



31 March 2021

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: ec.sen@aph.gov.au

Dear Secretariat

Re: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2020

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2020*.

The NFF notes there are two components to this Bill:

- Establishing the framework for the making, varying, revoking and application of National Environmental Standards (NES); and
- Establishing an Environment Assurance Commissioner to undertake transparent monitoring or auditing (or both) of the bilateral agreements with the states and territories and Commonwealth processes under the Act for making and enforcing approval decisions.

The NFF notes that recommendations of the Samuel review are structured in three tranches:

- Immediate reforms should be delivered to progress priority reforms;
- The second tranche of reform should be completed within 12 months; and
- The third and final tranche should be completed within 2 years.

The Bill is consistent with the Samuel review which recommended immediate implementation of the following recommendations:

Recommendation 3 *The EPBC Act should be immediately amended to enable the development and implementation of legally enforceable National Environmental Standards.*

a) The Act should set out the process for making, implementing and reviewing National Environmental Standards. The Act should include specific provisions about their governance, consultation, monitoring and review.

b) The Act should require that activities and decisions made by the Minister under the Act, or those under an accredited arrangement, be consistent with National Environmental Standards.

c) The Act should include a specific power for the Minister to exercise discretion to make a decision that is inconsistent with the National Environmental Standards. The use of this power should be a rare exception, demonstrably justified in the public interest and accompanied by a published statement of reasons which includes the environmental implications of the decision.

d) National Environmental Standards should be first made in a way that takes account of the current legal settings of the Act. The National Environmental Standards set out in detail in Appendix B should be adopted in full. The remainder of the suite of Standards should be developed without delay to enable the full suite of 9 Standards to be implemented immediately. Standards should be refined within 12 months.

Recommendation 23 *Immediately establish, by statutory appointment, the position of Environment Assurance Commissioner with responsibility to:*

a) oversee audit of decision-making by the Commonwealth under the EPBC Act, including the Office of Compliance and Enforcement

b) oversee audit of an accredited party under an accredited arrangement

c) conduct performance audits, like those of the Auditor General and set out in the Auditor-General Act 1997

d) provide annual reporting on performance of Commonwealth and accredited parties against National Environmental Standards. This report should be provided to the Environment Minister, to be tabled in the Australian Parliament in a prescribed timeframe.

The NFF has been closely engaged on the consultation process to the Samuel report. At the outset, NFF restates its conditions for supporting the suite of reforms proposed under the EPBC Act:

- Clear understanding of how jurisdictions, acting in concert with the NES process, would adjust their own legislations and incorporate the implementation mechanisms and how the devolution would work;
- Data, biodiversity and other indicators, consultation and strategic implementation are designed into a regional level process;
- The impact of the full reform package is transparently communicated to the sector and it is clear that farmers will not be worse off than the status quo as a consequence of the reform process, and preferably have improved engagement and understanding;
- Ensuring draft NESs are able to be tested via a case study approach by user groups prior to them becoming enshrined via a legislative instrument.
- Demonstration that scope creep has not been embedded in the NES;
- Satisfaction that measures that balance economic and social indicators are afforded equal footing with environmental priorities; and
- Farmers can conduct themselves under continuing use provisions (Section 43 A and B of the EPBC Act) that do not compromise standard and accepted farm practice.

The NFF makes the following observations of the Bill.

National Environmental Standards

NFF supports the arrangements proposed in the legislation. At the first instance, NFF acknowledges the need for legally enforceable standards to underpin effective operation of the Act as well as the eventual devolution of environmental assessments and approvals to the states.

However, at present, the NFF is inclined to support the Minister's NES that have been designed to reflect the current obligations for Matters of National Environmental Significance (MNES) under the Act. The current obligations are an appropriate baseline from which NES can be further refined in two years' time. NFF supports the Minister's NESs not being disallowable to ensure they do not erode certainty nor confidence, and to allow them to be further refined.

NFF does not support Samuel's proposed NES for the following reasons:

- Several NES in the Samuel report go beyond the MNES and current obligations under the Act.
- These NES were not considered in the interim report, and thus there was no opportunity to refine or improve the standards and has raised concerns with members. For example, the proposed NES for Indigenous participation and engagement requires 'engagement and participation of Indigenous Australians in decision-making...for activities at all scales including all projects' which has not been consulted on, the decision-making role and authority is unclear, including how this may interact with or be supported by the states and their respective jurisdictional governance mechanisms.
- The consultation period following the interim report was insufficient to generate consensus on key issues in the NES. As NESs evolve, they would need field testing to fully understand their likely impacts. It is idealistic to believe that a Commonwealth Act left relatively unchanged for 20 years would suddenly be resolved in a 6-week period.
- On 11 December 2020, National Cabinet agreed that the immediate priority was to '*pass legislation streamlining approval processes and to develop national environmental standards reflecting the current requirements of the EPBC Act*'. For environmental reform to be effective, states disposition towards the NES is important to ensure processes can truly be streamlined. If implemented hastily, one potential outcome would be states having separate but parallel processes to environmental regulation which would create further complexity and undermine the environmental reform process.
- It would be appropriate to test current obligations under the Act, reflected in the standards, against state and territory regulations, allowing them to be evaluated, aligned, and improved if necessary.

Environment Assurance Commissioner

NFF supports an Environment Assurance Commissioner where it is a statutory office holder, not a separate Authority, to support Commonwealth oversight of the devolution process and commitment to the NES. The arrangements proposed in the legislation are consistent with the Samuel report.

Should you require any further information, please contact Warwick Ragg, General
Manager Natural Resource Management, on or .

Yours sincerely

TONY MAHAR
Chief Executive Officer