



**Biodiversity
Council**

Submission to the National Environmental Standard for Matters of National Environmental Significance

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About The Biodiversity Council

The Biodiversity Council brings together leading experts including Indigenous knowledge holders to promote evidence-based solutions to Australia's biodiversity crisis. The Council was founded by 11 universities with the support of Australian philanthropists.



Introduction

The Biodiversity Council welcomes the opportunity to provide feedback on the draft National Environmental Standard for Matters of National Environmental Significance (MNES).

Our understanding

The consultation includes a policy paper and legislative instrument. The legislative instrument formalises the standard as law under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The policy paper explains how the standard is intended to work.

Overall assessment

The development of National Environmental Standards formed the centrepiece of the Samuel Review recommendations, as clear outcomes and requirements provide benefits to the community, businesses and government.

The Review noted that precise, quantitative standards for MNES will “provide for effective environmental protection and biodiversity conservation and ensure that development is sustainable in the long-term.” The Review suggested that future standards could include quantitative measures such as population size and trends and area and quality of habitat.

The Samuel Review developed a recommended National Environmental Standard for MNES which provides a model against which the legislative instrument can be compared. The Review suggested that the recommended standard for MNES is a first and immediate step that should be taken and that it would:

...clarify the existing settings of the EPBC Act to define clear limits of acceptable impacts for MNES, while accepting flexibility for development. They represent an improvement on the status quo, where opaque rules and unfettered discretion in decision-making often results in the trading away of environmental outcomes.

The Review noted that the standards would support more streamlined decision making because “[i]f the outcomes are clear and legally required, it does not matter who makes project assessment and approval decisions.”

The legislative instrument as currently drafted falls well short of what was proposed by the Samuel Review. The language is weak throughout, with regular use of non-binding terms such as “should” rather than binding terms such as ‘must’ or ‘will’, and regular use of vague terms such as ‘support’ and ‘promote’ rather than specific and positive language such as ‘ensure’ and ‘increase’. Rather than set clear outcomes for matters of national environmental significance, it focuses on process. There are no clear requirements to be met, no criteria to support decision-making and no thresholds or acceptable impacts. It is

unclear what benefit the standard will provide beyond what is already addressed by the amended EPBC Act.

The lack of requirement to demonstrate progress toward objectives of the act with scientifically robust monitoring data is hugely disappointing given the focus that the Samuel Review placed on the role of data and evidence as the “true north” in the words of Graeme Samuel.

Some specific areas of concern are outlined below.

Key concerns

1. The application of the standard is narrower than that proposed by Samuel Review

The policy paper limits the proposed application of the standard to decisions relating to actions or classes of actions only.

In contrast, the Samuel Review’s recommended Standard applied to ‘actions, decisions, **plans** and **policies** that relate to MNES’.

We recommend that the scope of the draft MNES standard be expanded to cover plans and policies in addition to actions, decisions, and approvals.

2. The instrument does not adequately address cumulative impacts

The Samuel Review’s recommended MNES standard included an objective related to cumulative impacts:

Maintain and improve conservation, recovery and sustainable management, address detrimental cumulative impacts and key threatening processes and fill information gaps that impede recovery and appropriate management, including use all reasonable efforts to prevent actions contributing to detrimental cumulative impacts or exacerbation of key threatening processes.

In the legislative instrument, Principle 2 ‘Actions appropriately consider impacts to protected matters’ touches upon cumulative impacts. The main text of the principle simply states that “[i]n considering the nature, extent or severity of an impact on a protected matter, regard should be had to the context in which the impact might occur.” It is under Note 2, that aspects of cumulative impacts are introduced:

Note 2: The context may also, depending on the particular matter being considered (for instance, when considering bioregional plans and strategic assessments) include the following:

- (a) the interaction of different stressors, for example the combined impacts of light, noise, and habitat clearance to breeding success of endangered species as a result of an action or a number of actions;*

- (b) the combination of past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter; and
- (c) individually minor, but collectively significant, actions taking place over a period of time.

Establishing clear, evidence-based thresholds is essential to set transparent expectations about what constitutes an acceptable level of *additional* impact from a proposal. Clear expectations about what is acceptable and unacceptable provides clear signals to proponents that they should select project sites with lower levels of impact, thus encouraging genuine avoidance of sensitive habitats and populations. When proponents understand the limits of acceptable impacts on a species or community—and know that those limits are non-negotiable—they are more likely to choose locations that prevent impacts altogether rather than applying the mitigation hierarchy at a site-level where options to mitigate impacts are limited. Thresholds also enable regulators to assess proposals consistently without being criticised for taking a disproportionate or inequitable approach. Here is an example of how clear thresholds can be used to define unacceptable impact, including cumulative impacts in a way that is measurable and accountable.

Unacceptable impacts include impacts that:

- a. Damage or destroy **irreplaceable habitat**, OR
- b. Result in a **substantial reduction** in the **abundance** of threatened or migratory species,

OR in the **extent and condition** of a threatened ecological community.

Definitions:

Irreplaceable habitat: is habitat for a species that is biologically, physically, or technically impossible to restore, recreate, or replace in a relevant timeframe and location, and with the same complexity, scale, and function.

Substantial reduction: in the abundance of threatened or migratory species, or in the *extent and condition* of a threatened ecological community would be one from which full recovery to the same abundance, extent and condition is unlikely or impossible over a relevant timeframe, OR one that decreases the 10-year (or 3 generation - whichever is longer) minimum abundance of a species by >1%, OR one that progresses the **Cumulative reduction** in a species abundance beyond a **cumulative reduction cap** specified by its threat status.

Cumulative reduction: is the net reduction in a species abundance brought about by multiple approved and unapproved actions against a 2025 baseline.

Cumulative reduction cap is fixed at 5% reduction compared to a 2025 baseline estimated abundance for CE species, and 10% for all other EPBC Act listed species.

It is unclear the degree to which proponents will be required to assess (and avoid, mitigate or offset) cumulative impacts. The ‘for instance’ in Note 2, may be interpreted by decision-makers as limiting the consideration of cumulative impacts to bioregional plans and strategic assessments, even though the principles refers to ‘actions’. The wording of the principle suggests that it is the role of the decision-maker to apply it. However, this is undermined by the fact that the department is highly reliant on information supplied by proponents to assess impacts.

Relying on individual proponents to assess cumulative impacts is highly likely to result in their underestimation, and would require proponents to consider impacts generated by projects outside of their knowledge or control. Proponents typically have limited access to comprehensive species-level data and incomplete knowledge of other current or proposed developments. They may rely on narrow survey windows, localised field data, or outdated mapping that fails to reflect the species' true population status or range-wide threats. Moreover, proponents are incentivised to frame their project's contribution as minimal or insignificant, especially when cumulative impacts are diffuse or difficult to quantify.

3. The instrument does not require consistency with conservation planning instruments

The legislative instrument does not require consistency with conservation planning instruments, contrary to the Samuel Review's recommended MNES standard. The Samuel Review's MNES standard included an objective relating to conservation planning documents

"Actions, decisions, plans and policies that relate to MNES:

....

d) Are not inconsistent with relevant international agreements, recovery plans, management plans and threat abatement plans, and have regard to and ensure decisions reflect any approved conservation advice where relevant."

The Samuel Review recommendation is complicated by the introduction of Protection Statements in the revised EPBC Act. It is intended that Protection Statements will be the "default primary document" used to clarify what a decision maker must consider during the approval of actions in protecting threatened species or ecological communities.

Providing adequate scientific scrutiny, including requiring approval of draft Protection Statements by the TSSC following open consultation, will be essential to ensuring consistency between protection statements and other instruments such as recovery plans. While Protection Statements may be a good additional tool to provide clear, short-form regulatory advice to proponents on what must and must not happen to a species, TEC or critical habitat, it is essential that the introduction of Protection Statements do not diminish the role of existing instruments AND that the minister is compelled not to act in a manner that is inconsistent with a recovery plan or threat abatement plan, and must have regard to any approved conservation advice.

4. The instrument does not include monitoring, evaluation, reporting and improvement

The legislative instrument does not refer to monitoring, evaluation, reporting and improvement.

The Samuel Review's recommended MNES standard required a plan to be prepared that monitored and evaluated the outcomes of actions, decisions, plans and policies for each MNES. Key mandatory components included tracking cumulative impacts; establishing a baseline, key indicators and targeted outcomes, and thresholds for change in the MNES triggering specific actions.

Without adequate monitoring, it is not possible to rigorously demonstrate adherence to Standards or whether Standards are achieving their objectives. The MNES Standard must mandate scientifically robust monitoring of all matters and the outcomes of decisions made under and in accordance with the standard. As drafted, the instrument would not require the necessary accountability and transparency required to hold proponents to the standard, or provide evidence that individual actions or the laws and standard as a whole are working to protect and recover MNES.

5. The objective for threatened species and migratory species is inadequate

The objective for threatened species and migratory species is:

Habitat, including critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for a threatened species to remain viable in the wild, is protected, conserved and restored to **support** the survival and recovery of the threatened species.

Protection and recovery actions support the viability of threatened species in the wild.

This language is weaker than the Samuel Review's recommended Standard in several key respects. The objective of the standard for threatened and migratory species should **ensure** the survival and recovery of the species, not simply 'support' it. Supporting survival is a weak objective for an outcomes-based standard. We suggest replacing 'support' with 'ensure' in objectives for species, migratory species and ecological communities.

The focus on habitat to the exclusion of the population of the species itself is also problematic. There are several actions that can have significant impacts on populations but may not be considered to have a significant impact on 'habitat'. For instance, mortality arising from collisions such as bird and bat strikes with wind turbines or mammals killed by vehicles. Second, the priority of protection and recovery actions is overall species viability, not impacts on specific populations. It also seems to be limited to protection and recovery actions, rather than decisions whether to approve new activities. Third, many areas with suitable vegetation and other biophysical features are losing or have lost threatened species because threatening processes have persisted, particularly invasive species. The current provision would not have prevented the extinction of the Christmas Island Pipistrelle from a Commonwealth National Park.

The Samuel Review's recommended Standard explicitly refers to impacts on individuals and populations:

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.

How to strengthen the standard

The Standard should apply to plans and policies that relate to MNES, not just decisions relating to actions.

The legislative instrument should be strengthened by:

Cumulative impacts

- Referencing cumulative impacts in the text of the provisions themselves, not just the notes
- setting thresholds on cumulative impacts across multiple actions and establishing how accumulating impacts will be measured and reported and who will be responsible for the measurement and reporting, and
- Clarifying who must assess and judge whether an individual impact will push cumulative impacts beyond the specified threshold.

Consistency with conservation planning documents

- Ensuring protection statements adhere to existing conservation planning documents, such as recovery plans and listing advice, and confirmed by the Threatened Species Scientific Committee

Monitoring, evaluation and improvement

- Include monitoring, reporting and evaluation requirements, including who will be responsible for monitoring and reporting, and ensuring public visibility of monitoring and reporting outcomes.

Objectives for threatened species and migratory species

- Strengthen the objectives to ensure that “**Populations of threatened species** and habitat, including critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for a threatened species survival in the wild, is

protected, conserved and restored to **ensure** the survival and recovery of the threatened species. AND

Protection and recovery actions maintain and increase the abundance and distribution of threatened species, and ensure the viability of threatened species in the wild.” (see proposed amendments to the MNES Standard attached)

Appendix 1: Recommended amendments to the legislative instrument



EXPOSURE DRAFT

National Environmental Standard (Matters of National Environmental Significance) 2025

I, the Hon Murray Watt, Minister for the Environment and Water, make the following Instrument.

Dated

The Hon Murray Watt **DRAFT ONLY—NOT FOR SIGNATURE**
Minister for the Environment and Water

EXPOSURE DRAFT

Contents

1 Name	1
2 Commencement	1
3 Authority	1
4 Definitions	1
5 Objectives	2
6 Outcomes	4
7 Principles	4
8 Principle 1—Actions appropriately consider the application of the mitigation hierarchy	4
9 Principle 2—Actions appropriately consider impacts to protected matters	5
10 Principle 3—Actions with residual significant impacts to protected matters are compensated	5
11 Principle 4—Appropriate evidence, first nations engagement and consultation	6

1 Name

This is the *National Environmental Standard (Matters of National Environmental Significance) 2025*.

2 Commencement

- (1) Each provision of this standard specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
Insert appropriate text	Insert appropriate text.	Insert appropriate text

Note: This table relates only to the provisions of this standard as originally made. It will not be amended to deal with any later amendments of this standard.

- (2) Any information in column 3 of the table is not part of this standard. Information may be inserted in this column, or information in it may be edited, in any published version of this standard.

3 Authority

This standard is made under section 514YD of the *Environment Protection and Biodiversity Conservation Act 1999*.

4 Definitions

Note: The following expressions used in this standard are defined in the Act:

- (a) action
- (b) declared Ramsar wetland
- (c) declared World Heritage property
- (d) Great Barrier Reef Marine Park

EXPOSURE DRAFT

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- (e) impact
 - (f) indigenous heritage value
 - (g) National Heritage values
 - (h) National Heritage place
 - (i) residual significant impact
 - (j) restoration contribution charge
 - (k) World Heritage Convention
 - (l) world heritage values

In this standard:

Act means the *Environment Protection and Biodiversity Conservation Act 1999*.

compensate, in relation to residual significant impacts, means either or both of:

- (a) an offset activity; and
- (b) a restoration contribution charge.

offset activity means the doing of anything or the taking of any measure, other than the payment of a restoration contribution charge, to offset a residual significant impact on a protected matter.

protected matter means a matter protected by a provision of Part 3 of the Act.

Note: The matters protected by a provision of Part 3 of the Act are set out in section 34 of the Act.

repairable impact on a protected matter means an impact on a protected matter which is minimal and temporary in nature.

Note: An example of a repairable impact is an impact which occurs only during the construction phase of an action, **is fully mitigated by the completion of construction and has no lasting impact on a MNES**.

5 Objectives

- (1) This Standard aims to ensure decisions provide for the protection, conservation and, where necessary, recovery of:
 - (a) matters of national environmental significance; and
 - (b) the environment, in relation to actions taken on Commonwealth land or on Commonwealth Heritage places overseas or actions by a Commonwealth agency.
- (2) This Standard aims to **promote maintain, improve** and enhance the diversity, abundance, resilience, and integrity of protected matters consistent with the principles of ecologically sustainable development.
- (3) The objectives for protected matters are specified in the following table.

Objectives for protected matters	
Item	Objective
1	Threatened species Populations of threatened species and habitat, including critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for a threatened species

EXPOSURE DRAFT

Objectives for protected matters	
Item	Objective
	to remain viable in the wild, is protected, conserved and restored to support the survival and recovery of the threatened species. Protection and recovery actions maintain and increase the abundance and distribution of threatened species, and ensure support the viability of threatened species in the wild. [DN: viability is a vague and impossible to measure in prospect, hence the need for ensuring abundance and distribution of the species/EC.]
2	Ecological communities Habitat, including critical habitat of the listed ecological community where the habitat is irreplaceable and necessary for an ecological community to remain viable in the wild, is protected, conserved and restored to support the survival and recovery of the ecological community. Protection and recovery actions, maintain and increase the abundance and distribution of threatened species, and support ensure the viability of ecological communities in the wild.
3	Migratory species Habitat, including critical habitat of the listed migratory species where the habitat is irreplaceable and essential for a migratory species to remain viable in the wild, is protected, conserved and restored to support the survival and recovery of the migratory species. Protection and recovery actions ensure support the viability of migratory species in the wild.
4	Wetlands of International Importance The ecological character of a declared Ramsar wetland is maintained, protected, conserved and (where it is in decline) restored.
5	National Heritage Places The National Heritage values of the place are protected, conserved and (where necessary) rehabilitated. Indigenous Heritage values of a National Heritage place are treated in a manner respectful of Indigenous traditions and beliefs.
6	World Heritage Properties The world heritage values of a declared World Heritage property are protected, conserved and (where necessary) rehabilitated in a manner consistent with Australia's obligations under the World Heritage Convention.
7	Great Barrier Reef Marine Park The environment, biodiversity and heritage values of the Great Barrier Reef Marine Park, and its individual components, are protected, conserved and (where necessary) restored.
8	Commonwealth Marine Areas Commonwealth Marine Areas, or part thereof, are protected, restored (where necessary) and sustainably managed.
9	Protection of Water Resources from Unconventional Gas Development and Large Coal Mining Development The function and integrity of the water resource are protected and conserved, including the: (1) ecological components, functions and processes of the water resource necessary to support sites of regional and national ecological significance, and (2) reliability and supply of water to support critical human water needs.

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National Environmental Standard (Matters of National Environmental Significance) 2025i

EXPOSURE DRAFT

EXPOSURE DRAFT

Objectives for protected matters	
Item	Objective
10	Protection of the Environment from Radiological Exposure Actions The environment affected, or part thereof, is protected, restored and sustainably managed. Human health is protected from radiological exposure. The environment, including biological diversity, and the health of natural ecosystems is protected from impacts of radiological exposure.
11	Actions taken on Commonwealth land or on Commonwealth Heritage places overseas and actions taken by the Commonwealth The environment affected, or part thereof, is protected, restored and sustainably managed.

6 Outcomes

- (1) The outcomes which this Standard is intended to achieve are that decisions under the Act:
 - (a) provide for the protection, conservation, and, where necessary, restoration of protected matters;
 - (b) ~~maintain and enhance~~ ~~contribute to the promotion and enhancement of~~ the diversity, abundance, resilience, and integrity of protected matters; and
 - (c) facilitate ecologically sustainable development.

7 Principles

For subsection 514YD(4) of the Act, the principles by which the outcomes and objectives in sections 5 and 6 of this Standard are to be achieved are the principles in sections 8, 9, 10 and 11 of this Standard.

8 Principle 1—Actions appropriately consider the application of the mitigation hierarchy

Requirement to have regard to the mitigation hierarchy

- (1) Actions should be planned and taken having regard to the mitigation hierarchy provided for in this section.

Step 1—Avoidance

- (2) If possible, impacts to protected matters should be avoided by taking measures to anticipate and prevent significant impacts to protected matters before those impacts occur.

Step 2—Mitigation

- (3) Where significant impacts to protected matters cannot be avoided, the impact should be mitigated through a demonstrated process of identifying and implementing measures to reduce significant impacts on protected matters.

EXPOSURE DRAFT

Note 1: A proponent can directly reduce significant impacts on protected matters by addressing the scale, duration, timing, location and intensity of impacts that cannot be completely avoided.

Note 2: Mitigation measures generally form the basis of management plans and monitoring for an action to reduce, prevent, control and react to adverse impacts through the lifespan of an action and are an active decision to do something to reduce the severity or likelihood of significantly impacting a protected matter.

Step 3—Repair

- (4) Following the application of any appropriate avoidance and mitigation measures, any repairable impacts on protected matters should be repaired as soon as possible and as close to its original condition as possible.
- (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.
- (6) Repair activities should focus on the significantly impacted protected matter and involve on-site works with specific goals for re-establishment of values-to reduce residual significant impacts.

Note: Rehabilitation activities at the conclusion of an action are not considered to be repairs.

Step 4—Offset

- (7) Following the application of any appropriate avoidance, mitigation and repair measures, appropriate measures should be taken to compensate for any residual significant impacts associated with the action.

9 Principle 2—Actions appropriately consider impacts, including cumulative impacts to protected matters

In considering the nature, extent or severity of an impact on a protected matter, regard should be had to the context in which the impact might occur.

Note 1: The context includes, for example, the unique context of a protected matter, including the past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter.

Note 2: The context ~~may also, depending on the particular matter being considered (for instance, when considering bioregional plans and strategic assessments)~~ includes the following:

- (a) the interaction of different stressors, for example the combined impacts of light, noise, and habitat clearance to breeding success of endangered species as a result of an action or a number of actions;
- (b) the combination of past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter; and
- (c) individually minor, but collectively significant, actions taking place over a period of time.

Note 3: Specify here who is responsible of monitoring and recording accumulated impacts -

10 Principle 3—Actions with residual significant impacts to protected matters are compensated

Compensation for a residual significant impact should generally only be considered after the prior steps in the mitigation hierarchy (avoidance, mitigation and repair) have been exhausted.

11 Principle 4—Appropriate evidence, first nations engagement and consultation

Actions should be supported by appropriate and suitable:

- (a) data and information;
- (b) consultation with Aboriginal and Torres Strait Islander people and contribution of their knowledge; and
- (c) consultation with other interested parties.