direct engagement and collaboration with the landholder or farmer in order to understand their management practices, recognising that '*each area is different'*. This is necessary to determine solutions that can be practically applied on a landscape scale.
- A more community and grassroots approach to protecting species – *'If a species of fauna or flora is of conservation value and valued by the community, then I believe that it is the responsibility of that community to bear the cost of its protection. The landowner is only the guardian and they should be fairly compensated for the work entailed in its conservation and not financially disadvantaged as a result of any legislative obligations.'*
- Better communication in general.

NFF comment:
These are some key responses which underpin the desire for market based instruments.

10. *Is there anything else you would like to raise in relation to the interaction between the EPBC Act and the agriculture sector?*

Many of the same issues here were mentioned in question 9. However, there was an expressed frustration, for example, in:

- The lack of consultation and direct engagement.
- The inflexibility of the EPBC Act which makes it difficult to comply with.
- The poor communication of the EPBC Act. Many find it difficult to fully understand the EPBC Act and their obligations under it.
- The lack of Federal and State legislative alignment.
- How complicated the EPBC Act is overall.

3. Threatened Species Scientific Committee (TSSC) Process

The NFF is concerned that the EPBC Act is not meeting its expectations in a number areas. It is poorly communicated to those that are held responsible for its on ground implementation, in this case farmers. There are also concerns that the current costs of administering the EPBC Act are such that a different way of implementation, moving away from command and control legislation to a more market-based approach may considerably improve environmental outcomes. NFF seeks a cost-benefit analysis to assess the efficiency of the current legislative and compliance framework. There is concern that significant funds are being applied to compliance and administration which may be better used in communications and/or incentives.

The EPBC Act also remains 'distant' from agricultural users, as evidenced by the significant number of respondents from the survey that expressed their frustration at the lack of on ground consultation and direct communication with farmers. It is considered a burden by the rural sector due to poor understanding, misinformation and lack of clarity of requirements.

The EPBC Act is a major barrier to farmers adopting precision agriculture practices, such as controlled traffic farming, in many cropping zones. This is because of the way the EPBC Act seeks to protect isolated paddock trees that have debatable conservation value. A new way of considering isolated paddock trees, with reasonable offsets that protect areas of higher conservation value, is required. Isolated paddock trees have the effect of obstructing farming practices, including controlled traffic farming and spraying, and can potentially result in damage to farming equipment.

For farmers to be confident that they are not breaching the law, they must go through a cumbersome and costly referral process. The process is one-size fits all – regardless of whether the action is undertaking a small farm activity or a large development such as a new suburb or mine. The issue is that some projects are quite small, others worth millions, yet broadly the same requirements apply. A simpler assessment and approval process is required that properly and adequately reflects the lower risks that are often associated with agricultural activities. This process needs to be well communicated and in language that can be sensibly interpreted on ground preferably without the need of external consultants.

3.1 Current state of the TSSC

The Threatened Species Scientific Committee (TSSC) is a critical player in the process of listing, re-categorising and delisting threatened species and communities. The TSSC is appointed by the Minister for the Environment. The TSSC has the following expertise:

Members collectively have extensive knowledge and experience of flora and fauna conservation and ecology, with specific expertise ranging from marine and freshwater ecology, molecular ecology, invertebrate and vertebrate taxa, botany, plant ecology and community engagement. (www.environment.gov.au/biodiversity/threatened/tssc)

The current ten members are undoubtedly highly qualified individuals and together seem to meet the scope outlined above. The TSSC operates under mature and published guidelines including:

- Under what circumstances a listing can be considered;
- The consultation process for a listing;
- The mechanism for recommending a listing and thresholds for defining the level;
- Providing conservation advice for the listing; and
- Reviewing the listing to adjust its status (higher or lower threshold or delete).

The TSSC acts on advice from the Minister in relation to listings or reviews and provides recommendations back to the Minister for their consideration. Ultimately, discretion lies with the Minister.

In a process sense the listing and TSSC frame is logical and transparent. Despite this, there are a number of concerns.

There is concern that the identification process for listing does not establish the need for review. The NFF is of the view that there needs to be a process of ensuring that the nomination process for listing considers the MNES process especially including its occurrence on a national scale and also its regional significance. There is also a need to prioritise where the species might be protected or where a recovery plan might be viable. For example the Comprehensive, Adequate and Representative process used for the Regional Forest Agreement process is a mechanism that could establish where coverage exists for a particular species or community on public land. Once done the focus can turn to private land if further protection is required.

A flow chart of the current listing process is at Appendix B.

While it is appropriate for the TSSC to be well qualified and expert in its field this frame does leave some issues to be resolved. It is clear that there is ongoing concern with the way that the conservation advice is developed and interpreted on the ground.

In the case of the Natural Temperate Grasslands of the South Eastern Highlands Ecological Community (NTG-SEH), the conservation advice, when practically applied, would capture much more of the landscape than the target of 3% of the presumed pre-settlement extent (estimated to be around 500,000 ha). The NFF have commissioned a report on this issue which will be provided to the review team.

This worked example gives rise to concerns about the extent to which conservation advice is appropriately defined to capture the actual target areas rather than a more cautionary approach. When considered in the context of mapping that accompanies the listing, the over-estimate concern is exacerbated.

A further concern on the NTG-SEH, as a consequence of its re-categorisation to critically endangered, is that it now has a broader geographic footprint than previously. This is causing further concern in those newly captured areas where the '*ecological communities targeted in the listing are considered endemic'* (*pers comm Clapham*).

Another dynamic that is of concern to the farm sector is the limits imposed by the conservation advice process that relates to whether or not an activity has a significant impact.

A significant impact is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant *impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. You should consider all of these factors when determining whether an action is likely to have a significant impact on the environment* [*www.environment.gov.au/epbc/about/glossary#significant*](www.environment.gov.au/epbc/about/glossary#significant)

There are various issues that arise in this context. A major concern for farmers is intensification. It is acknowledged that variations in stocking rates in the ebb and flow of variable seasonal conditions is not considered as intensification. Also of concern, for example, with the return to profitability of the wool sector, is whether a consequential return to fertiliser application to promote pasture growth may lead to a change in composition of a pasture and inadvertently put it back in scope. While this is expected not to be the case, potential impact of the NTG-SEH is of concern. The NFF are uncomfortable with the lack of clarity in the EPBC Act and guidance on enlargement, expansion and intensification and are seeking legal advice on ways to improve the EPBC Act, interpretation and/or guidance.

Turning to the opportunity to seek a review of the listing, there are a number of concerns. Firstly, there is an obvious question about the mechanism that allowed a listing that needs review. This is discussed in the next section.

Secondly, if a review is considered necessary there is a substantial burden on the proponent to provide a (presumably scientifically) substantiated case for the review. A current example is that Vicforests' $2.1 million investment over the past 3 years on work associated with research and conservation for the Leadbeater's Possum in order to inform the case for its current review. In NFF's own experience there has been consideration given to seeking a review of the NTG-SEH's escalation to critically endangered. The two key impediments to progressing the seeking of a review have been the unclear cost and likelihood of success coupled with an underlying doubt about whether the listing recommendation was well made in the first place, so it's a question of where the cost of the review should be borne (government or applicant).

Thirdly, a successful application for a revision of a listing would trigger a further investment of resources to attend review discussions and generally prepare information. And in committing those resources the review would be conducted by the TSSC, which made the initial recommendation. Thus the TSSC would be, as it were, marking its own homework. This outcome lacks the normal expectation of natural justice and creates insecurity for proponents that their arguments may not be fully considered on their merits.

3.2 How should the TSSC operate in the future?

The NFF considers there is scope for significant improvement in the operation of the TSSC and related factors.

It is noted that there are various formally constituted advisory committees that exist within the scope of the EPBC Act. They include the:

- Biological Diversity Advisory Committee;
- Indigenous Advisory Committee;

- Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC); and
- Threatened Species Scientific Committee

The NFF holds a productive working relationship with the Department of Environment and Energy and is a substantial contributor to the public consultation process provided directly or through these various committees. Despite this the NFF remains frustrated at the slow progress causing ongoing difficulties in the administration and farmer understanding of the EPBC Act. There is a *prima facie* case that, given farmers are responsible for managing around half the Australian land mass, there should be a more formal interaction with expertise within the system especially in the context of listings that apply to agricultural land. Additional positions should be made available to represent on ground understanding and be formally funded. This funding can be in the form of sitting fees or similar rather than expecting industry/private landholders to foot the bill for this contribution of expertise.

Alternatively, there is also a case that the TSSC could have its scope amended to incorporate scientific views from the land management sector. Such representatives could be those with qualifications and appropriate experience with landscape management, ecological assessment at a landscape level, or those with academic and practical management skills in farm management. Or both.

There are a number of further issues. The NFF supports the need to limit vexatious demands for review. That said, the development of a mechanism that allows a dialogue on measures within a listing (including the conservation advice) in a non-prejudicial manner may be an appropriate way to develop a mutual understanding of issues prior to any formal application being made. This may necessarily include the TSSC, or a subset thereof, with appropriate farm sector representatives.

The NFF has repeatedly expressed concerns about listing proposals that includes whether proposed species areas really are threatened where they still exist, because they still exist, and whether they are represented adequately elsewhere. And when combined and considered at a national scale are they MNES. The NFF is often not convinced these tests are always met.

The critical point in the process is really when the development of conservation advice and appropriate mapping is being developed. This is where the expanded expertise contemplated above is critical. The example of the NTG-SEH demonstrates where the application of the conservation advice extends the possibly captured area compared to the target area by more than a multiplier of 10. The target is 15,000ha and depending on the information source there could have been as much as 500,000ha prior to European settlement. That such an interpretation is possible, whether it is ultimately accurate or not, demonstrates that this is poor advice.

Another area of concern is that the process as it currently stands allows the Minister to consider socio-economic impacts only once they make their final consideration of the recommendations. The principles of Ecological Sustainable Development (ESD) allow consideration of economic, environmental, social, and equitable measures. NFF proposes that ESD considerations are applied at the point of developing conservation advice. Coupled with practical input from agricultural expertise to develop pragmatic solutions, this would provide a more robust process for sound development of conservation advice. The NFF has little confidence sufficient weighting is being given to clauses a), c) and e) of the Ecologically Sustainable Development Principles.

Ecologically Sustainable Development

The National Strategy for Ecologically Sustainable Development, endorsed by all Australian jurisdictions in 1992, defines the goal of ESD as: 'development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.'

The following ESD principles are outlined in Section 3A of the EPBC Act:

- *a) Decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations (the 'integration principle').*
- *b) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation (the 'precautionary principle').*
- *c) The principle of inter-generational equity – that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations (the 'intergenerational principle').*
- *d) The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making (the 'biodiversity principle').*
- *e) Improved valuation, pricing and incentive mechanisms should be promoted (the 'valuation principle').*

The farm sector would be better placed to positively participate if the level of confidence in the listing, in all its parts, could be enhanced. While these proposed improvements are unlikely to be an immediate panacea they are likely to set the basis for a more rational and respected regime. Critically, if the conservation advice can be seen as practical, regionally applicable and designed to ONLY meet the target for the best interests of the species or community being protected, then it is likely less concern will be expressed.

The NFF is of the view that there needs to be a consideration of how to ensure an unbiased consideration of listing reviews to give proponents more confidence in a balanced outcome.

NFF recommends:

- **a) That a cost benefit analysis be undertaken to determine whether the EPBC Act is being delivered as efficiently for environmental outcomes as possible;**
- **b) That the listing nomination process ensure that analysis of national and regional representation of a species is a component of the consideration;**
- **c) Establishing a less onerous process that recognises the low level of risk associated with most farming activities;**
- **d) Establishing an offsets policy that is specific to the unique nature of agriculture projects;**
- **e) That the scope of the TSSC expertise be amended to include at least two representatives with formal qualifications and practical experience in productive landscape management;**
- **f) That a formal, funded, agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident, especially in the development of conservation advice;**
- **g) That in developing conservation advice, social equity and economic considerations, consistent with the principles of Ecological Sustainable Development, be applied;**

h) **A 'discovery process' with the TSSC, or a subset, with appropriate agriculture representatives be implemented to allow a mutual understanding of views on an issue prior to a formal request for a review of a listing; and/or**
i) **The mechanism that allows the TSSC to recommend a listing, and also consider a review of that listing, be reconsidered with a goal of a more independent process being in place.**

3.3 Better Implementation for Landscape Scale Operations

One difficulty that the EPBC Act presents to the farm sector is its application across a broad range of circumstances. In its most prescriptive guises the EPBC Act focuses on geographically confined proposals that might include mine or urban development, or even proposed land use change in agriculture, for example, development of irrigation infrastructure.

For general agriculture the EPBC Act intersects with broadscale landscape issues and, more precisely, on land use change or intensification as described above. Even in this latter circumstance the impact of agriculture on listed species and communities is predominantly negligible in the landscape and of unlikely material impact on the preservation of those identified environmental assets. It grows more frustrating for the farm sector when palpably poor understanding of the practicalities of on-ground intentions result in the expression of concerns or alleged breaches of the EPBC Act.

Time and again the sector is advised that continuing land use practice will not incur the attention of the regulator yet circumstances like tree lopping for drought fodder and weed control to prevent the further spread of exotic species seem to be inevitably grey and irregularly dealt with by regulators.

In one case, a farmer in the Monaro Region of NSW was afflicted by the encroachment of African lovegrass into property. As his property was listed as a national significant ecological community, the farmer cannot practically control the weed (i.e broadacre spraying) until it reaches 50% of the perennial population of the grassland, at which point, it would be almost impossible to practically control. Additionally, the protected minimum area of 0.1 ha makes control on a broadacre basis totally impractical and unworkable. This particular example demonstrates the excessively prescriptive nature of the EPBC Act and does not recognise the dynamic nature of the environment nor best practices for weed control. There are, of course, flow-on impacts for the community if it becomes well-established in the area, impacting production of neighbouring properties as well. Interestingly the Nature Conservation Council is also concerned about African lovegrass. It has published some findings which indicate that a fire and herbicide regime may be an effective solution. Such a treatment is likely to prove difficult for the NTG-SEH captured resource due to the impact of the regime on native grasses.

Further, the recurring focus on patch size (down to 0.1 ha) and claims of intentions to only focus on the very best examples of remnant vegetation, in particular, cause concern for farmers where they may have unidentified small patches, or patches of pristine remnants, that they are neither equipped to identify, nor expecting it to exist in well used parts of their property.

Aside from the need to better communicate these expectations and identify where threatened species and communities realistically may occur, and for that matter, to what extent, the listed species may be expected to exist, a more equitable and clearer process needs to be found to assure farmers that the burden they feel is, for the most part, unjustified.

The evidence available to NFF suggests that the EPBC Act has the intent of targeting only quite specific areas of the landscape. For the most part this may be the case. Nevertheless, there remains a serious question as to how this can be done better. If indeed most farming practices are unlikely to affect listed species and communities, and don't, then there must be a pathway to a different outcome for those areas that are not clear, yet captured i.e. referrals and approvals shouldn't be required in some circumstances and/or much simpler application processes applied for low risk activities

The NFF has no difficulty accepting the need for a regulatory environment that covers serious and large scale breaches of the law. Equally, NFF acknowledges that the best intentions of departmental and appointed experts are to provide a balanced application of the EPBC Act. Where the difficulty lies is the fervour with which unmapped, uncommunicated and even unknown breaches are sometimes pursued.

The NFF is currently working closely with the Department to address this difficulty and some progress is evident. What is needed though is a more proactive and comprehensive engagement. The current process of predominantly reactive 'flying squads' needs to be replaced with a well-funded (either within the Department or under some sort of delegation to state authorities or other experts) engagement process that will assist in restoring confidence of the farm sector in the EPBC Act.

Historically, there has been an out-posted Departmental officer to NFF which sought to build that communication bridge back to the farm sector. While this was a useful experience in doing business and yielded some successes by way of engagement with farmers at key events, it has revealed that the best place to interact with farmers is in the comfortable surrounds of their farm or in local settings. Nevertheless NFF remain interested in a level of national engagement (probably out-posted) to support the delivery of a regional communications model.

NFF recommends:

j) That a formal agricultural consultative mechanism be constituted and made available to consult with the TSSC on listings where an impact on agriculture is evident. Especially in the development of conservation advice and prior to public consultation.

4. Better Administration and Communication

The NFF has previously noted the importance of communicating the EPBC Act requirements to farmers. A measure of the success of this communications strategy must be the number of contraventions of the EPBC Act incurred by the farm sector. Where a contravention occurs, this could often be considered as a communications failure. Whilst there remains the possibility of wilful non-compliance, there is minimal evidence of this taking place.

The NFF suggests that failure has occurred, primarily: when farmers do not know about the EPBC Act; what actions may trigger assessment; and when the Government has not adequately advised farmers in affected regions of new listings of species and ecological communities. As the number of listings increase, there will be an increasing exposure of farmers to non-compliance. This should be avoided through the establishment of adequate mechanisms to inform farmers about the EPBC Act and their obligations under the EPBC Act. The difficulty is in getting the farmer to identify and recognise the issue, compounded by the difficulty in getting departmental staff to identify and recognise and then articulate the issue. As farmers use different methods of obtaining information, the approach must be multi-faceted.

The results of the NFF survey demonstrate this failure. Over 80% of respondents felt that they did not have an adequate understanding of the obligations under the EPBC Act. A further disconnect is demonstrated with over 90% of respondents unclear with how Federal and State native vegetation management laws interact.

It is noted that, on 11 May 2018, Assistant Minister for the Environment, the Hon. Melissa Price MP, announced 50 changes to the listing process including the addition of 41 species, transfer of 6 species and removal of 3 species on the list of threatened species. Given the already inherent difficulty in communicating the existing combined 1800-1900 species and communities to potentially affected communities, NFF will be seeking to fully understand the communications plan for this latest cohort as an example of how the information dissemination will evolve.

These issues have been raised as critical concerns by NFF across a number of reviews. While NFF is heartened by the signs of more direct engagement from the Department of Environment in recent times, much more needs to be done. The experience in the South Eastern Highlands where an amended (escalated) listing was announced in April 2016 yet was so poorly communicated that landholders, and more critically NSW Government extension officers, were not aware by September of that year. This represents a microcosm of the problem.

The NFF has repeatedly argued for more streamlined and connected communications program as indeed did the Hawke Review in 2009.

4.1 Federal/State/Local Government

The current paradigm of operation of environmental law in Australia sees it administered by, at least, the Federal and State Governments. In some jurisdictions Local Government also has power and can impose environmental requirements through its planning and other local regulatory responsibilities.

Additionally, the development, review and implementation of legislation at the varying levels of government lacks harmony. In what NFF describes as the pendulum effect, variations in laws at one level of government too often occur at similar times to reforms at another level where laws are respectively tightened or loosened depending on the politics and the cycle of reform.

The current Commonwealth law has been reasonably static, notwithstanding some variations to listings (for example, the announcement of 41 new listings as described above). Just recently, the NSW Government has varied its laws to be more production and landscape focussed, thus potentially triggering EPBC Act provisions that may have otherwise been covered in previous iterations of NSW laws. Conversely, Queensland has just taken a draconian jump to a preservation-like regime which the farm sector in that state is extremely concerned about.

No matter where the jurisdictions are on the pendulum, it inevitably means that there are ongoing realignments between various tiers of government. It is observably difficult enough for the governments to understand where each other sits and which requirements are incorporated within, or adequately covered in other legislation, let alone the difficulty the farm sector has in gaining cogent information on its responsibilities.

In a real example there is now evidence that the same patch of grassland has been assessed against a State and a Federal compliance regime and has yielded two different answers. Briefly, the State assessment, based on analysis that measured species proportionality including perennial and annual species, found the patch in question to not be of significant ecological value. However, the Federal compliance required an assessment of proportionality which only allowed calculation of perennial species. This apportioned an ecological value that rated the patch as important and in need of preservation. Leaving aside surrounding issues of the appropriateness of the listing and its conservation advice this inconsistency clearly demonstrates why farmers have difficulty. It also questions to what extent the intergovernmental memorandum of understanding (see below) is working.

The frustration of farmers is felt where approvals are given for an activity at one level of government and farmers are then found to be in breach of a set of laws from another jurisdictions. There are current examples of this in both Queensland and NSW.

The NFF has consistently sought a mechanism that will provide farmers with increased certainty. It is understood that advisory structures work differently in different jurisdictions. It is also understood that there are concerns about liability especially where delegated authority or other bilateral regimes are considered for implementation. And it is understood that there are different legislative priorities and scope in different jurisdictions.

Of particular concern is the inaccuracy of mapping. There is substantial evidence especially in NSW and Queensland that the mapping is inaccurate and unreliable. Industry is strongly of the view that the current state of mapping is such that it cannot be relied upon as a decision tool, and nor can they be reasonably utilised as a compliance tool. The NFF have continually raised this as an issue.

Perhaps as an example of the frustration that continues to be felt with inadequate tools the following is noted. The development of the Regional Forest Agreement (RFA) process in the 1990s addressed very similar issues to what are being confronted at present. The RFAs undertook Comprehensive Regional Assessments for each area, incorporated in this process was the establishment of world class Comprehensive, Adequate and Representative (CAR) Reserve System, providing for endangered species protection and continuously improving the sustainable management of forests. This process protected identified species, and each RFA was advanced bilaterally. The important message here is not the RFA outcome it's that the science used for the CAR process was available in the 1990s and included mapping. Almost 30 years on it is a reasonable expectation this can be applied to private land to provide some certainty. In a data rich society these tools should be available through an online portal or at strategically placed locations.

Example of EPBC Act mapping issues

A farmer with a mixed farming operation near Roma in Queensland has been working with a company to set aside country for carbon credit scheme but inaccurate EPBC maps have resulted in half that country being ineligible for the scheme. Extensive work is now required to ensure that the EPBC map is ground-truthed and amended to reflect the farm history and its actual vegetation status. The farmer is encouraging the company to use his situation as a pilot to challenge the mapping, however there is resistance because of the time, cost involved and the lack of clear process involved in seeking EPBC maps to be modified to reflect on-the-ground factual information.

The company reports that it frequently finds that EPBC maps are not accurate and that there is no straight forward process for getting maps reviewed and amended, and as a result the amount of land able to be included in carbon projects is lower than should be the case. This directly impacts on the farmer commercially and acts as a disincentive for setting aside large amounts of country if only part of it is eligible to attract stewardship payments. It is a perverse outcome that the EPBC through the inaccuracy of its mapping is reducing the amount of land able to be farmed for carbon.

In assessing the farm's carbon potential, the company undertook extensive analysis of the property and prepared comprehensive and accurate mapping based on historic documents and photos and detailed satellite imagery of the actual property. This involved going through the imagery pixel by pixel for a 1000acre paddock to accurately map the paddock. The mapping closely aligned to previous state department mapping, but when overlaid with the federal EPBC map half the country became ineligible for the carbon scheme. The fact that state and federal mapping is so inconsistent demonstrates the flaws in the system, and the importance of ground truthing maps and information which are relied upon to make environmental decision.

This situation highlights the major concern about the accuracy of current mapping associated with the EPBC. It also demonstrates the difficulty, expense and time involved in challenging these maps and the lack of a clear process to do so. It is also evident that without the significant external sources with high level of expertise in this area, it is not viable for an individual farmer to challenge the accuracy of EPBC maps and seek maps to be updated to reflect the situation on the ground.

There is now enough experience and understanding of what the concerns are, they have been articulated over a long period by NFF and its members, a solution should be found to resolve these issues. One option is to seek resolution through formal COAG processes.

The NFF recommends:

a) **Implementing formal bilateral or trilateral (where local government is in play) negotiations to resolve how to ensure that a farmer can get a single set of advice on their particular site and be assured (protected) from sanction if the advice is adhered to;**
b) **Development of accurate, multi-jurisdictional mapping that shows layers of all environmental legislative requirements on a specific site to a scale that is meaningful on the ground and is subject to challenge when ground truthed. These should be accessible through an online portal and at strategic locations; and**
c) **Using trusted networks to educate the broader agriculture community to as to a general range of issues they need to consider and how to go about seeking advice if land use change or intensification is contemplated. Such advice should be available in the form on non-binding consultation where it is sought.**

4.2 Consistency across jurisdictions

Recommendation five of the 2009 Hawke review states:

Recommendation 5 – A National Approach

The Review recommends that Australian, State and Territory governments move to a single national list of threatened species, including marine species and ecological communities, through accreditation of State and Territory processes for listing endemic species. This process should include:

(1) agreed accreditation for listing;
(2) agreed protocols;
(3) minimum procedural standards; and
(4) consistent documentation standards.

NFF regards this as a critical recommendation. NFF acknowledges that there is a common assessment method which goes some way to addressing this issue.

However it does not seem to have given rise to full implementation as described by Dr Hawke. There is certainly some progress through the development of the Intergovernmental Memorandum of Understanding Agreement On A Common Assessment Method For Listing Of Threatened Species And Threatened Ecological Communities. While this might reasonably set the frame of operations, the key outcome sought (that is, consistent identification definition and management regimes for species across the nation and across jurisdictions) seems not yet to have been achieved.

The NFF seeks:

d) **That Hawke recommendation five is fully implemented and there is one list, one assessment methodology which presumably gives rise to one set of comprehensive maps and one compliance regime.**

5. Legal Changes

The NFF is taking advice to ascertain whether the following issues can be proposed for legislative amendment or clarification, once the advice is to hand NFF will provide it to the review.

Consideration of socio economic measures in conservation advice.

Whether the consideration of social and economic impacts can be included as a factor in the development of conservation advice (social and economic impacts are currently considered by the Minister after the conservation advice is draft), and if so how best to insert the consideration.

This would be specific to conservation advice dealing with the agricultural sector.

Third party appeals

Consider reform to ensure landholders are able to operate on the basis of guidance from a Commonwealth Officer without having to undertake the referral process.

This would involve limiting/shifting a landholders liability in the event a third party lodges an administrative appeal against their activity which they have undertaken in accordance with advice from a Commonwealth Officer.

Sections 43A and 43B

Consider options to clarify these provisions, in particular the terms:

'to promote the conservation and ecologically sustainable use of natural resources'; and

'an enlargement, expansion or intensification of use;

In doing so the Department's Guidance Note 11 advice will be reviewed to establish whether this provides adequate clarification.

6 New Paradigm

6.1 Command and Control Regulation Vs Market Based Instruments

When the EPBC Act was conceived and implemented in 2000 there were only nascent pockets of market-based instruments for environmental services. An early example is clean air credits in New York City in the 1990s. In this context aspirations to regulate and protect threatened species, though difficult for landholders then and now, were most logically and cost-effectively achieved by legislative intervention. This represented itself practically as a command and control mechanism where rules of engagement were determined under the auspice of environmental protection legislation. Identified species are assessed and classified based on a threat matrix and then conservation advice is developed that is a cautionary 'best bet' for arresting species and community decline. Conservation advice is, in theory at least, also focussed on species recovery.

This current paradigm of operation continues to perplex and distress landholders. The complexity of this process, agitated elsewhere in this submission, leaves landholders confused and with a feeling of carrying the burden of protecting environmental assets at their own cost. There is also the perverse incentive whereby landholders with the most significant remnant (threatened) ecological communities or occurrence of rare species are restricted the most and carry the greatest responsibility or burden.

While there are examples of purchasing of environmental services to aid and sustain recovery, for example, the Environmental Stewardship Programme for the Box Gum Grassy Woodland under the National Landcare Program, these are, by and large, the exception rather than the rule. For the most part the EPBC Act applies limitations to landuse variation or change, limitations of permissible activities around target habitats and seeks to force a dynamic landscape into a static set of rules.

The major policy instrument mix chosen for achieving desired outcomes is regulation, enforcement and compliance, with limited attention provided to other instruments such as: formal education and training; suasion; extension programs; participatory approaches; market-based mechanisms; economic incentives; direct investment; covenants and MoUs; common law; duty of care; stewardship; formal agreements; research and development; monitoring; evaluation; benchmarking and adaptive management; assessment procedures; self-regulation; quality assurance processes; EMS and ecolabeling; public relations; marketing and advertising; conditionalities; institutional arrangements; change other policies, or; reasoned inaction in agreed areas.

Whenever biodiversity legislation reduces the potential and/or value of farmland for a deemed community benefit and devolves the impost onto the landholder without due and deserved recompense, then inevitably the legislation will eventually fail in its intent. This lesson is indelibly written in many instances of history.

Almost two decades later this paradigm remains the default position. It is time to explore a new horizon.

At the end of the second decade of the 21st century there are options to protect species and communities differently.

The World Resource Institute has estimated the value of ecosystem services to be US$33 trillion a year. Internationally, the ecosystem services approach to natural resources management is now being used by governments in the European Union, the United Kingdom, the United States, Canada and New Zealand. Over the last two decades, together with traditional conservation tools, innovative instruments, such as PES (Payment for Ecosystem Services), have been proposed and implemented all over the world in order to improve management effectiveness in biodiversity conservation.

Payments for ecosystem services (PES) occur where individuals or communities are paid for the protection and provision of ecosystem services. This concept has manifested itself in various policies and programs internationally. Large bodies of work and scientific literature have explored and analysed their application, implications and outcomes for society (Schomer and Matzdorf 2013).

For example, the European Union budget provides payments to farmers/land managers for the supply of environmental services through programs designed by each member state according to their (environmental) priority. Participation of farmers/land managers in these schemes remains voluntary. Ecosystem services payments are supported by a percentage from the EU budget, with the remainder provided by the member-state budget and/or from private sources. The practices and actions of landholder need to be explicitly defined, monitored and controlled, so that the Ecosystem Service and benefit can be achieved. The payment calculation is based on income foregone for the beneficiary in order to perform the actions needed, plus additional costs incurred. For certain measures opportunity costs are also taken on board.

In Australia, there are maturing markets for emissions reductions (via the Emissions Reduction Fund) which are underpinned by carbon sequestration methodologies that are consistent with internationally agreed trading mechanisms. These schemes engage landholders in commercial activities that protect and enhance, particularly, vegetation assets. Methodologies such as human induced afforestation, savannah fire management and managed regrowth all promote the enhanced sequestration of carbon in the natural environment. Judicious design also requires the participants in the scheme to meet requirements for pest and weed control. It is in the participant's interest to maximise sequestration through active management of the sink. These requirements collaborate to focus on the commercial return of the resource.

While there are still scale problems with these schemes, that is, they penalise small landholders, due largely to transaction costs of carbon accumulators. The commercialisation of the environmental enhancement, where they are properly made financially attractive, then becomes a compelling option for landholders. Commercialisation can create an industry that provides sales, marketing and technical advice as a precursor to entering agreements, and management and technical input during the term of the contract. In many ways this process is more user friendly and engaging for landholders and cooperative environmental outcomes are the result. Landholder participants can have feelings of ownership, partnership and reward rather than of obligation, and the disproportional burden of environmental protection and confusion under the EPBC Act.

Under the current legislative regime there are limited opportunities to receive stewardship type payments and these, where taken up, are viewed positively by the landholders. The opportunity now is to commence transition for many more market based instruments to encourage protection rather than enforce it.

In valuing protection of high conservation value vegetation that may exist in the listing process as endangered or critically endangered, and it is accurately mapped, then a landholder can volunteer to enter into a commercial agreement which would negotiate a management regime and return a stewardship payment. Vesting this obligation by contract and payment, rather than by decree and enforcement, changes a subordinate relationship to a partnership. Such a mechanism will have a complementary outcome of creating an industry with a value that will encourage technical and management advice on a bilateral basis and go a considerable way to resolving the current communications difficulties from which current arrangements suffer.

A key issue for the farm sector is that it is unfairly bearing the burden of public good conservation. This has been a recurring theme since prior to the EPBC Act, back at least to the overnight introduction of State Environmental Planning Policy 46 in NSW in the mid-1990s. The NFF is of the view that trust was breached then, and through similar mechanisms in other jurisdictions, it has never recovered. Many comments from the NFF survey express a clear frustration towards the operation of the EPBC Act and a desire for more on-ground engagement and consultation with farmers. While recent focus on engagement by the Department is applauded, and its enhancement encouraged, there remains a substantial trust and knowledge deficit.

The experience of the Emissions Reduction Fund (ERF) and other market-based valuations of biophysical assets provide confidence that there is an opportunity to expand the biophysical candidates for market-based instruments. The NFF retains concerns about how this program is able to be accessed by small landholders and also whether it is causing adverse impacts on regional communities.

A critical concern is that where land tenure is uncertain that those that hold management rights (as lessee, or owner manager) over the landscape are fully engaged in any market based instruments including ensuring that the managements rights holder. The NFF will seek close engagement in the design of schemes to ensure these rights are protected.

It is plain that, to do the job of communicating properly, more resourcing is needed, which is made all the more difficult in a climate of greater efficiency requirements and indeed budget cuts to the public service. It is also an opportunity to consider a transitional collaborative role from communications/extension that is publicly funded to a commercial framework governed by resource outcomes rather than enforced protection.

To take this opportunity seriously there will need to be a medium term commitment from government to stand in the market to underwrite the investment. There is already evidence of other investors, largely developers seeking to offset habitat destruction. It is noted that there is a 12 year investment of over $10 billion from the Commonwealth in the Murray-Darling Basin to purchase predominantly environmental outcomes (in the form of acquiring environmental water).

The NFF proposes that an Environmental Stewardship Fund (ESF) be created to support the development of mature schemes of market-based instruments for endangered and critically endangered biophysical assets. The fund should commit $20 billion over the budget forecast period of 10 years. If the aim of Australian agriculture is to achieve a level of $100 billion per annum industry by 2030 and if the 80,000 farmers across the country were to receive a $25,000 payment per year that were tied to preserving and providing ecosystem services, that would equate to $2 billion per annum. This money could be spent through the implementation of market based instruments and also for threat abatement to particularly vertebrate species. The ESF should have the capacity to be a trading scheme where the dynamic nature of the Australian landscape can be represented.

The ESF would need to be innovative, flexible and target both threatened species protection and threat abatement. For threatened species protection funds should be made available through a competitive (reverse auction/tender perhaps) process that seeks to identify and appropriately protect sufficient numbers/hectarage of a robustly identified listing of endangered or critically endangered species/communities. There would preferably be triple goals of protection (and arresting decline of populations), implementing and monitoring a recovery plan in the participant areas, and to seek to move the population down the threat matrix (ultimately aspiring to delisting). There could also reasonably be a scheme design that would reward the achievement of these goals once independently verified. A likely scenario would be annual stewardship payments with bonuses for recovery and delisting.

The second key area of investment would be reducing threats. There will be several examples of key threatening processes or species that impact listed fauna in particular. Let's consider predation by feral cats. It is estimated by the Australian Wildlife Conservancy (AWC) that feral cats number approximately 4 million and can consume 2000 individuals per minute or more than 1 million birds, more than 1 million reptiles and more than 1 million mammals in Australia every day. The AWC model property that has protected and excluded predators from some 8,000ha at the Scotia Wildlife Sanctuary is already showing signs of species recovery and greater outcomes are expected. Serious investment in cat management/eradication programs are likely to have more positive effect on endangered fauna than many of the habitat protection regimes currently applied by the EPBC Act. While maintaining the habitat is an important goal, preventing species destruction through predation is also critical. More detail on the damage that cats cause and some of the successes by the AWC can be seen here. Other feral predators should also be considered for control.

While this mechanism is being considered, developed and funded there remains an increased need for greater capacity to deliver the necessary support systems that will provide greater clarity to landholders.

There are a number of examples of structures that could be mirrored under or within an ESF. The NFF notes that the Clean Energy Finance Corporation has an investment remit to support more rapid adoption of clean energy technologies. The ERF is in the process of investing $2.3 billion in carbon reduction through a range of negotiated methodologies. The Department of Agriculture and Water is investing over $10 billion purchasing water entitlements from consumptive users to establish a (Murray-Darling) basin wide pool of environmental water that is being strategically applied via the Commonwealth Environmental Water Holder to support and recover icon environmental sites. A combination of attributes of any or all of these structures would be a significant basis for the architecture of an ESF.

NFF Recommends:

a) **That the EPBC Act listings be reviewed to identify species and communities that can be valued and that a transition to a market based approach for protecting endangered and critically endangered species and communities be commenced.**

b) **That the developing communication engagement capacity of the department of environment be enhanced. Including to formally and clearly partner with other jurisdictions (State and/or Local Government) to provide concise information at a single point for landholders.**

c) **That the Commonwealth commit to support protection of public biophysical assets that are endangered or critically endangered by investing $20 billion over the next decade through the creation of an Environmental Stewardship Fund.**

7 Vegetation/Climate Trigger

The NFF is aware that there are proposals for greenhouse, climate and/or land clearing triggers to be incorporated into the EPBC Act.

The greenhouse trigger was noted in recommendation 10 of the Hawke review (below) and ought to have lapsed as it was recommended to sunset once the Carbon Pollution Reduction Scheme was implemented. That has happened and so has the successor to it. The NFF regards this as off the table.

Recommendation 10

The Review recommends that:

(1) an interim greenhouse trigger, with a threshold of at most 500,000 tonnes of carbon dioxide equivalent emissions, be introduced as soon as possible by way of Regulation to sun-set upon commencement of the Carbon Pollution Reduction Scheme; and

(2) the Act be amended to insert a requirement to consider cost-effective climate change mitigation opportunities as part of strategic assessments and bioregional planning processes

With the existence of separate mechanisms, such as the Emissions Reduction Fund, and ongoing international commitments to climate change there is no compelling case argued for either a climate or land clearing trigger. The principles of relying on competent science to inform the decision making process under the EPBC Act are the appropriate mechanism. For clarity NFF is opposed to such measures as they serve no useful purpose in the context of the objectives of the EPBC Act or the EPBC Act *per se*.

NFF recommends:

a) **That there be no trigger of any kind incorporated in the EPBC Act or its regulations.**

8 Case Studies and Survey Results disclaimer

The NFF has been able to draw together some case studies that reinforce a number of arguments. Notably, many of the responses to the survey also support the arguments articulated herein.

There has been some direct reference to case studies, and in some cases identification of the author. However, NFF do not believe that publishing the detail of these case studies necessarily adequately protects the individual. Instead NFF has entered into a confidentiality agreement with Dr Craik and Aither consulting whereby we have supplied the case studies we have to hand to support the case being argued herein.

In terms of the NFF survey, some individual responses to questions have been quoted in the text of this submission. They have been de-identified herein and have also been as they were provided to Dr Craik and Aither under the same confidentiality agreement referred to above.

Native Vegetation

Policy Position

Change is needed in the way that the Commonwealth Government administers the *Environment Protection and Biodiversity Conservation Act* in relation to the management of native vegetation on farms. To make native vegetation policy more workable for farmers the Government must develop specific guidelines and policies that are relevant to agricultural developments, provide a streamlined process for seeking approval and dedicate resources to assisting farmers understand and comply with the law.

Issue

Since the *Environment Protection and Biodiversity Conservation Act* (EPBC Act) was passed by the Commonwealth in 1999, the farm sector has argued that the way in which the law is applied to agricultural developments does not work.

Both State and Commonwealth laws govern the management of native vegetation on farms. This results in both duplication and confusion. An activity may be exempt from requiring approval under a state law, but still require assessment and approval from the Commonwealth. Further, a species or ecological community may be defined and protected in one way by the state, and in a different way by the Commonwealth – so even determining whether you have a protected matter in the first place can be difficult. While work has started to harmonise and streamline jurisdictions, more needs to be done.

For farmers to be confident that they are not breaching the law, they must go through a cumbersome and costly referral process. The process is one-size fits all – regardless of whether the action is undertaking a small farm activity or a large development such as a new suburb or mine. A multi-stepped referral, assessment and approval process is required that properly reflects the lower risks that are often associated with agricultural activities.

The EPBC Act is a major barrier to farmers adopting precision agriculture practices – such as controlled traffic farming - in many cropping zones. This is because of the way the EPBC Act seeks to protect isolated paddock trees that have debateable conservation value. A new way of considering isolated paddock trees, with reasonable offsets that protect areas of higher conservation value, is required.

It is important that farmers are aware of their legal responsibilities under the EPBC Act. Resources to develop communication materials that are relevant to farmers and to proactively communicate to the farm sector have been stripped from the Department over time. Investment in education and awareness is a cost effective way to ensuring compliance with the requirements of the Act.

Background

The EPBC Act protects matters of national environmental significance, including threatened and migratory species, wetlands, endangered ecological communities and national heritage properties.

Where a proposed activity may have a significant impact on a protected matter, the activity should be referred to the Commonwealth Department of the Environment for assessment, and where required, approval.

What the industry needs

Change is required to the administration of the EPBC Act to make native vegetation policy more workable for farmers. These changes include:

- dedicating resources to facilitate strategic and proactive communication of farmers' regulatory responsibilities under the EPBC Act;
- preparing guidelines – suited for farming situations – that can assist farmers make a decision as to whether they are likely to trigger the EPBC Act and how they can exercise due diligence when considering environmental laws;
- further streamlining of State and Commonwealth vegetation management laws, to reduce red tape and to ensure that farmers are better able to fully understand all their legal responsibilities;
- establishing a multi-step referral process that recognises the low level of risk associated with most farming activities;
- establishing an offsets policy that is specific to the unique nature of agriculture projects; and
- developing specific guidelines in relation to clearing isolated paddock trees.

2017

Appendix A

Process for listing threatened species, ecological communities and key threatening processes under the *Environment Protection and Biodiversity Conservation Act 1999*

Minister may determine a conservation theme

Public nominations invited (minimum of 40 business days allowed)

Nominations are received by the Minister and referred to the Department within 30 business days for EPBC Regulations checks.

Nominations that comply with the EPBC Regulations are then referred by the Minister to the Threatened Species Scientific Committee (the TSSC) for consideration.

The TSSC provides the Proposed Priority Assessment List (PPAL) to the Minister within 40 business days.

The Minister may make changes. The Minister agrees to the Finalised Priority Assessment List (FPAL), within 20 business days. TSSC publishes the FPAL on the Department's website.

Start of Assessment Period (1 October)

The TSSC begins the assessment of each item against the listing criteria. The TSSC invites public and expert comment on the draft Conservation Advice/draft Listing Advice for the nomination.

The TSSC considers submission received during public consultation. The TSSC assesses whether the nominated species, ecological community or key threatening process is eligible for listing, and if so, in which category of the EPBC Act.

The TSSC concludes its assessment and provides its advice to the Minister by the statutory deadline set in the FPAL.

Based on the TSSC's advice, the Minister decides whether to list the assessed species, ecological community, or key threatening process, as threatened and in which category.

The Minister notifies the TSSC and the nominator of the listing decision.

Information on new listings, including the advice to the Minister and relevant information products, are placed on the Department's website

National Farmers Federation

Environment Protection Reform Bill 2025 and Six Related Bills

November 2025

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

19 November 2025

Executive Summary

The National Farmers' Federation (**NFF**) welcomes the opportunity to provide a submission to the Senate Environment and Communications Legislation Committee. On 30 October 2025, the Commonwealth introduced seven separate Bills as part of its proposed reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). Together, these Bills seek to reduce duplication between Federal and State environmental assessment processes through accreditation and bilateral agreements, establish a National Environmental Protection Agency (**NEPA**), and create Environment Information Australia (**EIA**) alongside a new framework for Bioregional Planning and Environmental Restoration and Contributions.

The Bills tabled by the Government are as follows:

1. *Environment Protection Reform Bill 2025*.
2. *National Environmental Protection Agency Bill 2025*.
3. *Environment Information Australia Bill 2025*.
4. *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Bill 2025*.
5. *Environment Protection and Biodiversity Conservation (General Charges Imposition) Bill 2025*.
6. *Environment Protection and Biodiversity Conservation (Customs Charges Imposition) Bill 2025*.
7. *Environment Protection and Biodiversity Conservation (Excise Charges Imposition) Bill 2025*.

NFF supports reforms that deliver environmental protections, faster and efficient approval processes, and more transparency and integrity around environmental decision-making. We do not support the passage of legislation as currently drafted. Several amendments are required to ensure that reforms deliver better outcomes for business and achieve overarching EPBC Act objectives to protect the environment and promote Ecologically Sustainable Development (**ESD**). These are outlined in the proceeding items below.

For the agricultural sector, the EPBC Act is much more about continuing-use provisions than it about assessments. For the former, agriculture needs to be confident that obligations imposed are well articulated and accessible. Unreliable mapping, the differentiation of potential or critical habitat, or how the listing of a species and its subordinate threat abatement strategies are resolved and communicated are all of concern. On the latter issue of assessments, clarity on scale, offsets calculators, and risk attribution are all issues which are complex and difficult to communicate.

The Reform Imperative

There is consensus across industry groups including NFF that Australia's current National Environmental Laws administered through the EPBC Act are not working for either the environment or business.

The *2021 State of the Environment Report* confirms that Australia's national biodiversity is in long-term decline, with invasive species identified as a significant contributing factor.

Assessment and approval processes are complex, necessitate costly expert advice, and can take significant time to resolve for proponents, and the Act does not provide certainty for farmers seeking to understand their obligations or adequately address dual consent provisions with State and Territory environmental legislations. As a result, farmers are frequently subjected to unnecessary regulatory burdens and operate within a complex and uncertain regulatory landscape. Collectively, these issues demonstrate that the current regulatory framework for biodiversity management in Australia is failing to deliver effective environmental outcomes or practical certainty for the agriculture sector.

This submission outlines the NFF's key policy priorities and concerns with the proposed legislation. Recommendations and consequential amendments are provided to ensure reforms avoid unanticipated impacts for the agriculture sector and deliver better outcomes for business and the environment in accordance with the three pillars outlined by the Minister for the Environment and Water (**Minister**).

National Environmental Standards

The *Environment Protection Reform Bill 2025* (**EPR**) will amend the EPBC Act to provide a framework for the Minister to make, vary, and revoke National Environmental Standards (**NES or Standards**) and to apply such Standards to decision-making across several approval decision pathways under the Act. The creation of NES was a cornerstone recommendation of the *Samuel Review* and is supported by NFF, as Standards should provide decision-makers with clearly defined and consistent parameters within which to operate. This clarity is essential given the broader reforms which include the establishment of a NEPA and the introduction of new bilateral agreements and accreditation mechanisms. To be effective, Standards must outline clear requirements and parameters for environmental assessments, Bioregional Planning, and for the accreditation of State and Territory processes.

NFF notes that the *Department of Climate Change, Energy, the Environment, and Water* (**DCCEEW**) is currently consulting the public on proposed NES for Matters of National Environmental Significance (**MNES**) and Environmental Offsets, and that submissions will close 30 January 2026. Understanding that this consultation is a separate process from reforms currently before Parliament, NFF looks forward to robust engagement and discussion should legislation enabling the Minister to create NES pass. These discussions must be genuine and incorporate the views of industry and governments.

NFF Recommendation:

- **NES are clearly defined and establish clear parameters and boundaries through which decision-makers are to operate within.**

Streamlined Assessment Pathway

Consolidating Existing Pathways and Clarifying Further Requests for Information for Assessment and Approvals of Controlled Actions

The EPR Bill proposes to introduce a new Streamlined Assessment Pathway to replace (i.e., consolidate) three existing pathways for controlled actions as outlined below. The existing requirement that a person must refer the action for an environmental approval where they are proposing to take an action that has, will have, or is likely to have a Significant Impact on a MNES will be retained. The intent of this reform is to shorten assessment timeframes for proponents that provide sufficient documentation upfront.

1. *Assessment on Referral Information* (**ARI**).
2. *Assessment on Preliminary Documentation* (**PD**).
3. *Assessment on Public Environment Report* (**PER**).

The Commonwealth has stated that this pathway will reduce assessment and approval timeframes by 20-days, cutting the current 70-day statutory period under the existing ARI and PD pathways to 50-days or less resulting in faster assessments and reduced opportunity costs (i.e., delays) across the broader economy. A desktop review conducted by DCCEEW into projects that have progressed through the ARI and PD pathways found that a substantial number of projects experienced delays, and that delays were often attributed to further information requests made under the stop-clock provisions[1]. NFF therefore supports amendments requiring the Minister to publish the reasons for a request for further information on a **centralised webpage** managed by the Department as a public transparency measure that should in-effect limit the frequency of such requests to clear evidentiary needs only.

It is important to articulate that the benefit of these reforms to the agriculture sector is small, although not immaterial. While a vast majority of agricultural projects are not referred for assessment under the EPBC Act, approximately 3.5% of referred actions by the sector between 2000 and May 2018 were controlled action decisions[2]. Consequently, a shortening of the statutory timeframe for controlled actions is a welcome measure by NFF as this will in-theory facilitate quicker decisions for some agricultural proponents, including those who may be operating under time-sensitive conditions. We do however argue that that the existing assessment pathways are retained. This is due to the absence of clearly defined legislation and subsequent NES that provide detail on how the new proposed statutory tests, including a requirement to deliver net-gain, will be operationalised. Maintaining current pathways will also provide proponents with confidence and certainty by which to operate and allow time for the implementation of the proposed Streamlined Assessment Pathway to be clarified and understood.

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[1] September 2025, Department of Climate Change, Energy, the Environment, and Water, Australian Government: Environmental Law Reform: Certification of Final Report of the EPBC Act Review – Addendum to the Final Report
[2] September 2018, Aither and Wendy Craik AM: Review of Interactions Between the EPBC Act and the Agriculture Sector

‘Unacceptable Impacts’ Criteria

The proposed introduction of a new statutory ‘unacceptable impacts’ test as written is ambiguous and drafted so broadly that it risks precluding significant portions of the landscape from development. This includes in agricultural regions, where it is difficult to reconcile the EPBC Act’s Objects with the principle of ESD. There are 37 proposed definitions for ‘unacceptable impacts’ on protected matters spread across 12 pages. As currently framed, an ‘unacceptable impact’ encompasses, but is not limited to serious or irreversible damage on the viability of listed threatened species and ecological communities, and serious damage to critical habitat with no clear thresholds or proportionality parameters. Terminology such as ‘seriously impair’ are subjective and not adequately defined, and together fail to set clear, upfront, and transparent criteria as envisioned by the Minister.

In practice, this drafting could capture a wide range of routine activities rather than reflecting the Commonwealth’s stated intent that the ‘unacceptable impacts’ test is to apply only in *“very limited circumstances”*[3] (i.e., mining Uluru or building an apartment block in a Ramsar-listed wetland as explained by the Minister[4]) to protect nationally protected matters rather than acting as a broad prohibition on reasonable development activity. There is a disconnect here between the current drafting and policy intent expressed in the Explanatory Memorandum and in public statements by the Minister.

A more workable approach would be to adopt a single and clear definition of ‘unacceptable impacts’ that applies universally to all protected matters:

“A significant impact is an unacceptable impact if it will, or is highly likely to, result in the inability of the protected matter to continue to survive in the wild, or the permanent and irreplaceable loss of the critical values for which the matter is protected”.

Critical Values: The ecological, cultural, or natural features which are critical to the basis on which a World Heritage property, National Heritage place or declared Ramsar wetland was included in the List (e.g., Outstanding Universal Value of heritage places, ecological character of Ramsar wetlands).

As a general principle, and consistent with the recommendations of Professor Graeme Samuel AC, specificity in legislation is critical, and NES 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 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”*[5].

NFF supports deferring the technical detail of how ‘unacceptable impacts’ apply to specific MNES to the relevant NES, supported by additional sector-specific guidelines which is a principle supported by Prof. Samuel. This will provide proponents with clear

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[3] October 2025, Hon Tony Burke MP: Environment Protection Reform Bill 2025, Second Reading Speech
[4] October 2025, Minister for the Environment and Water: Address to the National Press Club
[5] November 2025, Senate Environment and Communications Legislation Committee: Environment Protection Reform Bill 2025 and Six Related Bills Senate Inquiry Hearings

examples of what an early 'no' will look like and provide confidence that this new statutory test is to be applied in a predictable and consistent manner. This material must be developed through a robust and consultative process with industry provided with the sufficient time to test and validate the workability of this new concept in real-world settings.

NFF Recommendation:

- **Adopt a single definition of 'unacceptable impact' for all MNES and defer to the NES and additional guidance documentation for detail and clarity respectively, not the primary legislation.**

Net-Gain Test Requirement

The current net-gain test is ambiguous and does not specify the extent of net-gain required and/or how it will be quantified for the purposes of measurement. There are also consistency issues that undermine what is presented as an outcome-based requirement. For example, although the EPR Bill states that the Minister must not approve a controlled action (at the project or strategic level Under Part 9 and Part 10 respectively) with a residual significant impact unless satisfied that approval conditions will achieve a net-gain, other provisions dilute this obligation. Regulations may allow *"no net-loss"* to be treated as passing the test (Section 527K(3)), certain human-facing impacts are deemed to pass the test without ecological improvement (Section 527K(4)), and, in the absence of regulations, the required level of net-gain becomes whatever the Minister is *"satisfied is appropriate"* (Section 527K(1)(b)(ii)).

It is also unclear whether net-gain must be demonstrated for each protected matter individually or at a broader landscape scale through environmental offsets and/or restoration contributions. Greater clarity is required to ensure that the net-gain test is not only understood but consistently applied and capable of providing certainty for proponents and the environment.

NFF Recommendation:

- **Define and address net-gain only within NES and not in primary legislation.**

Restoration Actions and Restoration Contributions (Environmental Offsets)

The EPR Bill does not specify how the Restoration Contributions Holder (**Holder**) will determine and prioritise areas for delivering environmental offsets funded by a 'Restoration Contribution Charge'. Section 177CS(5) provides only that a Restoration Action *"is to be carried out, so far as practicable, in the same bioregion in which the impact occurred"*. There is no statutory obligation to avoid arable land or to consider cumulative impacts on food and fibre production capability. Without clear safeguards, there is a risk that environmental offsets will disproportionately target arable land in conflict with Objective Two of the *Agriculture and Land Sector Plan* (balancing agricultural production with nature repair and carbon storage) and to the detriment of food and fibre production.

Environmental offsets must also be supported by stringent ongoing management obligations to prevent perverse outcomes at the landscape scale. These obligations should be clearly defined in the relevant NES to ensure environmental offsets do not exacerbate biosecurity, weed, fire, or vertebrate pest risks. Without strong and enforceable management requirements, environmental offsets will fail to deliver genuine, long-term biodiversity improvement and compromise existing environmental assets.

NFF Recommendation:

- **Environmental offsets under the Fund are subject to mandatory ongoing management obligations.**
- **Investments into environmental offsets prioritise the management of defence land, declared national parks, other public land, and environmental assets to address threatening processes including vertebrate pests.**

Bilateral Agreements and Accreditation Processes

Bilateral agreements and accreditation processes are critical to addressing dual consent issues regarding environmental assessments and approvals under National Environmental Law and comparative State and Territory environmental legislations. As previously detailed, agriculture is profoundly impacted by dual consent issues. There are countless examples whereby farmers operating under State and Territory environmental approvals are inadvertently made aware of them contravening obligations under National Environmental Law. This has been a longstanding issue for the sector, prominently raised through the *Craik Review*. NFF supports reforms that address dual consent issues and remove the need for duplicative Federal assessment and approval under an accredited framework that is consistent with NES, the ‘unacceptable impacts’ statutory test criteria, and the ‘net-gain’ test, provided our above recommendations are implemented.

NFF Recommendation:

- **Accredit State and Territory regulatory processes for assessment and approvals consistent with the *Samuel Review*.**
- **No duplication or conflict between State clearing exemptions and Federal assessments.**
- **Governments commit to a timeline to address dual consent issues through the establishment of bilateral agreements and accreditation processes.**

Bioregional Planning

Regional Planning Pilots

Eight Regional Planning Pilots are currently being developed between Governments and stakeholder proponents to identify prospective areas of ‘go’ and ‘no-go’ zones for development. To be effective, Bioregional Plans must be developed using existing Natural Resource Management (**NRM**) regions rather than the Interim Biogeographic Regions of Australia (**IBRA**) subregions. As IBRA boundaries frequently cross jurisdictional borders, multilateral development and approval between the Commonwealth and multiple States and Territories would be required. This will complicate agreement-making processes and trigger delays, resulting in productivity benefits for business. This complexity is already evident in Queensland where mapping and modelling for Pilot Plans use IBRA subregions[6]. Ensuring Bioregional Plans are developed using NRM regions would simplify the agreement-making process (bilateral only) and remove complexity.

NFF Recommendation:

- **Ensure Bioregional Planning is undertaken by NRM regions as opposed to IBRA subregions which can cross jurisdictional boundaries.**

Ensuring Reforms Deliver for Agriculture

NFF supports the concept of Bioregional Planning provided it is done comprehensively, this includes ensuring all relevant factors are considered including arable land boundaries. A comprehensive approach requires the clear integration of arable land boundaries to ensure agricultural land is not inadvertently displaced or disadvantaged by competing land-use priorities. Spatial tools such as the Spatial Agriculture, Forestry, and Environment (**SAFE**) model being developed by the Australian Bureau of Agricultural and Resource Economics and Sciences (**ABARES**) would be a valid pathway toward achievement.

NFF Recommendation:

- **Ensure Regional Planning includes a SAFE model provided by ABARES, or similar, by amending Section 177AM(b) to explicitly identify this along with other relevant social and economic assessments.**

Development Zones and Priority Actions

NFF believes that there is a missed opportunity in the way that the framework is currently being conceptualised. The current thinking at least expressed by the Commonwealth is to gear Bioregional Plans predominantly toward large-scale developments with a particular focus on carbon offsets, critical minerals, housing, mining, and renewable energy infrastructure projects.

Under the Bill, Development Zones are intended to allow specified classes of activities (Priority Actions) to proceed through a simple registration process rather than requiring a project-level EPBC approval. However, Development Zones do not automatically streamline all activities, they only streamline actions that have been expressly identified as a Priority Action. Importantly, Subsection 177AE(2) in the Explanatory Memorandum states that Priority Actions can only be specified *"if the Minister is satisfied that, taken as a whole, the actions in that class have, will have or are likely to have a significant impact on one or more protected matters"*.

The EPR Bill does not define or restrict how broad these classes may be, nor does it define what constitutes a 'Significant Impact'. As a result, what may be registered and therefore benefit from streamlined assessment is dependent on the Minister's satisfaction against criteria that remain undefined.

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[6] 2025, Queensland Government, Department of the Environment, Tourism, Science, and Innovation: [Bioregional Planning]

NFF Recommendation:

- **Explicitly define what constitutes a 'Significant Impact'.**

Keeping National Environmental Protection Agency Accountable

The NEPA Chief Executive Officer (**CEO**) must be accountable to the Minister to safeguard public trust and ensure NEPA is acting in accordance with public expectations.

Paid and Volunteer Work

The NEPA CEO will hold a position of statutory authority with responsibilities that demand undivided attention and professional commitment. Decisions made by the CEO will have consequential impacts on investment and the broader economy. Any external paid work would introduce, or be perceived to introduce, conflicts of interest that compromise public confidence in the integrity and impartiality of NEPA. The CEO should therefore be prohibited from undertaking paid employment outside the duties of the office.

Volunteer work may be appropriate where it does not give rise to conflicts of interest or diminish the CEO's capacity to meet statutory responsibilities. Such engagements should be promptly declared and subject to independent oversight.

NFF Recommendation:

- **The Minister is prohibited from approving the NEPA CEO to engage in other paid work as outlined under Section 50.**

Expanded Termination Criteria

As currently drafted, the NEPA CEO may only be removed for narrow forms of serious misconduct. The Bill does not provide any mechanism for termination on the basis of sustained poor performance. This is inconsistent with the responsibilities of the role and the expectations of an accountable authority. It also conflicts with the intent to build a culture of continuous improvement at NEPA as stated in the Explanatory Memorandum. NFF notes that several Commonwealth statutes empower Ministers to remove senior statutory appointees when their performance has been unsatisfactory over time.

For example:

Legislation 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):* *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:* ○ *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:* *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 has been unsatisfactory for a significant period of time.*	*Part 3, Division 3, Section 34*	*Minister for Infrastructure, Transport, Regional Development and Local Government*
Civil Aviation Act 1988	*The Minister may terminate the appointment of a Board member if:* ○ *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.* ○ *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*

NFF Recommendation:

- **The Minister's Statement of Expectations is binding on the NEPA CEO.**
- **Amend termination provisions under Section 52 to include a criterion for poor performance, consistent with similar statutory positions and Commonwealth legislation.**

Chief Executive Officer Appointment Criteria

Appointment criteria for the NEPA CEO 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:

a) *conservation of biodiversity;*
b) *ecologically sustainable development;*
c) *heritage;*
d) *Indigenous affairs;*
e) *law;*
f) *law enforcement;*
g) *natural resource management;*
h) *any other matters prescribed by the rules; and*

While these categories are relevant, they do not recognise the significant interface between National Environmental Law and agricultural land management. A substantial proportion of EPBC regulated actions occur within agricultural landscapes. It is therefore essential that the existing criteria is expanded to include agriculture and land management to ensure decisions are grounded in the practical realities of the environments in which they will apply.

NFF Recommendation:

- **Appointment criteria under Section 45(2)(b) are expanded to include agriculture and land management, to ensure the complexities of the sector are understood and appropriately reflected in the actions of the statutory decision-maker.**
- **Requirements for representation on the Advisory Committee must match specific criteria for CEO eligibility as outlined in Section 45(2)(b) which includes but is not limited to knowledge or experience in either ESD, agriculture, or natural resource management.**

Delegation of Powers

The NEPA Bill should be amended to ensure delegation of powers requirements are consistent with the delegation requirements outlined in the *Environment Information Australia Bill 2025* and in respect of the more consequential role and responsibilities of the CEO. That is only SES level staff can be the subject of delegated powers.

NFF Recommendation:

- **Amend delegation of powers criteria to remove a person who holds or is acting in an Executive Level 1 position from the specified requirements list outlined in Section 59(4).**

Clarifying Ability to Make Rulings

The NEPA CEO's ability to make a ruling relating to their opinion on a specified environmental law provision must not be inconsistent with the Minister's Statement of Expectations and/or override the Minister entirely.

NFF Recommendation:

- **Clarify legislation so that rulings made by the NEPA CEO cannot override nor contradict the Minister.**

Environment Protection Orders

Environment Protection Orders (**EPOs**) will operate as a de-facto 'stop work' direction with immediate consequences for proponents. It is therefore essential that stronger safeguards apply to both the Minister and NEPA CEO in the exercise of this power. EPOs must only be utilised in cases where there is demonstrable evidence that a contravention has occurred and not on a speculative basis. This approach is consistent with comparable powers in State and Territory jurisdictions and the Explanatory Memorandum which details that EPOs are intended to be utilised to address *"egregious offences"* and *"time-sensitive matters"*. Clear statutory expiration periods are also required to prevent the rolling issuance of EPOs or their misuse as a constraint against development in the absence of a substantiated breach.

NFF Recommendation:

- **EPOs should only be used in cases where there is demonstrable evidence that a contravention has occurred (i.e., on an evidentiary basis).**
- **Introduce clearly defined expiration timeframes (maximum 14 days) and restrictions preventing a rolling-issuance EPO against the same identified contravention unless new material evidence emerges.**

- **Natural justice provisions must be included.**
- **No duplication/conflict with States and Territories and/or other equivalent agencies.**

Environment Information Australia

State of the Environment Reporting

State of the Environment (**SOTE**) reporting must be a data-driven assessment of national environmental outcomes and not a reflection of the views of a limited subset of subject-matter experts. NFF supports amendments requiring SOTE reports to draw on and reflect the knowledge and insights of both agriculture and biodiversity experts. These perspectives are essential to delivering an accurate national account of the environmental condition and trend, particularly given SOTE reports will assess progress against national environmental targets including the 30 X 30 Target for Land.

Given that environmental offsets will be required to contribute to net-gain outcomes for protected matters, SOTE reports must also track and evaluate the effectiveness of environmental offset activities. This includes accounting for management of vertebrate pests which are central to delivering genuine environmental improvement.

NFF Recommendation:

- **Amend Section 12(3) to require SOTE reporting to draw on and reflect the knowledge and insights of persons with knowledge and expertise in biodiversity and natural resource management.**
- **SOTE reporting is to include an assessment of the status and management of the national estate.**

Advisory Committee Membership

There will be a number of existing and newly established Committees that will operate under the EPBC Act. Agriculture expertise must be represented to ensure decisions are grounded in the realities of land management and production systems.

NFF Recommendation:

- **Amend legislation to require an appropriately qualified individual with agricultural expertise for:**
  - **The Threatened Species Scientific Committee (which is the current practice and a *Craik Review* recommendation);**
  - **The Independent Expert Scientific Committee;**
  - **Any Advisory Committee appointed for either the EPA CEO, or the Restoration Contributions Holder; and**
  - **Any other formal advisory entity that may impact agriculture; including for EIA.**
- **Implement a specific process that would formalise agricultural advice.**

Maintaining Continuing-Use Provisions Under Section 43A and Section 43B

NFF maintains that farmers must continue to be provided with certainty to conduct themselves under existing provisions under National Environmental Law. Continuing-use provisions outlined under Sections 43A and 43B of the EPBC Act are critical in providing such certainty and must be preserved. These provisions ensure that standard and accepted agricultural practices, including native regrowth management, weed control, interchanging grazing strategies, and variations in stocking rates driven by seasonal conditions (for example) remain lawful and are not subject to unnecessary environmental assessment or approval requirements. These provisions underpin the viability and continuity of agricultural production across Australia and any reforms that diminish them will impose disproportionate regulatory burdens on the farm sector and undermine food and fibre production.

NFF Recommendation:

- **Maintain and protect continuing-use provisions under Section 43A and Section 43B of the EPBC Act.**

Forestry

NFF Recommendation:

- **Regional Forestry Agreements (RFAs) are amended to make them subject to NES.**
- **After initial assessment, RFAs are assessed against NES at each 5-year interval.**
- **Transition arrangements will be important to ensure existing arrangements are maintained until new arrangements are established.**
- **State regulators oversee compliance.**
- **Continued exemption from net-gain.**

Convention on International Trade in Endangered Species

The Minister must comply with the obligations and protection levels of the Convention on International Trade in Endangered Species (**CITES**) in accordance with the internationally recognised, consistent, and agreed upon core CITES Appendices I, II, and III lists. Any adjustments to CITES lists must balance environmental protection with economic consequences. Australia's existing Australian Fisheries Management Authority (**AFMA**) and EPBC management frameworks already meet or exceed CITES obligations and should not be duplicated or overridden by additional domestic measures.

NFF Recommendation:

- **Remove Section 303CB which enables the Minister to declare that a specified CITES III specimen can be treated as a CITES I specimen for the purpose of applying stronger domestic measures to the international trade in that specimen.**

Conclusion

The legislation would benefit from amendments as described herein. The long-standing need for clarity and confidence from the farm sector would be substantially met having made those adjustments. It would then need a comprehensive process of consultation and collaboration to ensure that the implementation of, especially Bioregional Planning and bilaterals, meet desired outcomes for agriculture.

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 Information Sheet on Proposed Reforms and Amendments**

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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.

<u>Specifically:</u>

- *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 Farmers Federation

National Environmental Standard for Environmental Offsets

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) on the continued development of the *National Environmental Standard* (Standard) *for Environmental Offsets.* This submission builds on our prior response to the first-round consultation on the proposed *National Environmental Standards* (Standards) for *Matters of National Environmental Significance* (MNES) *and Environmental Offsets* **(Attachment 1).** It also draws upon our recently lodged submission to the second-round consultation on the proposed Standard for MNES **(Attachment 2).**

The proposed Environmental Offsets Standard is not yet sufficiently clear or practical for implementation in agricultural landscapes. There is a need to clearly define how key concepts will work in-practice so that landholders and proponents alike understand their obligations and have confidence to engage with the proposed framework. This includes understanding how concepts such as net-gain are to be satisfied in-practice and how the Principle-led approach to implementation will be undertaken in a manner that is actually consistent with the Objectives and Outcomes of the Standard and broader *Environment Protection and Biodiversity Conservation* (EPBC) *Act 1999.*

In the absence of a consolidated reform package, it is difficult for industry to assess the implications of the proposed framework including how Standards will interact with each other. We continue to seek release of the full suite of regulations and supporting materials so that stakeholders can properly assess the cumulative impact of the reforms. At present, there is no visibility of how issues of overlap and inconsistency across Standards will be resolved.

Significant amendments are required to make the proposed Environmental Offsets Standard workable and fit-for-purpose.

<u>This includes in summary:</u>

- *A commitment to publishing the full suite of proposed Standards together rather than continuing with the staggered approach to enable industry to better understand the full regulatory, operational, and economic implications of the proposed framework and identify unintended consequences or address the many areas of duplication and overlapping requirements present across them;*

- *Clarify the relationship between the Objectives, Outcomes, and Principles through consistent drafting. This includes whether satisfaction or application of the Principles is intended to be the operative test to demonstrate consistency;*

- *Amend section 7(4) of the draft Legislative Instrument so that a decision-maker will be taken to be satisfied that a decision is consistent with the Standard where the specified requirements are sufficiently clear and are understandable, applicable, and interpretable;*

- *Make clear that environmental offsets are only required for residual Significant Impacts on MNES and their critical habitat, and that referral or assessment does not automatically trigger an offset obligation;*

- *Develop practical examples of what avoidance, mitigation, and repair look like in an agricultural, marine, and fisheries context where environmental offsets are determined to need consideration post-referral;*

- *Clearly describe how compatible agricultural land-uses such as grazing, pest management, weed control, and other productive land management activities can operate on environmental offset sites where they are consistent with the intended environmental outcome;*

- *Clarify how the Environmental Offsets Register will address privacy considerations and questions around commercially sensitive data and information; and*

- *Ensure the Relevant Area Principle can be practically applied in a real-world context, understanding that cultural considerations make offsets substantially more challenging to identify and secure.*

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

NFF is extremely concerned that the proposed Principle-led approach to implementation that is apparently being adopted across all Standards is creating significant uncertainty about how consistency with the Standard is to be demonstrated and benchmarked in-practice. We do not support this approach unless there are significant improvements and refinements made.

As is the case with the MNES Standard, 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. The language here appears to largely resemble a replica of that presented in the recently concluded MNES Standard consultation, and as such, the issues there have been carried forward here and remain unaddressed. This is a new and significant problem because the legislative framework requires decisions to be consistent with the Standard as a whole and not part-thereof. It must not be dismissed on the basis of complexity as it goes directly to the practicality, user friendliness, 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.

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.

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

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

- ***Principles: Are requirements 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 and consistent with the issues outlined in our submission to the MNES Standard, 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 of the Standard. Additionally, Section 7(2) of the draft Legislative Instrument provides that an offset activity intended to compensate for damaged caused **where that offset activity 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.

Again, as stated in our submission to the MNES Standard, 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 that a decision is consistent with the Standard where the specified requirements are sufficiently clear and are understandable, applicable, and interpretable".* Together, this creates uncertainty about how consistency with the Standard is to be demonstrated. NFF prefers a minimal and cautious approach to allow a just and smooth transition.

The Mitigation Hierarchy

Environmental Offsets

Environmental offsets must not become the default outcome to an environmental referral for a development impact (which we understand is the case). There is a concern that despite the above, the circumstances in which an environmental offset is required, and the process by which any offset obligation is then implemented (which is flexible), are not sufficiently understood by, or communicated to, producers.

In the agricultural space, the distinction between an assessment of Significant Impact referral, repair measures, and environmental offset liability is challenging to navigate, particularly in the context of the changes to continuous-use and the absence of clear, fit-for-purpose guidance with respect to Self-Assessment. This perception is heightened where preliminary advice and/or risk adverse desktop tools identify protected matters as *'likely'* or *'may'* occurring rather than confirming actual presence and impact. As a result, there is a very real risk that producers may assume that any potential impact on one part of a property will automatically require an environmental offset elsewhere on that property, and as a consequence of this, open an offsets 'black box' where the multipliers and costs attributed are not yet transparent. This uncertainty is likely to discourage producers from engaging confidently with the framework especially where the practical consequences of referral and Self-Assessment remain poorly understood. On this point, NFF reiterates our interest to be involved in discussions around adjustments to the offsets calculator when that is examined in due course.

In addition to this, there needs to be recognition that producers are already contributing to biodiversity outcomes through activities voluntarily adopted on-farm that support productivity and food and fibre production. These include, for instance, pest management, revegetation and restoration works, pasture improvement, and other land management activities that improve habitat condition and connectivity (including those perhaps operating under the *Nature Repair Framework*). This is particularly important where an environmental offset is being considered on-farm. Unlike more extractive forms of development impact such as a mining development, agricultural landscapes are subject to ongoing and active management over a sustained period. Where a producer can demonstrate a history of management actions that have improved or restored protected matter values, that should be considered as part of the assessment context. We recognise that there may be limits to how historical improvement can be treated under the legislation, however, this should not bar its exclusion from consideration altogether.

There needs to be a clear pathway to translate and recognise these outcomes within the framework where relevant. Our comments on the Relevant Area Principle (which is related to this) are addressed further below. In a landscape context, there needs to be a balanced approach, recognising positive outcomes as a component of assessing Significant Impact, they cannot be viewed as mutually exclusive. To this degree, we seek guidance materials to accompany the development of this Standard that make clear that an environmental offset obligation is not triggered merely because a referral is submitted or because a protected matter may occur.

Clarifying What Constitutes 'Repair'

NFF considers that the interaction between avoidance, mitigation, repair, and environmental offsets remains insufficiently clear for agriculture. This is especially the case in relation to what constitutes a generally viable option for repair. This deficiency was raised in our submission to the MNES Standard, where we noted that the circumstances in which repair is recognised as generally viable are too narrow to be useful and that there are inconsistencies between the draft Legislative Instrument and *Policy Paper* regarding its application.

A constrained approach to repair may have the unintended consequence of increasing reliance on environmental offsets, including in circumstances where practical repair measures are available. It is our view that the Department needs to adopt a broader and more flexible approach that is tailored to agricultural landscapes and provide clear guidance on how repair can be applied in-practice. The set of practices identified in the MNES materials is simply too narrow to provide meaningful guidance for producers, advisers, and/or assessment officers.

In agricultural landscapes, management measures may often be more practical and effective than environmental offsets. These are legitimate practices and should be clarified upfront. Concerns about being overly prescriptive are not legitimate in this instance and should not preclude provision of practical examples to guide those captured under the impending regulations.

Additionally, the Standard should not assume that improved environmental outcomes require exclusion of any agricultural activity or a larger/expanded patch of habitat. In many circumstances, managed agricultural use may be compatible with and/or contribute to environmental outcomes (e.g., active pest and weed management). The issue should be whether the activity supports the intended environmental outcome not whether the land is removed from production altogether. While NFF understands this is the intended approach, it is our view that this has not been adequately communicated in the current materials.

Compatible Land-Use on Environmental Offset Sites

There is also insufficient clarity on whether livestock or other agricultural, marine, and fisheries activity can continue on an environmental offset site where such uses do not compromise the required environmental outcome and requirements around measurable improvement and net-gain. This is a substantial issue for producers and is particularly relevant for those seeking to maintain a tree-to-grass ratio or manage land in a way that supports both production and biodiversity values. NFF seeks clear assurance that the framework will not operate in a manner that excludes agricultural land from food and fibre production where compatible land management can achieve the required environmental outcome.

While we appreciate the specifics will be judged on a case-by-case assessment due to the manner in which net-gain has been defined, practical examples should still be provided to help producers understand and navigate this novel process. On this point, we note that some environmental planting approaches already include livestock and revegetation outcomes being managed together under specified conditions so there is precedent and recognition here. This issue also has broader farm business implications as the ability to continue producing food and fibre impacts land value and it is also tied to capability toward securing finance. This is a worthy point to raise as agriculture is very much a majority stakeholder in the landscape (encompassing approximately 50% of the land) and thus will play an important role in ensuring these reforms are achieving the outcomes that are intended.

Relevant Area Principle: *Offsets are delivered in an area that is relevant to the affected protected matter, and which will enhance the effectiveness of conservation efforts for the affected protected matter*

Reference To The Above Sections

While we understand that environmental offsets are not required to be delivered at the exact place of impact or on the same parcel of land, this flexibility does not diminish the practical issues raised above.

Our Broader View

NFF broadly supports the intent of ensuring environmental offsets are delivered in areas that are relevant to the affected protected matter as it opens up flexibility under the framework. Despite this, we hold significant concerns around the Relevant Area requirements and scoping which have been substantially broadened beyond their first conception without clear explanation. The *Policy Paper* refers to ecological and social equity considerations, and the draft Legislative Instrument includes language relating to ecologically or culturally relevant areas. This broadening will make environmental offsets more challenging to identify and secure and especially in landscapes where availability is already constrained.

This is an important point given the existing challenges associated with delivering environmental offsets. Experience from existing *Biodiversity Offset Frameworks* including in *New South Wales* demonstrates the difficulty of finding and securing suitable equivalent offsets in the landscape. Put simply, it is a proven flawed model and adding further social and/or interpretive cultural layers on-top of that risk further delays and complexity. There is also an information asymmetry issue where producers are expected to navigate complex ecological and cultural considerations without adequate guidance, support, or capability to challenge claims.

Like-For-Like Principle

As stated in our initial submission, 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). It is extremely challenging to envisage how these requirements will be achieved in-practice across all protected matters. While we accept there is a place for this, these requirements should be applied in a risk-based and proportionate manner and perhaps directed toward impacts to high-value biodiversity attributes such as impacts to Critically Endangered species and ecological communities. Keeping in mind the non-regression Principle in legislation, we need to set ourselves up for success.

Security Principle: *Offset activities are committed and the offsets site is protected and managed to prevent its loss and degradation*

Management Approach and Avoiding Perverse Outcomes

NFF supports the Principle that environmental offsets are secure and protected from loss or degradation. Security mechanisms are critically important to ensuring outcomes are safeguarded and that perverse landscape-level outcomes are avoided and mitigated to the greatest extent possible. To this point, there remains insufficient clarity as to how management obligations regarding maintenance period requirements are to be designed and what parameters they are required to include. For instance, there needs to be a clear set of *Key Performance Indicators* (KPIs) to guide attainment of required habitat scores, and to clarify what effective pest management, weed management, monitoring, and adaptive management should look like.

More broadly, the Standard appears to adopt an overly simplistic approach to environmental offsets by assuming that an offset can be identified and secured without fully considering the broader management implications of doing so. Offset activities may have consequences for other natural resources and protected matters within the same landscape. This risk is compounded where Commonwealth information systems and mapping products fail to provide clarity including in identifying overlapping values

<u>There are several examples that may give rise to this:</u>

> Management actions designed to improve habitat condition for one protected matter may alter water availability, drainage patterns, groundcover, fire risk, pest pressure or productive land-use in ways that create unintended or perverse outcomes elsewhere in the landscape.

In such circumstances, landholders may be left uncertain as to whether a proposed management action supports the intended environmental offset outcome or creates a new compliance risk elsewhere. There is a need, therefore, to clarify how such situations and conflicts are to be addressed.

On a separate point, we also note that there is also a broader inequity issue where renewable energy proponents may receive public support or incentives to locate and secure offsets while farmers hosting or managing those offsets are not afforded equivalent support.

Achieving 'Security' and Information Asymmetry

NFF continues to seek the recognition that covenants and similar mechanisms are not strictly mandatory. As stated in prior submissions, legal mechanisms such as covenants can materially affect land value, succession planning, future land-use, finance arrangements, insurance, tax treatment, and business flexibility. Where covenants or similar mechanisms are proposed, landholders must be provided with clear and upfront information about the legal and practical implications.

These issues are significant where a farmer is not the original proponent but is perhaps approached by the *Restoration Contributions Holder,* or other offsetting entity, to deliver an offset on-farm. There have been examples in the carbon market where due to information asymmetry and unequal negotiating power, producers have entered private contractual arrangements without fully understanding the obligations they were assuming. Similar risks may arise in the offsets context unless clear disclosure expectations and protections are provided. Specifically, the framework must avoid circumstances where residual impact and management obligations are covertly transferred onto farmers without full disclosure and informed consent. It is not sufficient for the framework to acquit and transfer a proponent's liability onto the Holder if risk can then be transferred via private contract.

Measurable Improvements Principle: *Offsets deliver a measurable improvement for the affected protected matter relative to an agreed baseline*

NFF understands that the amount of net-gain will be calculated against the level of residual Significant Impact and that it will need to deliver a measurable improvement beyond that impact (baseline).

<u>There are several issues relating to this:</u>

1. **We are concerned about landholder and approval-holder liability where environmental outcomes are affected by factors beyond their control.**

   Predation from adjoining land, natural hazard events, biosecurity incursions, and/or unauthorised third-party activity may affect whether an environmental offset (located on the same land tenure as the residual Significant Impact) delivers the expected and required outcome. There is a need to explain how such risks are to be addressed and when a landholder will not be held responsible for matters beyond their control.

   Further, if the purpose of the Standard is to avoid Significant Impacts to MNES, then equivalent management expectations and consequence need to be applied to the public estate to avoid situations where poor management of invasive species for instance are contributing to the degradation of protected matters.

   Where a *Restoration Contribution Charge* is paid, NFF understands that delivery responsibility then shifts to the *Commonwealth Restoration Contributions Holder* and that the proponent's liability is acquitted. Despite this, there remains a need to explain how net-gain will be costed through that charge (which has not been undertaken), how delivery risk will be managed by the *Commonwealth Holde*r, and what safeguards will apply where restoration activities are proposed on private agricultural land. This also raises questions about who will be responsible for funding management activities on private land where a landholder chooses to host an offset.

With regards to the *Environmental Offsets Register,* it must be designed carefully to avoid unnecessary exposure of private landholder information and commercially sensitive information.

2. **No specific percentage requirement has been chosen to be prescribed in the Standard, and we therefore understand that the requirement will defer to the primary legislation and ultimately be assessed to the satisfaction of the Minister.**

   It is not realistic to expect proponents to demonstrate a *"high level of confidence"* that an environmental offset will deliver the required net-gain should they choose to undertake one when there remains no clear methodology, threshold, habitat scoring approach, calculation tool, or decision-making process for determining how to achieve it. In the absence of clarity there is significant risk around how this framework will actually operate as intended. There are also questions around how to satisfy Principle 8 as it relates to securing tenure let alone a protection mechanism to meet that requirement.

State and Territory Offset Schemes

NFF considers that existing State and Territory offset schemes should continue to be recognised as compatible with the Commonwealth framework where they deliver equivalent outcomes for the same protected matter.

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 (May 2026): National Environmental Standard for Matters of National Environmental Significance.***

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National Farmers Federation

Environment Protection Reform Consultation: Subordinate Legislation

June 2026

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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.

<u>In those documents, we emphasised the need for the following key measures:</u>

- *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.

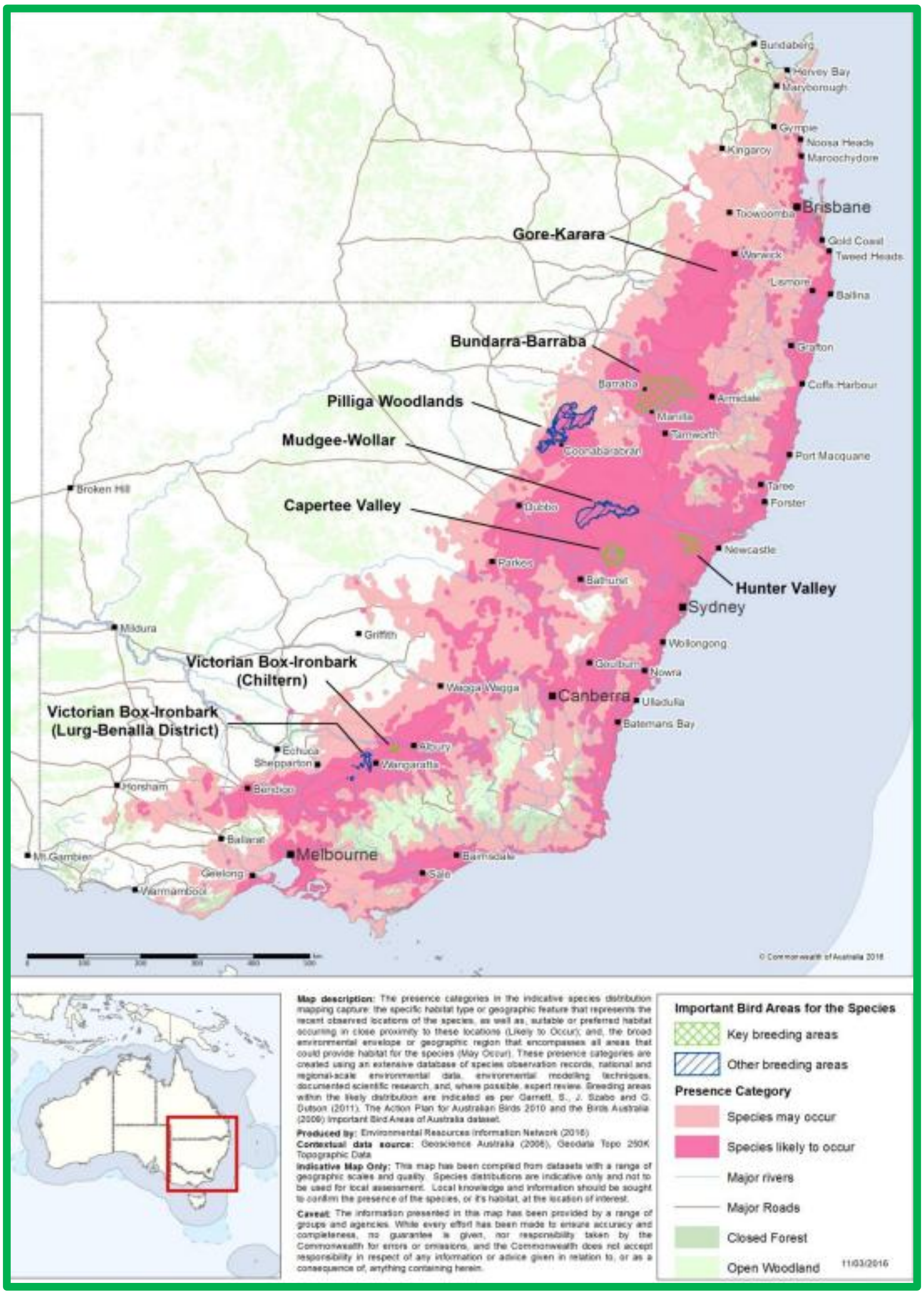

Figure 1: *Regent Honeyeater distribution*[3]*.*

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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National Environmental Standard for Data and Information

July 2026

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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 draft *National Environmental Standard for Data and Information* (Standard).

NFF notes that the consultation process underpinning *National Environmental Law* reform has deviated substantially from what would ordinarily be expected for reforms of this scale and consequence. No comprehensive *Regulatory Impact Assessment* has been undertaken to understand or quantify the impact of the reforms on agriculture. This is particularly concerning given the 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. In the absence of a consolidated reform package (including all five Standards together), it is challenging for agriculture to assess the implications of the proposed framework including how the Standards will interact with each other. We continue to seek release of the full suite of regulations and supporting materials so that stakeholders can properly assess the cumulative impact of these reforms. At present, there is no visibility of how issues of overlap and inconsistency across Standards will be resolved.

With respect to this public consultation, NFF recognises and supports the need to ensure that decisions made under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) are informed by credible, defensible, relevant, and interoperable data and information. NFF also supports efforts to provide clearer upfront guidance and to improve the quality, accessibility, and use of environmental data and information.

Broadly, we are comfortable with the content of the Standard, including the single headline Objective that decisions made under the EPBC *Act "are based on appropriate data and information and to extend the availability of credible data and information assets for use in such decisions".* However, we continue to hold strong concerns regarding the Principles-led approach to implementation, including inconsistencies in the language used to describe how Principles are to be applied in-practice and in a manner that is actually consistent with the Objective and Outcomes of the Standard, and the broader EPBC Act. We are also concerned about how proportionality will operate, and whether the intention for requirements to be scaled and applied proportionately is sufficiently reflected in the draft Legislative Instrument.

NFF also considers that the Standard provide stronger recognition and protection of data sovereignty, ownership, and custodianship, particularly where data and information supplied for a specific regulatory purpose may be shared with *Environment Information Australia* (EIA) or used for purposes beyond that for which it was originally provided. While the Outcomes recognise the need for data and information to be ethically managed, it is our view that this is not sufficiently reflected in the underlying Principles that will guide implementation of the Standard.

These protections need to be expressed with greater clarity and specificity (in Principle 5), including in relation to consent, access, disclosure, re-use, confidentiality, custodianship, and the respective rights and responsibilities of data owners, providers, and the Commonwealth. Principle 5 should also clearly link these requirements to relevant obligations and rights under the *Privacy Act 1988* where applicable, so that those collecting, managing, providing, or accessing information understand the legal requirements that apply, and affected persons are aware of the rights and protections available to them. The latter could perhaps be achieved through a Note, or by amending the Policy Position Paper itself.

Further, best-practice ethical and governance safeguards must apply equitably across all categories of held data and information, not only First Nations data and information. Equivalent application must apply and this needs to be recognised and corrected within the underlying Notes in Section 12 of the draft Legislative Instrument.

Relationship Between the Headline Objective, Outcomes, and Principles

NFF has repeatedly raised significant concerns during consultation on the development of Standards regarding the relationship and interaction between the Objectives, Outcomes, and Principles that underpin their implementation. These concerns are reflected in our submissions to the draft *National Environmental Standards for Matters of National Environmental Significance* (MNES) and *Environmental Offsets.* Our technical concerns remain relevant as the consultation materials presented here do not address the issues identified by NFF. Our submissions to those processes are attached at **Attachment 1** and **Attachment 2** respectively and should be read in conjunction with this section.

To reiterate, we note the following inconsistencies and seek clarification on how they will be addressed. These issues remain unresolved despite the opportunity to consider stakeholder feedback during the development and release of subsequent Standards:

- *The Policy Position Paper uses different formulations to describe the relationship between the Objective, Outcomes, and Principles. In some places, satisfaction of the Principles appears sufficient to satisfy the Outcomes and Objective. Elsewhere, the Principles are described as achieving the Outcomes but only promoting the Objective;*

- *Subsection 7(3) provides that a decision-maker "may be satisfied" that a decision is consistent with the Standard where the relevant data and information are consistent with the Principles. Read together with the Policy Position Paper, it remains unclear whether the Principles are procedural considerations or constitute the substantive test for demonstrating consistency and adherence to the Standard; and*

- *Terminology such as "applied", "satisfied", "achieve", "promote", and "consistent with" are not equivalent. Applying a Principle suggests that it must be considered or used, while satisfying a Principle suggests that a substantive requirement has been met. Similarly, achieving an Outcome is different from merely promoting an Objective.*

Taken together, the drafting makes it unclear whether proponents and decision-makers must demonstrate that the Principles have merely been applied or substantively satisfied, whether satisfaction of the Principles is sufficient to establish consistency with the Standard, whether the Objective must be independently achieved, and whether a decision-maker may nevertheless reach a different conclusion after the Principles have been met.

These are important questions given that Standards as a whole are subject to statutory review requirements and the non-regression principle. Any uncertainty may have significant implications not only for the initial application of the Standard but also for how its intent is interpreted and thus maintained over time.

Proportionality and Application

The Policy Position Paper states that the Standard is intended to operate in a scalable and proportionate manner and that supporting technical guidance will explain how its requirements are to scale and apply proportionately. While NFF supports this approach, proportionality is not sufficiently reflected in the draft Legislative Instrument itself. The five Principles are expressed as substantive requirements, but the Instrument does not contain an overarching requirement that they be applied proportionately. Instead, much of the intended flexibility is expressed through terminology such as *"appropriate", "adequate", "relevant",* and *"where relevant".* While these terms permit some contextual judgement, they do not establish a clear or consistent test for determining how the characteristics of a proposal should influence the nature and extent of the data and information that is required.

This creates a risk that proportionality will remain a policy and implementation objective expressed principally through the Policy Position Paper (notably Pages 3 and 5) and future technical guidance, rather than a clear feature of the Standard itself. It may also result in inconsistent expectations between proponents and assessment officers, particularly where terms like *"appropriate"* and *"adequate"* are interpreted on a case-by-case basis without clear criteria and/or explanatory material being made available upfront.

The Policy Position Paper also anticipates that implementation will be supported by a register of trusted environmental data and information assets. Such measures may generate important downstream benefits, but their development will take time, and the Paper does not identify when this (alongside technical guidance) will become operational. We need to see clear implementation timeframes here so that the Standard operates predictably and proportionately from the outset.

NFF therefore recommends that proportionality be expressly defined within the draft Legislative Instrument and carried consistently through each of the five Principles. We need to see a requirement that underlying data and information requirements are applied having regard to the:

- *Nature, scale, complexity, and potential impacts of a proposal; the availability and quality of existing information;*
- *The cost and practicality of obtaining further information; and*
- *Whether that additional information would materially improve the evidentiary basis for the decision at-hand.*

This is particularly important for agriculture because a localised, small-scale proposal with limited and well-understood impacts (i.e., an activity undertaken periodically as part of an established agricultural practice) should not face the same information requirements as a major greenfield development for example. **Further surveys or analysis should not be required where they are unlikely to materially reduce uncertainty or add meaningful value to the decision-making process, or where the cost and practicality of obtaining additional information would be disproportionate to the potential risks posed by the proposal.**

Principle 1: Representative Data and Information

Scientifically Robust and Fit-For-Purpose Data and Information

NFF supports the intent of Principle 1 and the requirement that data and information used to inform a decision under the EPBC Act *"adequately and accurately reflect and describe the relevant protected matters and environmental conditions".* As stated in our submission to the *Environment Protection Reform Consultation: Subordinate Legislation* (Tranche 2), NFF supports the use of high-quality data and information to inform decision-making, provided that it is accurate, fit-for-purpose, and appropriately governed. The requirement in Subsection 8(2)(a)(i) that information be collected using a scientifically robust methodology must nevertheless be applied proportionately, having regard to the nature of the proposal and its likely environmental risks.

Commonwealth guidance (which is likely to be treated as an authoritative source under Principle 1) can prescribe extensive survey methodologies. The Survey Guidelines for *Australia's Threatened Birds*[1] for example, state that biological surveys should generally be undertaken in specified circumstances and in accordance with rigorous criteria, including at particular times of the day or year and during suitable seasonal and weather conditions. The Guidelines also recognise that surveys over multiple years may be required where a single year of data is insufficient.

The recently released *Draft EPBC Act Information for the Red Goshawk* illustrates how these broader expectations may translate into species-specific requirements in a practical sense (i.e., an assessment context). The draft document recommends baseline surveys over 24 to 30 months, covering at least two breeding seasons, together with repeat visits, extensive spatial coverage, habitat assessment, and multiple survey approaches (referring regularly to the above guidelines).

The Policy Position Paper itself uses a threatened-species survey conducted during breeding or migratory seasons and over two or more years as an example of the scientific rigour required under Principle 1. It then states that the Principle will support faster decision-making by helping proponents provide decision-ready information. While clearer upfront expectations may reduce requests for further information after an assessment commences, this does not account for the potentially significant time and cost required to

[1] Department of the Environment, Water, Heritage, and the Arts, 2010: *Survey Guidelines for Australia's Threatened Birds: Guidelines for Detecting Birds Listed as Threatened Under the Environment Protection and Biodiversity Conservation Act 1999*

meet those expectations before a proposal can actually be referred or assessed. As a result, an assessment may proceed more quickly once commenced without necessarily producing a faster overall decision-making process, particularly where the relevant evidentiary threshold requires several seasons or years of preliminary survey work.

Such methodologies may be appropriate where a proposal presents a significant environmental risk (i.e., where a Critically Endangered species is affected). They should not, however, automatically become the default benchmark for every action. For a low-risk agricultural proposal undertaken on a cyclical basis with limited and well-understood impacts, requiring extensive survey work before referral will impose unacceptable costs and delays that are disproportionate to the likely impacts.

This issue is particularly relevant where formally non-mandatory Commonwealth guidance is treated as an authoritative source under Principle 1, and where only one methodology is presented. While strict adherence may not be required, proponents may still be expected to explain and justify any departure from that methodology, as is the case with the *Draft EPBC Act Information for the Red Goshawk* which recommends doing so.

This may signal that adopting an alternative approach could affect how the adequacy of the information is assessed, thereby placing the onus on the proponent to justify any deviation. The result is that formally non-mandatory guidance may operate as a de-facto minimum standard, encouraging proponents and their advisers to adopt methodologies that may be unnecessarily demanding or disproportionate in order to reduce assessment risk, even where a less intensive approach is available and credible.

This risk is compounded where farmers are required to engage a suitably qualified ecologist or consultant to undertake survey work and prepare supporting material. In that context, there is a real risk that consultants may interpret the Standard and associated guidance as requiring the most detailed methodology, even where a less intensive approach would be fit-for-purpose. This may occur for several reasons, including to reduce the risk of requests for further information, avoid delays during assessment, or manage consultant liability. It may also create incentives for consultant overreach, with proponents being advised to undertake more extensive and costly work than is otherwise necessary to support a decision or demonstrate consistency with the Standard.

“Adequate” Metadata and Supporting Transparency and Interoperability

The draft Legislative Instrument appropriately recognises that the adequacy of metadata is context-dependent, although this explanation is contained only in a Note which carries a different legal weighting. The Standard needs to make clear that missing or incomplete metadata does not automatically render otherwise relevant and reliable information unusable. Similarly, minor deficiencies in file formatting, version control, and/or other related metadata (particularly where the relevant information is unavailable or can no longer be reasonably recovered), should not prevent adherence to the requirements of the Standard or unnecessarily delay decision-making. It is our view that, while the term *“adequate”* is a useful starting point, it does not (without further qualification) provide sufficient assurance that these requirements will be applied flexibly and proportionately.

The same consideration applies to Principle 3 and its requirements concerning formatting, structure, and units of measurement to support comparison. Again, while we support interoperability and the consistent presentation of data and information, these requirements should be applied proportionately and with sufficient flexibility where strict compliance would not materially improve comparability or the quality of the decision. This may include minor deficiencies such as missing or irrecoverable version-control information.

Transparency should also be distinguished from unrestricted public disclosure. Information may be sufficiently transparent and accessible to the decision-maker while remaining confidential or subject to restrictions on public release due to privacy considerations and commercial sensitivities. We understand that the privacy element is addressed later in Principle 4 and Principle 5 (although further clarification and strengthening is required, as discussed below).

Principles 4 and 5: Data Sharing and Privacy

Principle 4: Reusable Data and Information

NFF supports the intent of Principles 4 and 5, including the appropriate re-use of data and information with minimal additional effort and ensuring the protection of sovereign data rights, ownership, and privacy. In relation to Principle 4, the reference to consent arrangements and other conditions governing access, retention, re-use, or disposal in Subsection 11(2)(a)(ii) should apply *"where applicable"* rather than *"where relevant"* to avoid such arrangements potentially being treated as a discretionary consideration. Where an applicable consent, licensing, security control, restriction on re-use, and/or obligation around retention and disposal are in-place, it should be identified and disclosed so that the conditions governing the information are understood and implemented.

The Standard also needs to clarify whether informed consent obtained for the original regulatory purpose extends to subsequent re-use of data and information. Where consent is required, data providers need to be informed in plain-English of the proposed uses and consequences of agreeing to or declining consent and given an opportunity to respond and/or opt-out. This includes clarification on what access will look like and for whom to ensure perverse outcomes for farmers are avoided, noting that de-identification may not always be an adequate solution. Any conditions or processes associated with providing, limiting, or declining consent must be simple and straightforward and must not require legal or other third-party advice at additional cost. A decision to decline upfront must also not prejudice the assessment at-hand.

Additionally, further clarification is required regarding what the requirement for data to be re-usable with minimal additional effort is intended to require of providers and most notably farmers. There must not be an inherent expectation that information supplied for a particular regulatory purpose is automatically conditioned or otherwise prepared for unrestricted future re-use.

Principle 5: Ethnical Data and Information

NFF understands that neither this Standard nor the subordinate legislation developed through Tranche 2 creates a general mechanism to compel farmers to provide data beyond existing statutory requirements, and we seek to ensure this remains the case. Where information is provided for an EPBC Act assessment or other regulatory purpose, its collection and use should take proper account of data sovereignty and custodianship. While we recognise that sharing data may support improved environmental mapping and decision-support tools, any subsequent use must be appropriately governed and retain the context in which the information was originally collected.

<u>As stated in our Tranche 2 submission:</u>

> *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.*

NFF supports the recognition in Principle 5 that rights and privacy must be protected. The requirement to *"minimise harm"* needs to be strengthened to require harm to be avoided wherever reasonably practicable. Where harm cannot be avoided, it should be appropriately mitigated and managed to an acceptable level of risk. Against this background, Principle 5 must provide stronger recognition of data sovereignty, ownership, custodianship, and adherence to best-practice ethical data management principles across all categories of held data and information (not just First Nations). This is particularly important in relation to secondary use and ongoing disclosure. Appropriate safeguards may include informed consent and data-sharing arrangements that clearly identify the original and proposed purposes of use, applicable restrictions and authorisations, and other responsibilities of the relevant custodian (including retention and disposal requirements etc.).

This should be clarified within the Notes under Subsection 12(2)(a)(ii). While the current Note provides examples of ethical data principles with reference to First Nations data and information, ethical data management must be framed more broadly. The Note must make clear that relevant ethical data principles apply to other held data and information, including that at the farm-level where issues of consent, ownership, custodianship, sensitivity, secondary use, disclosure, and/or potential harm arise.

Closing Remarks

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

Attachments List

1. ***NFF Submission (May 2026): National Environmental Standard for Matters of National Environmental Significance.***
2. ***NFF Submission (June 2026): National Environmental Standard for Environmental Offsets.***

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National Farmers Federation

National Environmental Standard for Community Engagement

July 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 draft *National Environmental Standard for Community Engagement* (Standard).

NFF notes that the consultation process underpinning *National Environmental Law* reform has deviated substantially from what would ordinarily be expected for reforms of this scale and consequence. No comprehensive *Regulatory Impact Assessment* has been undertaken to understand or quantify the impact of the reforms on agriculture. This is particularly concerning given the 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. In the absence of a consolidated reform package (including all five Standards together), it is challenging for agriculture to assess the implications of the proposed framework including how the Standards will interact with each other. We continue to seek release of the full suite of regulations and supporting materials so that stakeholders can properly assess the cumulative impact of these reforms. At present, there is no visibility of how issues of overlap and inconsistency across Standards will be resolved.

With respect to this public consultation, NFF broadly supports the intent of the Standard, including the headline Objective that decisions made under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) relating to the protection and management of protected matters are supported by meaningful engagement and cooperation. NFF also supports the recognition that engagement is effective, transparent, accessible, and tailored to the broad circumstances of affected persons. This is particularly important in regional and remote areas where online engagement alone (for instance) may not provide a reasonable opportunity to participate.

Notwithstanding the above, should the Commonwealth proceed with finalising this Standard through the current process, significant amendments are required to make it workable and fit-for-purpose for agriculture.

<u>In summary:</u>

- *The relationship between the Objective, Outcomes, and Principles continues to remain unclear, consistent with concerns raised by NFF throughout the development process underpinning Standards. In particular, it remains uncertain whether the Principles are procedural considerations or constitute the substantive test for demonstrating consistency and adherence to the Standard itself, and whether satisfaction of the Principles is sufficient to satisfy the Objective and Outcomes;*

- *The Standard must clearly distinguish between farmers as affected persons and farmers as proponents. Where farmers and regional communities are affected by major projects, engagement must provide a meaningful opportunity to understand and respond to potential impacts. Where farmers are proponents of localised, small-scale agricultural proposals with limited and well-understood impacts,* *engagement requirements must be proportionate, practical, and not equivalent to those expected of major greenfield developments or mining projects;*

- *Proportionality and materiality be expressly reflected in the draft Legislative Instrument rather than relying primarily on terms such as "reasonable" and "appropriate" and/or on future supporting guidance;*

- *The proposed 10-business-day period should be treated as a minimum requirement only, rather than a period that will be reasonable in every circumstance. From the perspective of farmers and regional communities as affected persons, the appropriate engagement period must take into account the volume and complexity of the information, barriers to participation, and regional circumstances including harvest periods and/or natural disasters present with respect to the proposal in question. From the perspective of farmers as proponents, obligations to monitor and adapt engagement should also focus on matters within the control of the person undertaking the engagement;*

- *Equivalent engagement undertaken through another Commonwealth, State, or Territory process should be recognised where it provides affected persons with a meaningful opportunity to participate and meets the relevant information and procedural requirements. This is important both to avoid consultation fatigue for affected farming communities and to avoid duplicative engagement obligations for landholder proponents. A clear pathway should be established for proponents to obtain early confirmation that an existing or proposed engagement process will satisfy the Standard;*

- *The privacy and consent provisions are supported by clear requirements for participants to be informed about the collection, use, disclosure, and retention of their personal information, together with their relevant rights under the Privacy Act 1988 and the Australian Privacy Principles. This includes clarity regarding the custodianship and information-management arrangements once engagement information is transferred away from the proponent or is used for another authorised purpose; and*

- *Further clarification is required regarding Outcome C, which provides that inclusive and respectful engagement builds confidence, trust, and accountability in decisions made under the Act. While this is an appropriate aspiration, confidence and trust may be influenced by factors beyond the design and delivery of an engagement process. These are also inherently subjective concepts that are not defined in legislation. This creates a significant legal and practical concern as it is difficult to envisage how achievement of this Outcome (which reads more like a statement) is to be demonstrated or assessed (i.e., is it measurable?), which is an important consideration given Standards are subject to statutory review processes and the non-regression principle.*

Principle-Led Approach Toward Implementation

NFF has repeatedly raised significant concerns during consultation on the development of Standards regarding the relationship and interaction between the Objectives, Outcomes, and Principles that underpin their implementation. These concerns are reflected in our submissions to the draft *National Environmental Standards for Matters of National Environmental Significance* (MNES) and *Environmental Offsets.* Our technical concerns remain relevant as the consultation materials presented here do not address the issues identified by NFF. Our submissions to those processes are attached at **Attachment 1** and **Attachment 2** respectively and should be read in conjunction with this section.

To reiterate, we note the following inconsistencies and seek clarification on how they will be addressed. These issues remain unresolved despite the opportunity to consider stakeholder feedback during the development and release of subsequent Standards:

- *The Policy Position Paper uses different formulations to describe the relationship between the Objective, Outcomes, and Principles. In some places, satisfaction of the Principles appears sufficient to satisfy the Outcomes and Objective. Elsewhere, the Principles are described as achieving the Outcomes but only promoting the Objective;*
- *Section 7(3) provides that a decision-maker "may be satisfied" that a decision is consistent with the Standard where the relevant data and information are consistent with the Principles. Read together with the Policy Position Paper, it remains unclear whether the Principles are procedural considerations or constitute the substantive test for consistency with the Standard;*
- *Terminology such as "applied", "satisfied", "achieve", "promote", and "consistent with" are not equivalent. Applying a Principle suggests that it must be considered or used, while satisfying a Principle suggests that a substantive requirement has been met. Similarly, achieving an Outcome is different from merely promoting an Objective;*
- *Additionally, the Policy Position Paper also states that the Outcomes (Outcome C) support Ecologically Sustainable Development (ESD), which is an Object of the EPBC Act. Consideration should be given to replacing "support" with "facilitate" to describe the relationship in a more clear and consistent manner with language used in the Act.*

Application

NFF seeks clarification on the application of the Standard before referral or before a Significant Impact determination has been made. NFF understands that pre-referral use of the Standard is intended to operate as guidance only, rather than as a mandatory requirement. This should be clearly reflected in the Policy Position Paper, including in relation to eligibility for the proposed Streamlined Assessment Pathway. The consultation material appears to suggest that compliance with the Standard may be expected before the Standard formally applies. This requires clarification. Otherwise, proponents may be expected to comply with requirements intended to apply only where an action has been determined to have, or is likely to have, a Significant Impact on a protected matter. This would conflict with the stated intent and application of the Standard (see Page 3).

Proportionality and Materiality

NFF supports the expectation that engagement be tailored to the proposal in question. This is important in both contexts in which farmers may interact with the Standard as affected persons responding to a proposed action, and as proponents of actions themselves.

Where farmers are affected persons, proportionality should not be used to narrow engagement in a way that prevents meaningful participation. Major projects affecting agricultural land, regional communities, farm businesses, water access, biosecurity risk, or rural amenity (for instance) may require engagement that goes beyond minimum notification periods or online consultation. In these circumstances, affected persons (i.e., farmers) must have sufficient time and information to understand the proposal, assess its potential implications, and provide an informed response.

Where farmers are proponents, proportionality is equally important to ensure that engagement obligations do not become disproportionate to the nature and risk of the proposed action. The level and form of engagement should reflect the scale and complexity of the proposal and any engagement already undertaken through another process (if applicable). As noted above, a localised, small-scale agricultural proposal with limited and well-understood impacts (i.e., an activity undertaken periodically as part of an established agricultural practice) should not be subject to the same engagement expectations as a major greenfield development or mining project (for example). Contextually, this speaks to materiality and that should be clearly understood from the documentation.

Terms such as *“reasonable”, “appropriate”,* and *“where appropriate”* provide some flexibility but do not establish a clear proportionality test. The Standard should expressly clarify that requirements are to be applied proportionately (similar to the Standard for Data and Information). Supporting guidance could then demonstrate what that looks like for different proposal types.

Reasonable Opportunities to Participate

NFF supports the requirement to provide affected individuals with a reasonable opportunity to participate and comment as this is fundamental to ensuring engagement is genuine and effective. We understand that the proposed 10-business-day period is intended to operate as a minimum rather than a standard period that will be reasonable in every circumstance. It is our view that the appropriate duration must reflect the volume and technical complexity of the material and the nature of the proposal, as well as practical circumstances such as limited internet access, alignment with harvest periods, emergency response, or natural disasters affecting regional communities for example.

NFF also supports reasonable efforts to make engagement accessible. Plain-English should be used where possible and technical terms should be explained for a general audience. Online engagement alone may be inadequate in rural and remote areas. Depending on local circumstances, appropriate approaches may include direct mail, telephone contact, local newspapers, radio, physical notices, meetings, or engagement through trusted local organisations and providers. Engagement should be required to be conducted in good faith.

The requirement to monitor and adapt engagement should focus on matters within the control of the person proposing to undertake an action. A proponent can assess whether information was made available in an accessible format, invitations were delivered, participants had a reasonable opportunity to respond, and material questions were addressed. A proponent cannot though guarantee participation, satisfaction, agreement, confidence, or trust.

Equivalent Processes and Avoiding Duplication

NFF supports the recognition of equivalent engagement processes. The Standard should avoid requiring affected persons to be consulted repeatedly on substantially the same proposal or substantive issues. Repeated consultation can create fatigue and impose unnecessary cost and delay without improving the quality of the decision in question. A single engagement process should be capable of satisfying multiple Commonwealth, State, or Territory requirements where it provides affected persons with a meaningful opportunity to participate and meets the relevant information and procedural requirements.

Proponents should be able to seek early confirmation that an existing or proposed engagement process will satisfy the Standard. This could be achieved, for instance, by establishing a pathway to recognising equivalent engagement in the draft Legislative Instrument. Additional engagement should not be required merely because an earlier process used different terminology or administrative arrangements, provided it achieved substantially the same purpose and afforded affected persons with a meaningful opportunity to participate.

Privacy, Consent, and Information Management

NFF supports the proposed provisions as they relate to privacy and consent. Any consent obtained must be informed, specific, and limited to the stated purpose. Participants should also be clearly informed about how their personal information will be collected, used, disclosed, retained, and accessed, including their rights under the *Privacy Act 1988* (specifically outline the *Australian Privacy Principles*) to seek access to, or correction of, personal information held about them.

In relation to section 10(2)(a)(i)(C), NFF supports the requirement for participants to be informed about how their personal information will be disclosed. Further guidance should clarify what happens once engagement information is transferred from the proponent to Government, including who assumes responsibility for its custodianship and the arrangements that apply to its retention, access, disclosure, etc. While engagement information may not carry the same regulatory consequences as environmental or spatial data supplied through an assessment process, appropriate safeguards remain necessary. Where information is proposed to be used beyond the engagement purpose for which it was collected, that use should have an appropriate legal basis and be consistent with the consent provided.

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.

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