National Farmers Federation

NSW Assessment Bilateral Agreement

November 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



Table of Contents

About Us 2

NFF Member Organisations 2

Table of Contents 3

Executive Summary 4

Agricultural Recognition and Local Land Services 6

Commonwealth Resourcing Support and Responsibility 6

Agricultural Safeguards in Bioregional Planning 7

Development Zones and Priority Actions 7

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 proposed *Draft Assessment Bilateral Agreement* between the Commonwealth and *New South Wales* (NSW) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

NFF has consistently advocated for greater regulatory certainty and improved coordination between Commonwealth and State environmental legislation for well over a decade. As we have stated repeatedly, agriculture is profoundly impacted by dual-consent issues, and this is compounded by the complex nature in which the sector operates around matters such as continuous-use and *Matters of National Environmental Significance* (MNES). There are countless examples where farmers operating under State and Territory legislation are subsequently made aware that their activities may contravene separate obligations under *National Environmental Law*. This has been a longstanding issue for the sector and was most prominently raised through the *Independent Review of Interactions Between the EPBC Act and the Agriculture Sector* (Craik Review). With respect to the 2025 EPBC reforms, there are now further issues and uncertainty in understanding what constitutes a Significant Impact on a MNES (in the absence of fit-for-purpose guidance material) in addition to what is a permissible activity and what is exempt from assessment. This includes ongoing discrepancies between Commonwealth and State mapping and regulatory requirements.

While supportive of the intent to streamline assessment processes, we are disappointed that the draft Agreement makes no explicit reference to agriculture, agricultural production, primary producers, farming, agricultural land, or landholders. It is discouraging to see that the proposed Agreement largely retains the scope of existing arrangements, despite the opportunity presented by the reforms to address longstanding regulatory challenges facing agriculture. This needs to be recognised at both levels of Government and progressed with urgency notwithstanding the complexities of accreditation.

There has also been no dedicated mechanism for direct agricultural engagement in this process despite the significant potential benefits that improved coordination could deliver for the sector. Agriculture has not been afforded explicit consideration or a clearly defined role, and we understand that this is also an issue in the progression of other arrangements across jurisdictions. Agriculture must receive proportionate consideration and meaningful opportunities for engagement alongside other sectors. The current approach is simply excluding a sector that stands to greatly benefit from improved coordination.

Of particular concern is the absence of clear explanatory material regarding how the proposed Agreement will interact with existing NSW legislation and land-management codes. Bilateral arrangements involving agriculture must be appropriately confined to the Commonwealth's responsibilities concerning MNES where the Significant Impact threshold is met. At present there remains insufficient clarity on what actually constitutes a Significant Impact including how Commonwealth requirements interact with existing State provisions, and the extent to which accreditation may require changes to State legislation and consequentially relevant land-management codes.

Without resolving these matters, there is a significant risk that Commonwealth accreditation could result in more restrictive State land-management requirements, leaving agricultural landholders potentially worse off despite the intended benefits of bilaterals. This reinforces the need for careful consideration of the scope and implications of accreditation (especially for existing arrangements governing regrowth management and vegetation thinning where interaction with Commonwealth requirements remains unclear). NFF is therefore seeking publication of a clear assessment of the interaction between these respective legislative frameworks including any accreditation gaps and the implications of potential changes for agriculture. We also call for clear transitional arrangements while bilaterals are negotiated and implemented to provide certainty for existing lawful agricultural activity.

Finally, any *Bioregional Planning* process must prioritise agricultural land as an ongoing land-use and develop systems to protect agricultural land from being the target for other development sectors. The Pilots do not seem to recognise and value agricultural land and production both as a legitimate and ongoing land-use but also for its ongoing contribution to the local regional and national economies. Agriculture expects to be closely and seriously consulted in both the development of templates and priorities as well as during any planning process where agricultural land is covered.

In summary and at a high-level, NFF is seeking the following key outcomes:

- *Explicit recognition and engagement of agriculture in the development and implementation of bilateral agreements with proportionate consideration alongside other sectors and meaningful opportunities for direct consultation.*

- *Clear scope and regulatory certainty including transparent, fit-for-purpose guidance on what constitutes a Significant Impact on a MNES.*

- *A published assessment of accreditation implications identifying gaps between Commonwealth and State frameworks and potential changes to existing land-management legislation and codes.*

- *Clear transitional arrangements for agriculture while bilateral agreements are negotiated and implemented.*

- *Formal recognition of NSW Local Land Services (LLS) as the preferred agricultural outreach and engagement agency supported by clearly defined responsibilities.*

- *Sufficient Commonwealth resourcing beyond measures already announced to support the adequate transfer of responsibility to States and Territories to ensure timely outcomes. States and Territories must not be required to absorb the full practical and ongoing costs of administration.*

- *Agricultural safeguards in Bioregional Planning through appropriate mapping, planning, and protection of agricultural land-use, equitable access to the benefits of Development Zones, and safeguards against Conservation Zones that may unnecessarily restrict agricultural activity and property rights.*

Agricultural Recognition and Local Land Services

The Craik Review identified longstanding concerns regarding the complexity, uncertainty, and regulatory burden faced by farmers navigating environmental regulation. Importantly, Recommendation 3 identified the existing collaboration between the Commonwealth and NSW LLS as a potential model for improving locally based outreach and engagement to assist farmers in understanding their obligations under the EPBC Act and recommended consideration of its expansion to other jurisdictions.

NSW already has an established agency through LLS responsible for supporting agricultural productivity and Natural Resource Management with extensive regional relationships and existing responsibilities for advising landholders and administering land-management arrangements under the *Local Land Services Act 2013*. While Schedule 1 of the draft Agreement references the *Biodiversity Conservation Act 2016*, it does not identify LLS or establish how its existing functions could support implementation.

NFF supports LLS as the preferred agricultural landholder-facing model for outreach and engagement under the NSW bilateral arrangements provided Commonwealth involvement is limited to activities concerning MNES and the arrangements do not unnecessarily restrict existing lawful State land-management activities. We therefore recommend that LLS be formally recognised as the preferred agricultural outreach and engagement agency under the Agreement, with its role supported through the Administrative Arrangements under Clause 9 (Cooperation and Governance). This should be accompanied by clear parameters governing its responsibilities and the interaction between Commonwealth and State requirements. Equivalent regional agricultural and Natural Resource Management agencies should also be considered as the basis for further bilaterals across jurisdictions.

However, and as noted above, a key issue in establishing these arrangements is the lack of clarity regarding what constitutes a Significant Impact on a MNES and how these requirements interact with existing LLS land-management codes and allowable activities. Without such clarity, there is a risk that LLS could be required to administer more restrictive requirements through changes to State legislation or codes as part of the accreditation process which would be a perverse and unacceptable outcome for agriculture. While LLS is the preferred agency for agricultural outreach and engagement, its involvement alone does not guarantee a satisfactory regulatory outcome. It is (again) therefore critical that the scope of bilaterals and their implications for existing State land-management activities are properly scoped and understood in the upfront design, and this necessitates ensuring there is direct engagement with the sector.

Commonwealth Resourcing Support and Responsibility

The transfer of assessment responsibilities to State agencies will need to be supported by a significant quantum of funding. States and Territories must 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. Adequate resourcing is also critical to ensuring timely outcomes and avoiding delays given existing concerns around approval timeframes with some landholders experiencing delay upward of two-years.

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.

Agricultural Safeguards in Bioregional Planning

The proposed *Assessment Bilateral Agreement* must also be considered alongside the broader *Bioregional Planning* framework to ensure coordinated regulatory arrangements that appropriately recognise and protect agricultural land-use.

As NFF has stated in previous submissions, we support the concept of *Bioregional Planning* provided it is undertaken comprehensively and all relevant factors are considered. These considerations apply to both non-regulatory *Bioregional Guidance Plans* under Section 176 of the Act and *Bioregional Plans* with regulatory zones. A comprehensive approach requires the clear integration of arable land boundaries (i.e., an agricultural layer) and land-use arrangements 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), or an equivalent mechanism, provide a pathway towards achieving this.

Such safeguards must be incorporated into the social and economic assessments provided for under the primary legislation. This is an outcome that NFF sought as part of the broader negotiation process before the legislation was passed and remains a substantial issue.

Development Zones and Priority Actions

NFF remains of the view that there is a missed opportunity in the way that the framework has now been operationalised. The current approach, at least as expressed by the Commonwealth, is gearing *Bioregional Plans* predominantly toward large-scale developments with a particular focus on critical minerals, housing, mining, and renewable energy projects (and sectors). Agriculture must be explicitly recognised on both sides of the planning framework.

Under the legislation, *Bioregional Plans* with regulatory zones may establish *Development Zones*, allowing specified classes of activities (Priority Actions) to proceed through a registration process subject to applicable requirements rather than requiring a separate project-level approval. However, it is important to distinguish that *Development Zones* do not automatically streamline all activities (as only those expressly identified as Priority Actions benefit).

Conversely, where *Bioregional Plans* establish *Conservation Zones* or otherwise restrict activities, the implications for existing lawful agricultural uses (i.e., property rights) and future land-management decisions must be properly considered as part of that zoning process. Poor application will constrain landholders' ability to use and develop their property, and in some circumstances those restrictions would have the practical effect of sterilising future productive use for what would be in-affect an indefinite period which

brings into question arguments around compensation. At present there is insufficient clarity on how ongoing agricultural activities and existing lawful land uses will be recognised in *Bioregional Planning* and subsequent regulatory decisions. In this context, we highlight the criticality of ensuring meaningful engagement with agricultural landholders is explicitly provided for within the plan-making process. This must involve opportunities for two-way dialogue and direct notification where identifiable agricultural land may be materially affected.

Planning and assessment requirements must also account for biodiversity and ecosystem changes beyond the control of individual landholders rather than attributing all environmental decline to agricultural activities. This is particularly important where no-net-loss, net-gain or restoration requirements may impose additional obligations on producers especially in the absence of how these are understood specifically.

Agriculture cannot be excluded nor overlooked as a priority sector from the benefits of Bioregional Planning. It is critical that State and Territory processes are accredited in a timely manner and bilateral agreements established to address dual-consent issues and reduce assessment timeframes for agricultural controlled actions. Without these measures, the sector will see limited productivity benefits from reforms which were intended to deliver more efficient assessments due to the default toward project-level approvals notwithstanding the introduction of the new *Streamlined Assessment* pathway. Broadly, this is an equity issue as it would create a two-tiered regulatory system where favoured sectors enjoy broad regional-scale exemptions while the agricultural sector is left to navigate what is now a well-acknowledged complex system despite its critical role in regional communities and food security (i.e., national interest).

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.

National Farmers Federation

Leading Australian Agriculture

NFF House
14-16 Brisbane Avenue
Barton ACT 2600

Locked Bag 9
Kingston ACT 2604

(02) 6269 5666
reception@nff.org.au
nff.org.au