

Submission to consultation on

National Environmental Standards for Matters of National Environmental Significance (MNES)

prepared by Environmental Justice Australia

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On 28 November 2025, the reforms to the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* were passed, which, among other things, provide the Environment Minister with the power to make National Environmental Standards (**Standards**). The Standards are the “centrepiece”¹ of the reforms – legally enforceable regulations intended to set the boundaries for decision-making to deliver the protections needed for matters of national environmental significance.² We welcome the creation of Standards as a critical element of the EPBC Act reform required to enact meaningful change.³ The *National Environmental Standard (Matters of National Environmental Significance) 2025 (MNES Standard)* is crucial to the effective operation of the Act.

At present the MNES Standard does not meet the requirements of the EPBC Act and will not afford real environmental protection, causing the government to fail to meet its stated objectives for these reforms.

Unclear drafting and discretionary language will result in greater uncertainty and inefficiency in decision-making. Undefined and unenforceable objectives will result in ineffective processes, rather than defined outcomes.

The MNES standard must be amended in five essential areas:

1. [The MNES Standard must promote the objects of the EPBC Act and not be inconsistent with Australia’s obligations under international treaties](#)
2. [The MNES Standard must be sufficiently defined and outcomes-based](#)
3. [The MNES Standard should apply to all relevant decisions and require proponent compliance](#)
4. [The objectives must be specific and granular](#)
5. [Outcomes and principles must be strengthened and defined](#)

We note and refer also to our Submission to the Senate Standing Committees on Environment and Communications in response to the Inquiry into the *Environment Protection Reform Bill 2025* and six related bills dated 13 November 2025 and Submission to consultation on National Environmental Standards for Environmental Offsets dated 30 January 2026.

¹ Samuel, G 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October (**Samuel Review**) p 2.

² Explanatory Memorandum, Environment Protection Reform Bill 2025 (Cth) (**Explanatory Memorandum**) p 2.

³ Explanatory Memorandum p 2.

About Environmental Justice Australia

Environmental Justice Australia is a public interest environmental law practice, based in Melbourne and undertaking work across our areas of expertise throughout Australia. We provide legal advice and support to the community on public interest environmental issues, advocate for better environmental laws, and provide legal education to the community on environment matters. We act primarily for community organisations, Traditional Owners groups and NGOs on matters concerning environment and natural resources law and policy.

We acknowledge the Awabakal, Bunurong, Gadigal, Larrakia, melukerdee, Ngambri, Ngunnawal, punnilerpanner, Wadawurrung and Wurundjeri peoples, the Traditional Owners of the lands on which the Environmental Justice Australia team lives and where our office is located. We pay our respects to Elders past and present, and recognise that sovereignty has never been ceded. This land always was and always will be Aboriginal and Torres Strait Islander land. Environmental justice is inseparable from First Nations justice.

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1 MNES Standard must promote the objects of the EPBC Act and not be inconsistent with Australia's obligations under international treaties

The Samuel Review found that Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat, and that the EPBC Act is failing to halt this decline.⁴ National Environmental Standards, and particularly the MNES Standard, are the central proposed fundamental reform to halt and reverse environmental decline,⁵ and are key to implementation of Australia's international obligations.

Section 514YD(2) provides that before making a national environmental standard, the Minister must be satisfied that the standard would promote the objects of the EPBC Act; and the standard would not be inconsistent with Australia's obligations under the international agreements specified in subsection 520(3). The international agreements specified in 520(3) include the Convention on Biological Diversity;⁶ the UN Framework Convention on Climate Change;⁷ World Heritage Convention;⁸ and the Ramsar Convention.⁹

The objects of the EPBC Act include: to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; to promote ecologically sustainable development through the conservation and ecologically

⁴ Samuel Review p viii.

⁵ Samuel Review p ix.

⁶ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

⁷ *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994).

⁸ *Convention Concerning the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).

⁹ *Convention on Wetlands of International Importance especially as Waterfowl Habitat*, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975) ('Ramsar Convention').

sustainable use of natural resources; to promote the conservation of biodiversity; and to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity (section 3).

The MNES Standard as drafted does not adequately promote the objects of the EPBC Act and is inconsistent with the relevant treaties. For example:

- The Samuel Review found that the objects of the EPBC Act, particularly ecologically sustainable development, are not being achieved¹⁰ and the EPBC Act lacks clear outcomes for MNES.¹¹ If the MNES Standard fails to provide for clear outcomes in accordance with the Samuel Review recommendations, the MNES Standard will not promote the objects of the EPBC Act (see further recommendation 2 below).
- As set out in Recommendation 4 below, the objectives in s 5 are not sufficiently granular and enforceable to provide the environmental protections required to meet Australia's international environmental obligations. For example, when it comes to threatened species and ecological communities, the important international concepts of threatened species populations (set out, for instance, in Article 8(k) Convention on Biological Diversity) is absent from the objective in section 5(3) Item 1. Appendix B1 of the Samuel Review provides examples of appropriately granular objectives (see further recommendation 4 below).
- In addition, the objectives set out in s 5 of the Standard do not correspond with the relevant international treaties. For example, the concept of "wise use" which is central to the Ramsar Convention is not included in Section 5(3) Item 4. The objectives in s 5 should correspond to relevant treaties and include a corresponding level of ambition.

Recommendation 1: The MNES Standard must be redrafted to promote the objects of the EPBC Act and afford real environmental protections, including by setting clear enforceable environmental outcomes as set out in Recommendation 2. Section 5(3) should be redrafted at the level of specificity required to implement relevant treaty obligations (see recommendation 4 below).

2 The MNES Standard must be sufficiently defined and outcomes-based

As set out in the Draft MNES Policy Position (**Policy Position**)¹² the Samuel Review found that under the current EPBC Act, decision-making requirements are not focused on outcomes for MNES and allow considerable discretion by the Minister.¹³ The Samuel Review recommended the development of MNES standards which outline clear outcomes and provide clear and consistent rules for decision-making.¹⁴ The MNES Standard is so core to the Samuel Review recommendations that a draft MNES Standard was included in the report.¹⁵ As such, the MNES Standard is intended to resolve identified issues with the EPBC Act by setting clear expectations to ensure quality and consistency of decision-making.

Yet, as drafted, the MNES Standard is not appropriately clear and outcomes-based to ensure consistency of decision-making. The current drafting risks increasing the uncertainty criticised by the Samuel Review and undermining the policy rationale behind the Standards because it is process-

¹⁰ Samuel Review p 43.

¹¹ Samuel Review p 43.

¹² Department of Climate Change, Energy, the Environment and Water, *DRAFT Policy Position: National Environmental Standard for Matters of National Environmental Significance (Policy Position)* p 2. (available at <https://consult.dcceew.gov.au/natl-environmental-standards-mnes>)

¹³ Samuel Review p 3.

¹⁴ Samuel Review p 52.

¹⁵ Samuel Review Appendix B1.

driven, unclear and discretionary. The MNES Standard should be amended to resolve this as a matter of priority, including in the following ways:

- **Discretionary and qualifying language should be amended to be clear and defined.** Words and phrases such as “may”, “if possible” and “where necessary” reduce certainty and clarity. This drafting should be amended to achieve the policy purposes of the Standards. Clear, enforceable language (e.g. “must”) should be used instead.
- **The Standards should require specific outcomes rather than process.** As drafted, the MNES Standard is focused on process rather than outcomes. For example, the drafting in Sections 5(1) and s 6(1) is on “decisions” rather than the outcome of those decisions. These sections should be drafted to require specific measurable outcomes.
- **Standards should include parameters within which an outcome or objective is to be achieved, and processes or actions to be followed or taken in achieving an outcome or objective.** Section 514YD(4)(b) provides for Standards to include parameters within, or principles by which, an outcome or objective is to be achieved; and processes or actions to be followed in achieving an outcome or objective. Given the centrality of the MNES Standard to the operation of the EPBC Act, it is appropriate that the Minister include specific parameters, processes and actions in accordance with s 514D(4)(b).
- **The Standards should not introduce undefined terms which weaken concepts in the EPBC Act .** There are several examples of new concepts, undefined in the EPBC Act or regulations which introduce uncertainty in interpretation and application of the Standard. For example, the Water Resources objective (s 5(3) Item 9) introduces new concepts of “site of regional ecological significance”, “site of national ecological significance” and “critical human water needs”. These concepts are undefined by the EPBC Act and increase uncertainty. The Standards must not undermine or water down the EPBC Act by introducing uncertain and weakened terms.
- **The Standards should set measurable and granular outcomes to be achieved.** We welcome the granularity of the objectives for each protected matter (section 5(3)). To further the policy purpose of the Standard, these objectives should include measurable and time-bound outcomes, including science-based thresholds and limits where actions cannot proceed due to the impact they will have on MNES. This is discussed further at Recommendation 4.

Recommendation 2: The MNES Standard be amended to substitute discretionary and qualifying language for clear and certain provisions which reduce discretion and uncertainty and set clear and defined outcomes for standards.

3 The MNES Standard must apply to all relevant decisions and require proponent compliance

The MNES Standard, being core to the operation of the EPBC Act, should apply to all relevant decisions. Section 514YK of the EPBC Act provides for regulations to prescribe the application of any National Environmental Standard, and the way it is to be applied. The Samuel Review recommended that the Standard should apply to actions, plans and policies at all scales, not just by approval decision-makers.¹⁶

The proposed application in the Policy Position (pages 2-3) includes that the Minister only be able to approve an action if satisfied that doing so is not inconsistent with any prescribed National Environmental Standard; and that actions approved by state or territory decision-makers under

¹⁶ Samuel Review p 203.

approval bilateral agreements may also only be approved if the Minister is satisfied that doing so is not inconsistent with any prescribed Standard. This proposed language should be amended to be “consistent with” to align with new s 136A.

Regulations should require compliance with the MNES standard, not merely that decision-makers “have regard to” it. Proponents should also be required to comply with the Standard, in accordance with the Samuel Review. Weak wording risks inconsistent application and undermines the purpose of the standard.

Recommendation 3: Regulations must provide for the MNES Standard to apply to all relevant decisions. Proponents must also have obligations to comply with the MNES Standard.

4 Objectives must be specific and granular

The Samuel Review recommended granular and measurable¹⁷ Standards. The Standards must be at the level of specificity to provide for consistent environmental outcomes in order to achieve their policy purpose. Samuel Review Appendix B1 gives an indication of the baseline level of granularity and specificity required for MNES objectives. Section 5(3) must be rewritten to provide a similar, if not greater level of specificity. This is essential to the success of the MNES Standard.

Section 5 should be amended to provide measurable, outcomes-based objectives. For example, the qualifying language in s 5(1) “aims to ensure” should be substituted with “will ensure” to increase certainty and reduce discretion. The words “where necessary” are equivocal and should be removed.

For example, **threatened species and ecological communities** should contain national standard outcomes equivalent to, if not more specific than, Appendix B1 of the Samuel Review. This includes requirements to, for example (at Appendix B1, p 211):

*7) Promote the survival and/or enhance the conservation status of **listed threatened species and ecological communities**, taking into account both individual and **cumulative impacts**, by:*

*a) Maintaining and improving **habitat** of all **listed threatened species**, including by ensuring that actions and decisions, at a minimum:*

*i) avoid adverse impacts to the extent or quality of **habitat critical to the survival** of the species, and*

*ii) ensure **no net reduction of habitat** of a **listed threatened species**.*

*b) Maintaining and improving **population** numbers for all **listed threatened species**, including by ensuring that actions and decisions, at a minimum:*

*i) avoid adverse impacts that are likely to result in the loss of individuals or **populations** of **highly restricted and small and declining species**, and*

*ii) ensure **no net reduction** in the **population** of a **listed critically endangered or endangered species** or **important population** of a **vulnerable species**.*

*c) Maintaining and improving the extent and condition of **listed endangered and critically endangered ecological communities**, including by ensuring that actions and decisions, at a minimum:*

*i) avoid adverse impacts to the extent or quality of areas of **highly restricted and sensitive ecological communities***

¹⁷ Samuel Review p 53.

- ii) avoid adverse impacts to areas of **listed ecological communities** that meet high **condition thresholds and classes**, and
- iii) ensure **no net reduction** in the extent or condition of a **listed endangered or critically endangered** ecological community.
- d) Not exacerbating **key threats** to the **listed threatened species or ecological community**.

Concepts including cumulative impacts, important habitat, and key threats are defined in the Samuel Review and should be similarly adopted by the Standards.

Another example is the objective for Protection of Water Resources from Unconventional Gas Development and Large Coal Mining Development (Item 9). The draft objective for the protection of water resources introduces two concepts - 'supporting a site of regional or national ecological significance' and 'critical human water needs' - which are neither defined in nor consistent with the EPBC Act. It is not clear why these concepts have been introduced or the purpose they are intended to serve, considering that the definition of 'water resource' used in the EPBC Act means that ss 24D and 24E protect *all* aspects of a water resource. These novel and undefined phrases introduce uncertainty and may incorrectly indicate that it is only these two functions of a water resource that decisions should seek to protect, rather than the intrinsic value of the water resource, resulting in inappropriate decision-making and undermining the policy intent of the Standards.

The objective should be amended to draw on existing concepts and definitions in the EPBC Act and associated guidelines, while introducing the specificity necessary to support enforceable objectives and consistent decision-making. For example:

'The qualities, functions and integrity of all aspects of water resource are protected and conserved, including:

- *water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource; and*
- *the hydrological characteristics and water quality of the water resource, including the conditions within the water resource that support ecosystem services.'*

This suggested objective draws on the definition of 'water resource' in the EPBC Act, the significant impact guidelines currently applicable to this MNES, and the Samuel Review recommendations for water resource protection.

'Ecosystem services' should be defined as in the Samuel Review¹⁸ as follows:

'The benefits and services obtained from water resources. These include:

- *provisioning services (e.g. use by other industries and use as drinking water)*
- *regulating services (such as the climate regulation or the stabilisation of coastal systems)*
- *cultural services (including recreation and tourism, science and education); and*
- *supporting services (e.g. maintenance of ecosystem function).'*

Recommendation 4: The objectives in s 5 must be redrafted to be granular and specific. Samuel Review Appendix B1 should be used as a starting point for these objectives.

¹⁸ Samuel Review p 224.

5 Outcomes and principles

Outcomes: Section 6 should be amended to be outcome-based, rather than process-based substituting the focus on “decisions under the EPBC Act” with outcomes under the Act. Equivocal and qualifying language such as “intended to achieve” and “where necessary” should be removed.

Mitigation hierarchy (Principle 1): Language should be amended so that compliance with mitigation hierarchy is required, rather than merely “having regard to” or “considering” the hierarchy. In addition, ‘avoidance’ requirements must be clarified by setting out defined thresholds and steps that must be taken to avoid an impact. The Policy Position says that where required, Regulations will outline the information needed to demonstrate that the mitigation hierarchy has been appropriately applied¹⁹ and that further guidance and policy will be developed, including on whether a proposed measure in the mitigation hierarchy is feasible.²⁰ This approach recognises that, as drafted, Principle 1 is unclear and requires further clarification. To reduce uncertainty and increase efficiency this clarification should be included in the Standard itself rather than by further policy documents.

Actions appropriately consider impacts to protected matters (Principle 2): Principle 2 should include a requirement for consideration of cumulative impact, as recommended by the Samuel Review.²¹ Qualifying language, particularly the phrase “appropriately consider” should be removed to increase certainty.

Actions with residual significant impacts to protected matters are compensated (Principle 3): The language of Principle 3 should be strengthened to remove the qualifying word “generally” and substitute “should” for must. The principle should clarify that there are significant impacts for which ‘compensation’ is not permitted (e.g. where there are unacceptable impacts).

Appropriate evidence, first nations engagement and consultation (Principle 4): The Samuel Review recommended prioritising, as a matter of urgency, the National Environmental Standard for Indigenous engagement and participation in decision-making.²² This Standard should be developed as a matter of urgency. We understand that a Community Consultation Standard and Data and Information Standard will soon be released. Principle 4 should be removed or alternatively amended to incorporate these standards to resolve potential inconsistency.

In the alternative, the requirements in Principle 4 should be strengthened, including to expand the First Nations engagement consultation requirements in Principle 4 to require free prior and informed consent. Section 5 of the draft standard for MNES includes an objective to protect Indigenous Heritage values of a National Heritage place by treating such values “in a manner respectful of Indigenous traditions and beliefs.” Although Principle 4 provides that actions should be supported by “appropriate and suitable” consultation with Aboriginal and Torres Strait Islander people and contribution of their knowledge, it is unclear how this standard will be met by decision makers and proponents. We note that “appropriate and suitable” consultation falls short of the consultation standard for groups with a communal interest in Country (such as that held by First Nations).²³

Recommendation 5: Outcomes and principles should be redrafted to strengthen qualifying language as set out above. Principle 4 should be removed or alternatively amended to resolve

¹⁹ Policy Position p 13.

²⁰ Policy Position p 14.

²¹ See e.g. Samuel Review p 207.

²² Samuel Review Appendix B2.

²³ Consultation with First Nations people must be “appropriate and adapted to the nature of the interests” : *Santos NA Barossa Pty Ltd v Tipakalippa* [2022] FCAFC 193 at [104].

inconsistencies with future standards, including to strengthen requirement for free, prior and informed consent.