



Environmental
Defenders Office

**Submission on the draft National Environmental
Standard (Matters of National Environmental
Significance) 2025**

30 January 2026

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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Submitted to:

[Survey on draft MNES Standard Policy Paper and legislative instrument](#)

Department of Climate Change, Energy, the Environment and Water

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherent and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

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Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on draft National Environmental Standards (**Standards**) developed under new provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

This submission provides feedback on the draft National Environmental Standard (Matters of National Environmental Significance) 2025 (**draft MNES Standard**) and the Draft Policy Position: National Environmental Standard for Matters of National Environmental Significance (**MNES Policy Position**).

As stated in the MNES Policy Position, Standards are intended to ‘support the operation of a reformed EPBC Act by setting expectations for regulated activities and uplifting the quality and consistency of decision-making’.¹ This is stated as being in response to the independent review of the EPBC Act by Professor Graeme Samuel in 2020 (**Samuel Review**), which found that the current EPBC Act decision-making requirements are not focused on outcomes for MNES and allow considerable discretion by the Minister.

The lynchpin of the recommendations made by the Samuel Review was the introduction of National Environmental Standards containing clear, enforceable outcomes that must be met through all decisions made under the EPBC Act. Strong National Environmental Standards are the backbone of a reformed EPBC Act.

The Samuel Review went so far as including a draft MNES Standard in its final report (**Samuel MNES Standard**). EDO considers that while the Samuel MNES Standard provides a useful starting point and could be improved (for example, by setting clear limits of environmental harm), it does provide an important baseline against which to measure the Government’s draft MNES Standards. Appendix 1 of this submission provides a table comparing the draft MNES Standard and the Samuel MNES Standard.

Disappointingly, the draft MNES Standard (and the draft National Environmental Standard (Environmental Offsets) (**draft Offsets Standards**)) fall short of the vision outlined in the Samuel Review and, generally, the ambition stated by the Government. As drafted, the Standards are unlikely to result in improved environmental outcomes, as they are:

- unclear and imprecise,
- focused on process not environmental outcomes,
- discretionary, and
- are likely to be difficult to enforce.

EDO strongly recommends that the draft MNES Standard is revised to ensure it establishes prescriptive, outcomes-based requirements to strengthen the EPBC Act and ensure it achieves its objects. This will provide greater protection for the environment, certainty for proponents and reduce the risk of poor-quality decision making that threatens Australia’s most significant and threatened environmental values.

¹ Draft MNES Standard Policy Position, p 1.

Summary of Recommendations

Overarching comments on draft National Environmental Standards

Recommendation 1: Amend the draft Standards to clearly specify environmental outcomes and set out clear, legally enforceable measures, including as follows:

- (a) Standards must use clear, unqualified language, to ensure they are understood and are enforceable.
- (b) Objectives, outcomes and principles must be coherently and consistently framed to ensure ambition is achieved through clear criteria that aligns with that ambition, and are outcomes focused, not process focused.
- (c) Standards must set SMART requirements: specific, measurable, actionable, realistic, and time-bound.
- (d) All necessary considerations must be included in the Standards themselves rather than creating further guidelines. Where policies and guidance are still required, these should be provided for public consultation alongside draft Standards so they can be considered as a whole.
- (e) Standards should ensure, for example through requiring mandatory conditions on approvals, that approval holders have mandatory, enforceable, ongoing obligations for environmental outcomes.

Recommendation 2: Include parameters, processes, and actions in Standards that specify precise, quantitative, requirements in order to ensure environmental outcomes for MNES are achieved.

Recommendation 3: Implement the full suite of Standards recommended by Professor Samuel as a matter of priority and prior to any decisions being made under the reformed EPBC Act, including with respect to accreditation or the changed management of Regional Forest Agreement operations.

Draft MNES Standard Objectives

Recommendation 4: Amend the table of objectives for protected matters in subsection 5(3) to align with the ambition in subsection 5(2) and the substantive outcomes outlined in subsection 6(1)(a)-(c) of the draft MNES Standard.

Recommendation 5: Amend the language in the objectives to ensure they are fit for purpose and do not simply mirror the parameters for ‘unacceptable impacts’ found in the EPBC Act.

Recommendation 6: Amend the thresholds for each objective in subsection 5(2) to ensure they are not solely focused on matters which are barely surviving, but rather lead to the ‘diversity, abundance, resilience and integrity’ of protected matters. For example, terms such as ‘abundance’, ‘resilience’ and ‘biodiversity’ should be incorporated into the thresholds, in order to ensure these outcomes are incorporated into decision-making effectively. Also, the objective should aim to promote and enhance ‘function’.

Recommendation 7: Require that research, monitoring and reporting for each MNES is publicly published regularly, and required to be considered by decision-makers, to ensure that the assessment criteria are able to be applied to proposed actions threatening impacts to MNES.

Recommendation 8: Amend the following specific objectives for protected matters to ensure they adequately protect each MNES:

- (a) *Threatened species, ecological communities and migratory species:* remove the words ‘where the habitat is irreplaceable and necessary for a threatened species to remain viable in the wild’ from the objective. While that wording may be relevant for the purpose of defining ‘unacceptable impacts’ on a threatened species, for the purpose of the MNES Standard it is appropriate for the MNES Standard to require that **all** critical habitat is protected, conserved and restored.
- (b) *Protection of Water Resources from Unconventional Gas Development and Large Coal Mining Development:*
 - i. Remove reference to protection only of sites of ‘regional and national significance’. Alternatively, in addition to supporting ‘sites of regional and national ecological significance’, the Standard should be amended to also include sites of local ecological significance.
 - ii. Include reference to protection of ‘protected matter and other species and processes reliant on the water’, and include reference to the need for ‘sustainable management’ of water resources.

Draft MNES Standard Outcomes

Recommendation 9: Delete the chapeau at subsection 6(1) to ensure the prescribed outcomes are framed around environmental outcomes and not administrative process (i.e. ‘decisions’).

Recommendation 10: Frame the Outcomes as statements of the environmental outcome the Standard requires and will achieve, using clear, objective, unqualified language.

Draft MNES Standard Principles

Principle 1

Recommendation 11: Replace weak and ambiguous terms in Principle 1 with unambiguous language (e.g. ‘appropriately consider’ and ‘having regard to’ should be replaced).

Recommendation 12: Strengthen the Steps in Principles 1, as follows:

- (a) Step 1 ‘Avoidance’ must be clarified to provide greater certainty as to the level of activity and evidence needing to be demonstrated to satisfy the decision-maker that avoidance has occurred, including by reference to the public interest in the activity to warrant any unavoidable impacts and whether the activity can be located elsewhere, including on another site, to avoid the impact.
- (b) Step 3 ‘Repair’ should clarify that ‘timely manner’ means ecologically timely.
- (c) Step 4 ‘Offset’ should be amended to ensure the availability of viable offsets is a fundamental consideration in the mitigation hierarchy as to whether the proponent and decision-maker may elect to allow an impact to occur on the basis of provision of an offset.

Recommendation 13: Include sufficient, granular detail in the Standard itself rather than subsequent guidelines.

Principle 2

Recommendation 14: Amend Principle 2 to clearly reference and define cumulative impacts.

Recommendation 15: Amend Principle 2 to explicitly require consideration of climate change impacts, and the effectiveness of avoidance and mitigation measures under climate-change scenarios, on MNES

Recommendation 16: Remove reference to ‘for instance, when considering bioregional plans and strategic assessments’, in Note 2 of Principle 2, to ensure it clearly applies to all activities.

Principle 3

Recommendation 17: Amend draft MNES Standard Principle 3 to:

- (a) Remove ‘generally’ to eliminate any confusion as to when offsets can be relied upon, being only after the mitigation hierarchy has been implemented fully.
- (b) Add a note to cross-reference the definition of ‘compensation’ in section 4.
- (c) Make it clear that there are some residual significant impacts for which ‘compensation’ is not appropriate (e.g. where there are unacceptable impacts).

Principle 4

Recommendation 18: Amend draft MNES Standard Principle 4 as follows:

- (a) Remove Principle 4 in its entirety to avoid future confusion and inconsistency with intended First Nations Engagement Standard, Community Consultation Standard and Data and Information Standard.
- (b) In the alternative, amend Principle 4 to specifically refer to the anticipated three Standards so as to provide relevant thresholds of what activities would be considered sufficient to meet the requirements as currently listed in Principle 4.

Additional principles

Recommendation 19: Amend the draft MNES Standard to add a new principle requiring that actions must be consistent with international agreements.

Quality up to date data

Recommendation 20: Require and deliver funded research and public reporting of the current baseline of environmental values, to implement the MNES decision-making criteria, and to understand and map environmental trends over time to assist in evaluating the effectiveness of the Standard and the Act.

Recommendation 21: Require regular public reporting on environmental trends, and measurable outcomes in Standards, with the National Environmental Protection Agency (EPA) to report against performance of Standards against outcomes and Act objects regularly.

Recommendation 22: Require Environment Information Australia (EIA) to regularly report against Australia’s progress on the Global Biodiversity Framework.

Application of Standards

Recommendation 23: Ensure that the application of National Environmental Standards is subject to an objective test that a decision or framework is consistent with all relevant Standards (i.e. not the Minister's satisfaction).

Recommendation 24: Constrain provisions that exempt certain proposals from meeting the Standards. In particular:

- (a) Provide a limit on all national interest exemptions that refines what can be considered to be the 'national interest' to apply the exemption, specifically to national emergencies.
- (b) Remove the national interest proposal pathway, where existing national interest exemptions are sufficient and there has not been sufficiently demonstrated need for the national interest proposal pathway.

Recommendation 25: Standards should apply to all relevant decisions as the starting point, not just those prescribed by regulation.

Recommendation 26: The no regression principle should be amended to ensure that Standards that are varied or revoked must still meet the same criteria as when Standards are first made, particularly in relation to consistency with international agreements.

Introduction

In 2020 the Samuel Review found that the arrangements and decision-making requirements under the EPBC Act are not focused on outcomes for matters of national environmental significance, and that opaque rules and unfettered discretion in decision-making often results in the trading away of environmental outcomes.² It found that without fundamental reform, the EPBC Act cannot deliver the level of environmental protection the community expects.

The centrepiece recommendation to address this was for the creation of clear, binding National Environmental Standards that:

- set clear, measurable limits on environmental harm;
- provide transparent rules that guide decisions under the EPBC Act;
- lift environmental outcomes, not merely manage decline; and
- ensure governments, proponents and regulators operate with consistency, clarity and accountability.

These Standards were intended to include ‘hard lines and no-go zones... [to] protect critical assets and prevent unacceptable impacts’.³ The Samuel Review went so far as including a draft MNES Standard in its final report (**Samuel MNES Standard**). The Samuel MNES Standard was explicitly not intended to be the ultimate form of that Standard. In fact, the Samuel Review noted that the Standard was to be a starting point which should evolve to become more granular and measurable over time to ensure the achievement of ecologically sustainable development.⁴ However, the Samuel MNES Standard does provide a helpful starting point for an initial MNES Standard, and a baseline against which to measure the Government’s draft MNES Standard currently out for public consultation. **Appendix 1** of this submission provides a table comparing the draft MNES Standard and the Samuel MNES Standard.

Recent reforms to the EPBC Act, introduced by the *Environment Protection Reform Act 2025* (Cth) (**EPR Act**), have created new powers for the Environment Minister to make National Environmental Standards. However, the matters for which Standards will be made, and how they will be applied to decision making is not specified in the Act.

To date, the Government has released a draft MNES Standard and draft Offsets Standard for public comment. The Government has also flagged its intention to develop a First Nations Engagement Standard, Community Consultation Standard and a Data and Information Standard. The Samuel Review recommended a full suite of nine Standards.⁵

² Professor Graeme Samuel AC, Independent Review of the EPBC Act – Final Report (**Samuel Review**), p 52.

³ Samuel Review, p 52.

⁴ Samuel Review, p 53.

⁵ Samuel Review, p 51. The full suite of Standards should include:

- matters of national environmental significance
- Commonwealth actions and actions involving Commonwealth land
- transparent processes and robust decisions, including– judicial review– community consultation– adequate assessment of impacts on MNES – including climate change impacts– disclosure of emissions profile– quality regional planning
- Indigenous engagement and participation in decision-making
- compliance and enforcement
- data and information
- environmental monitoring and evaluation of outcomes
- environmental restoration, including offsets
- wildlife permits and trade.

Disappointingly, the provisions in the EPBC Act for developing and applying Standards, and the draft Standards prepared to date, fall short of the comprehensive framework envisaged by the Samuel Review. More work is needed to ensure Standards can play the important role intended to set limits, lift environmental outcomes and deliver clear and consistent decision making.

This submission provides feedback and key recommendations as follows:

- 1. Overarching comments on draft National Environmental Standards**
- 2. Feedback on the draft MNES Standard**
- 3. General feedback on the legal framework for making and implementing Standards in the EPBC Act**

1. Overarching comments on draft National Environmental Standards

In this section of our submission, we provide overarching comments highlighting deficiencies with the first two draft Standards released for public comments - the draft MNES Standard and the draft Offsets Standard - and highlight key issues that must be addressed across all Standards, namely:

- 1.1 Standards must specify environmental outcomes and set out clear, legally enforceable measures by which they will be achieved
- 1.2 Standards must include parameters within an outcome or objective is to be achieved, and processes or actions to be followed or taken in achieving an outcome or objective
- 1.3 The full suite of Standards must be urgently developed, and must be in place prior to accrediting any frameworks

We include recommendations for consideration across all Standards as they are developed.

1.1 Standards must specify environmental outcomes and set out clear, legally enforceable measures by which they will be achieved

The Samuel Review found that a fundamental shortcoming of the EPBC Act is that it does not focus on environmental outcomes but rather on process, and does not provide sufficient constraints on discretion. This, it found, has resulted in uncertainty and poor environmental outcomes. In our view, as drafted, the draft Standards may exacerbate existing flaws in the EPBC Act identified by the Samuel Review by failing to specify clear environmental outcomes to be met, and by entrenching and extending discretionary decision-making powers of the Minister and their delegates.

In particular, we provide the following feedback:

- The current draft Standards provide discretionary, qualified language that is unclear and difficult for stakeholders to understand and to enforce. Standards should use clear, unqualified language ('must', 'will', 'ensure'), not discretionary language ('aims', 'is intended', 'reasonable', 'may', 'if possible' or 'where necessary'). This level of discretion is further compounded when read in the context of the Act's multiple requirements that the Minister must be 'satisfied' their decision is 'consistent with the Standard' prescribed for that decision (for example, the decision to accredit a bilateral agreement).⁶ The

⁶ See EPBC Act, new ss 46(3)(e) and (f). These provisions have not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

discretionary use of ‘satisfied’ will make it difficult for the public to hold a decision-maker to account where they fail to uphold the Standard meaningfully.

- The current draft Standards include ‘outcomes’ that are not consistent with Samuel Review’s recommendation for environmental outcomes based (rather than process-oriented) decision-making. For example, as currently drafted the ‘outcome’ for each draft Standard is:
 - ultimately about process (i.e. ‘decisions’ for the draft MNES Standard and ‘framework’ for the draft Offsets Standard);
 - not clear or specific, and uses vague and qualified language which is not tied to the objectives and principles. For example, ‘this Standard aims to ensure **decisions** provide for the protection, conservation, and, where necessary, recovery of... matters of national environmental significance’ (emphasis added).
- The objectives, outcomes and principles contained in Standards must be coherently and consistently framed to ensure ambition is achieved through clear criteria that achieve or are consistent with that ambition. In the absence of this language, the Standards will not perform the role envisaged in the Samuel Review and risk being ineffective or counterproductive.
- As drafted, the draft Standards will be difficult to enforce. Again, this does not align with the Samuel Review. To assist in ensuring they are enforceable, the Standards should provide for SMART requirements: specific, measurable, actionable, realistic, and time-bound.
- Standards must contain requirements that bind proponents, not only decision-makers, to ensure that approval holders have an ongoing requirement to comply with the Standards and achieve relevant environmental outcomes. This could be done, for example, through the Standards requiring the imposition of conditions of approval relating to requirements for environmental outcomes (not simply relating to process).
- As drafted, the draft Standards are not sufficiently granular, and instead further detail is intended to be set out in policies and guidance. Making further policies and documents that sit under the Standard will defeat the purpose of the Standards being a single place to provide clear, simple guidance for decision-makers, proponents and the public. It would also risk reducing the enforceability of the Standards, where detail being provided in non-statutory documents may create ambiguity as to what is the enforceable threshold.
- The Samuel Review criticised the EPBC Act framework where ‘[d]ecision-making requirements are buried within hundreds of pages of legislation and statutory documents, and unenforceable guidelines and policies.’⁷ To provide effective, clear and enforceable Standards, and to provide the granular detail envisaged by the Samuel Review, we strongly recommend all necessary considerations should be included in the Standards themselves rather than creating further guidelines. Where policies and guidance are still required, these should be provided for public consultation alongside draft Standards so they can be considered as a whole.

⁷ Samuel Review, p 52.

Recommendation 1: Amend the draft Standards to clearly specify environmental outcomes and set out clear, legally enforceable measures, including as follows:

- (a) Standards must use clear, unqualified language, to ensure they are understood and are enforceable.
- (b) Objectives, outcomes and principles must be coherently and consistently framed to ensure ambition is achieved through clear criteria that aligns with that ambition, and are outcomes focused, not process focused.
- (c) Standards must set SMART requirements: specific, measurable, actionable, realistic, and time-bound.
- (d) All necessary considerations must be included in the Standards themselves rather than creating further guidelines. Where policies and guidance are still required, these should be provided for public consultation alongside draft Standards so they can be considered as a whole.
- (e) Standards should ensure, for example through requiring mandatory conditions on approvals, that approval holders have mandatory, enforceable, ongoing obligations for environmental outcomes.

1.2 Standards must include parameters within an outcome or objective is to be achieved, and processes or actions to be followed or taken in achieving an outcome or objective

New section 514YD of the EPBC Act sets out the process for making, and the contents of, Standards. Subsection 514YD(4) states that a National Environmental Standard:

- (a) must prescribe one or more outcomes or objectives; and
- (b) may prescribe any of the following:
 - (i) parameters within, or principles by which, an outcome or objective is to be achieved;
 - (ii) processes or actions to be followed or taken in achieving an outcome or objective.

We note that neither the draft MNES Standard nor draft Offsets Standard has prescribed:

- parameters within an outcome or objective is to be achieved; or
- processes or actions to be followed or taken in achieving an outcome or objective.

While section 514YD(4) permits, but does not require, the relevant standard to prescribe parameters, processes, or actions, it is disappointing they are not included in the draft Standards. It is these parameters, processes, or actions which enable the Standard to be sufficiently prescriptive and detailed to ensure that the environmental outcomes specified in the Standard are met (noting our separate comments that the drafting of the Outcome in the draft MNES Standard must be amended to ensure it relates to environmental outcomes for MNES, not matters of process).

For example, the Samuel Review noted that Standards for MNES must be ‘precise’ and ‘quantitative’. If Standards do not contain clear, mandatory, measurable requirements for the meeting of environmental outcomes they will not perform the role envisaged in the Samuel Review and risk being ineffective or counterproductive. As noted above, Standards should provide for SMART requirements: specific, measurable, actionable, realistic, and time-bound. These

requirements would fall within the parameters, processes or actions provided for by section 514YD(4)(b) but not included in the draft MNES Standard.

Professor Samuel acknowledged that the Samuel MNES Standard set out in the Appendix to the Samuel Review was itself not sufficiently precise, and that Standards must evolve in a way that requires ecologically sustainable development, and for the values and attributes of MNES to be protected, maintained and actively enhanced.⁸ The Samuel Review urged the MNES Standard must become ‘granular and measurable’ so as to be able to ‘be applied with greater precision and efficiency’.⁹

The Samuel Review recommended and provided examples for how this could be effected:

- ‘definitive mapping of habitat critical to the survival of a species will provide greater clarity than a more general scientific description of that habitat’;¹⁰
- ‘National Environmental Standards for threatened species could be expressed in quantitative measures to support recovery over a specific time frame – with targets that specify the intended outcomes’;¹¹
- ‘Measures such as population size and trends, and the area and quality of habitat available across a landscape type (that is, population numbers, hectares, threat management and years), should be developed’;¹²
- ‘[h]ard lines and no-go zones in the Standards [to] protect critical assets and prevent unacceptable impacts’.¹³

Recommendation 2: Include parameters, processes, and actions in Standards that specify precise, quantitative, requirements in order to ensure environmental outcomes for MNES are achieved.

1.3 The full suite of Standards must be urgently developed, and must be in place prior to accrediting any frameworks

The Samuel Review recommended that: ‘The National Environmental Standards set out in detail in Appendix B [of the Samuel Review Report] 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.’¹⁴

We strongly support the full suite of Standards suggested by the Samuel Review, and further the Review’s strong warning that the Standards must be subject to regular review and strengthening in alignment with the findings of increase quality data and information to support their development.

It is imperative that a full suite of Standards is implemented prior to development or revision of any bilateral agreements or declarations devolving EPBC Act powers, and ideally prior to any further significant decisions under the EPBC Act.

⁸ Samuel Review, p 53.

⁹ Samuel Review, p 53.

¹⁰ Samuel Review, p 53.

¹¹ Samuel Review, p 53.

¹² Samuel Review, p 53.

¹³ Samuel Review, p 52.

¹⁴ Samuel Review, p53.

The provisions of the EPBC Act are drafted in a way to allow these decisions to be made in the absence of Standards. The current provisions of the EPBC Act only require decisions to be made where the decision-maker is 'satisfied' that the decisions is 'consistent' with Standards as 'prescribed by regulations'.¹⁵ This means that where Standards have not been prescribed by regulations for particular decisions, there is a possibility the decision could be made without applying the Standards. Allowing key decisions to be made without Standards in place and prescribed for decisions undermines the intent of the reforms and the Samuel Review.

It is essential that the Standards are implemented prior to the accreditation of any frameworks that devolve EPBC Act powers to another entity. Devolution of EPBC Act powers was sold to the public on the basis of the strong National Environmental Standards working to ensure that the frameworks and processes of accredited entities will have to meet the requirements of the Standards. It would be disingenuous to then allow any accreditation to occur prior to the finalisation of the full suite of Standards, and risks accrediting poor quality frameworks, for example state or territory environment planning and approvals legislation.

This is particularly important in relation to any accreditation of bilateral agreements for the regulation of Regional Forestry Agreement (**RFA**) operations. In light of substantial concerns that RFAs were not achieving required environmental outcomes, the Samuel Review recommended applying Standards to RFAs.¹⁶ The recent reforms provide that from 1 July 2027, RFA operations will be subject to EPBC Act approval processes.¹⁷ In response to these changes, the federal government has stated an intention for RFA forestry operations to be accredited under bilateral agreements.¹⁸ If this occurs, to protect forests, including threatened species habitats, the full suite of Standards (including the MNES Standard) must be in place prior to the accreditation of any bilateral agreements that regulate RFA operations.

The latest 2021 State of the Environment Report makes it clear that 'the state and trend of the environment of Australia is poor and deteriorating because of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction.'¹⁹ This is why it is important that Standards are strong, measurable, enforceable, ambitious and backed by solid scientific understanding of the status of environmental values, to lead to the 'quantum shift' that Professor Samuel stated was required to halt and reverse this decline. Anything less risks repeating the failings of the EPBC Act.

Recommendation 3: Implement the full suite of Standards recommended by Professor Samuel as a matter of priority and prior to any decisions being made under the reformed EPBC Act, including

¹⁵ For example, EPBC Act, new ss 33(3)(e) and (f) states that the Minister must not accredit a management or authorization framework unless they are satisfied that (e) 'the framework is consistent with any national environmental standard prescribed by regulations for the purposes of this paragraph' and (f) 'approving the action or class of actions in accordance with the framework will be consistent with any [Standards] as prescribed by regulations for the purposes of this paragraph'. This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

¹⁶ Samuel Review, p 16.

¹⁷ See EPBC Act, new ss 38(1). This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

¹⁸ Commonwealth, *Parliamentary Debates*, Senate, Thursday 27 November 2025, p 44 and 46 (Murray Watt Minister for Environment and Water), available at [Senate_2025_11_27.pdf;fileType=application/pdf](#).

¹⁹ Commonwealth Government, 2021 State of the Environment Report, *Key findings*, available at: <https://soe.dcceew.gov.au/overview/key-findings>.

with respect to accreditation or the changed management of Regional Forest Agreement operations.

2. Feedback on the draft MNES Standard

The draft MNES Standard is the most important of all Standards in implementing the Samuel Review's key recommendation for strengthening environmental protection outcomes to avoid further decline of Australia's environmental values. The draft MNES Standard is intended to strengthen and clarify the criteria that is utilised in decision making on potential impacts to MNES. For that reason, there is a need for the Standard to be as clear, objective and enforceable as possible, and underpinned by the best science to guide decision-making in accordance with the Standard.

This section of our submission is structured as follows:

- 2.1 Draft MNES Standard Objectives
- 2.2 Draft MNES Standard Outcomes
- 2.3 Draft MNES Standard Principles

We include key recommendations for strengthening the draft MNES Standard.

2.1 Draft MNES Standard Objectives

We raise the following broad concerns with the draft MNES Standard Objectives:

- The criteria provided in the objectives, particularly in the table at subsection 5(3) of the draft MNES Standard, are not in alignment with the ambition of subsection 5(2) nor of the substantive outcomes outlined in subsection 6(1)(a)-(c) of the draft MNES Standard. While the ambition provided in subsection 5(2) is laudable, it remains vague and the criteria provided in the table of subsection 5(3) provides a low level of protection for protected matters.
- The language in many of the objectives mirrors language found in the definition of 'unacceptable impacts' under the reformed EPBC Act.²⁰ While it is useful to use consistent terminology, language that sets objectives must be fit for purpose; terms used for the purpose of defining unacceptable impacts and thresholds for meeting that specific test are not necessarily appropriate for setting objectives for protecting, conserving and restoring MNES more broadly.
- The thresholds outlined in the objectives are focused on protecting a status of each protected matter which is barely surviving, focusing for example on critical habitat that is irreplaceable and necessary for the viability of a species to remain in the wild. This threshold will not lead to 'diversity, abundance, resilience and integrity of protected matters' as provided for in the substantive outcomes outlined in subsection 6(1)(a)-(c). There is in fact no mention of the terms 'abundance' nor 'resilience' in the detailed outcomes, and only limited reference to 'biodiversity' as applying to the Great Barrier Reef Marine Park and protection of the environment from radiological exposure actions. This leaves little chance that these outcomes will be integrated into decision-making effectively such that they are

²⁰ See EPBC Act, new s 527F. This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

achieved. We also suggest that to promote and enhance ‘function’ should also be added to the objectives.

- We note again that for the objectives to be effectively implemented in assessment and decision making under the EPBC Act, they must be supported by research, monitoring and reporting to develop a better understanding of the status of each MNES. For example, to determine if a threatened species is to ‘remain viable in the wild’, it is necessary to know the population health currently of that species and the projected population health noting existing known threats.

We also note the following specific amendments needed to various objectives:

- **Threatened species, Ecological Communities and Migratory Species:** The objective for threatened species provides ‘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’ (emphasis added). Similar wording is used for Ecological Communities and Migratory Species. The emphasised words should be removed. While they may be relevant for the purpose of defining ‘unacceptable impacts’, for the purpose of the MNES Standard it is appropriate for the MNES Standard to require that all critical habitat (as defined in the reformed EPBC Act)²¹ is protected, conserved and restored.
- **Protection of Water Resources from Unconventional Gas Development and Large Coal Mining Development:** Reference must be removed to sites of ‘regional and national significance’ to ensure the protection of water resources is not unnecessarily and inappropriately narrowed. Alternatively, in addition to supporting ‘sites of regional and national ecological significance’, the draft Standard should be amended to also include sites of local ecological significance. Further, this criterion must be amended to add protection ‘to protected matter and other species and processes reliant on the water’. Both of these factors are necessary inclusions to support protection of ‘ecological components, functions and processes’ of water resources at all scales. We recommend also that ‘sustainable management’ is integrated into this objective for protecting water resources, as it has been included for item 10 of the table – for example by including ‘The function and integrity of the water resource are protected, conserved and sustainably managed’.

Recommendation 4: Amend the table of objectives for protected matters in subsection 5(3) to align with the ambition in subsection 5(2) and the substantive outcomes outlined in subsection 6(1)(a)-(c) of the draft MNES Standard.

Recommendation 5: Amend the language in the objectives to ensure they are fit for purpose and do not simply mirror the parameters for ‘unacceptable impacts’ found in the EPBC Act.

Recommendation 6: Amend the thresholds for each objective in subsection 5(2) to ensure they are not solely focused on matters which are barely surviving, but rather lead to the ‘diversity, abundance, resilience and integrity’ of protected matters. For example, terms such as ‘abundance’, ‘resilience’ and ‘biodiversity’ should be incorporated into the thresholds, in order

²¹ See EPBC Act, new ss 207A(4). This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

to ensure these outcomes are incorporated into decision-making effectively. Also, the objective should aim to promote and enhance ‘function’.

Recommendation 7: Require that research, monitoring and reporting for each MNES is publicly published regularly, and required to be considered by decision-makers, to ensure that the assessment criteria are able to be applied to proposed actions threatening impacts to MNES.

Recommendation 8: Amend the following specific objectives for protected matters to ensure they adequately protect each MNES:

- (a) *Threatened species, ecological communities and migratory species:* remove the words ‘where the habitat is irreplaceable and necessary for a threatened species to remain viable in the wild’ from the objective. While that wording may be relevant for the purpose of defining ‘unacceptable impacts’ on a threatened species, for the purpose of the MNES Standard it is appropriate for the MNES Standard to require that **all** critical habitat is protected, conserved and restored.
- (b) *Protection of Water Resources from Unconventional Gas Development and Large Coal Mining Development:*
 - i. Remove reference to protection only of sites of ‘regional and national significance’. Alternatively, in addition to supporting ‘sites of regional and national ecological significance’, the Standard should be amended to also include sites of local ecological significance.
 - ii. Include reference to protection of ‘protected matter and other species and processes reliant on the water’, and include reference to the need for ‘sustainable management’ of water resources.

2.2 Draft MNES Standard Outcomes

The proposed section 6 ‘Outcomes’ of the draft MNES Standard provides:

- (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) contribute to the promotion and enhancement of the diversity, abundance, resilience, and integrity of protected matters; and
 - (c) facilitate ecologically sustainable development.

As noted above, a primary criticism of the EPBC Act by the Samuel Review was that the Act, and decision-making requirements under it, are not focused on environmental outcomes but are more concerned with process. This was the fundamental rationale for recommending Standards - to set out clear environmental outcomes for the Act.

As the Samuel Review identified:

‘Clear outcomes and requirements are important to help the community know what they can expect from the EPBC Act. It is important for businesses, which seek clear and consistent rules. It is also important for decision-makers and regulators, because it gives clarity on the rules they are expected to adhere to and enforce’.²²

²² Samuel Review, p 52.

To perform the function envisaged by the Samuel Review, the Outcome/s specified in the Standard must be a statement of the actual, on-ground, result/circumstance for the relevant MNES that the Standard is requiring. Standards must be focused on measurable and timely outcomes for nature, not on process.

The Outcomes as drafted do not do this. Rather, the focus of the Outcomes, as specified in the chapeau at (1) are **decisions** made under the Act rather than actual, on-ground environmental outcomes the Standard is to achieve.

By contrast, the Samuel MNES Standard provides a clear statement of the on-ground environmental outcome the standard intended to achieve. It provides an overarching Environmental Outcome, as well as specific Environmental Outcomes for each MNES. The Environmental Outcome specified in the Overarching MNES Standard is:

‘Matters of national environmental significance are protected and enhanced, and decision-making actively contributes to improvements in their conservation and management.’

As drafted, the section 6 of the draft MNES Standard is further weakened by its use of qualifying, discretionary, subjective, and process focused language, rather than clear, prescriptive, statements of fact. For instance, ‘where necessary’, ‘contribute to’, and ‘facilitate’. By way of contrast, the environmental outcome specified in the Samuel MNES Standard is a clear, unqualified statement of fact, the focus of which is on-ground environmental outcomes: ‘Matters of national environmental significance are protected and enhanced, and decision-making actively contributes to improvements in their conservation and management’.

Recommendation 9: Delete the chapeau at subsection 6(1) to ensure the prescribed outcomes are framed around environmental outcomes and not administrative process (i.e. ‘decisions’).

Recommendation 10: Frame the Outcomes as statements of the environmental outcome the Standard requires and will achieve, using clear, objective, unqualified language.

2.3 Draft MNES Standard Principles

The draft MNES Standard sets out at sections 8-11 a number of principles by which, according to section 7, ‘the outcomes and objectives in sections 5 and 6 of this Standard are to be achieved’.

This Principles are:

- Principle 1 - Actions appropriately consider the application of the mitigation hierarchy (section 8).
- Principle 2 - Actions appropriately consider impacts to protected matters (section 9).
- Principle 3 - Actions with residual significant impacts to protected matters are compensated (section 10).
- Principle 4 - Appropriate evidence, first nations engagement and consultation (section 11).

There is a need for more clarity and prescription with respect to the principles to ensure they meet the proposed outcomes of the Standard (noting our recommendations about the framing of the current draft MNES Standard Outcomes). As currently drafted the Principles are high level and lack aspiration. Specific comments on each Principle, and recommendations for strengthening them are outlined below.

Principle 1 – Actions appropriately consider the application of the mitigation hierarchy

The EPBC Act reforms provide that the Minister ‘must consider’ whether the proponent has taken appropriate measures (including through the location or design of the action) to avoid, mitigate or repair the impact or damage.²³

Principle 1 of the draft MNES Standard provides that actions ‘appropriately consider’ the application of the mitigation hierarchy and should be planned and taken ‘having regard’ to the mitigation hierarchy. Both of these elements provide weak and unclear requirements as to how the mitigation hierarchy must be applied, referring to just consideration or regard being given to the mitigation hierarchy. These criteria are particularly unclear as to the extent the applicant must ensure that the mitigation hierarchy has been implemented in their activity design.

In our view, the mitigation hierarchy must be implemented by the proponent (e.g. by providing clear information in application materials on how it has been applied) and the decision maker (e.g. by considering and being satisfied that it has been properly applied), to ensure thorough consideration and application. Further, there must be a requirement that decisions be ‘consistent’ with the mitigation hierarchy to ensure a clear obligation to meet the hierarchy steps.

Principle 1 then outlines steps in applying the mitigation hierarchy. We comment on the steps as follows:

- *Step 1 – Avoidance:* This is the most important step of the mitigation hierarchy, and the threshold must be clear for when impacts must be avoided for the hierarchy to be meaningful. Amendments are needed to provide more certainty in the actions needing to be taken to sufficiently ‘avoid’ impacts. For example, removing ‘if possible’ and providing clarity on evidence needed to demonstrate that adequate avoidance has occurred and the threshold for determining when the impact is still allowed or should be avoided. Ideally this would involve reference to ensure that the activity causing the impact that cannot be avoided is in the public interest, and that the activity cannot be placed elsewhere (including outside of the site selected) for example. While the Draft Policy Position indicates that the Regulations will be updated to outline the information needed to demonstrate that the mitigation hierarchy has been appropriately applied,²⁴ sufficient detail should also be included in the Standard itself, rather than subsequent guidelines.
- *Step 2 – Mitigation:* The criteria for mitigation are slightly more detailed which provides more clarity to all stakeholders as to the activity that is needed. Again, sufficient detail should be included in the Standard itself rather than subsequent guidelines.
- *Step 3 – Repair:* We support the inclusion of a requirement to undertake repair activities as soon as possible, in a timely manner, and in a way that is feasible and sustainable in the long term for the protected matter. In this context, the Standard should clarify that ‘timely manner’ means ecologically timely. We further support that rehabilitation activities at the end of an action are not considered repairs. We suggest that timely matter be clarified to mean an ecologically timely manner.

²³ See EPBC Act, new ss 134(3F). This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

²⁴ Draft Offsets Policy Position, p 13.

- *Step 4 – Offset*: Considerations of the availability of viable offsets should be clearly required in the mitigation hierarchy steps; this is something that should be considered at the time of assessment of the impacts to determine whether the impact should be allowed (i.e. considering the viability of any offset available to compensate for the impact). If an offset is not possible to compensate for the impact, the impact must only be allowed under strict thresholds of necessity and public interest, given that there will be no compensation for the impact and only decline in the protected matter. It is this threshold that will make the difference in ensuring the reformed EPBC Act framework does not entrench ongoing environmental decline in Australia. We have provided further commentary on the offset requirements in our submission on the Draft Offsets Standard.

Recommendation 11: Replace weak and ambiguous terms in Principle 1 with unambiguous language (e.g. ‘appropriately consider’ and ‘having regard to’ should be replaced).

Recommendation 12: Strengthen the Steps in Principles 1, as follows:

- (a) Step 1 ‘Avoidance’ must be clarified to provide greater certainty as to the level of activity and evidence needing to be demonstrated to satisfy the decision-maker that avoidance has occurred, including by reference to the public interest in the activity to warrant any unavoidable impacts and whether the activity can be located elsewhere, including on another site, to avoid the impact.
- (b) Step 3 ‘Repair’ should clarify that ‘timely manner’ means ecologically timely.
- (c) Step 4 ‘Offset’ should be amended to ensure the availability of viable offsets is a fundamental consideration in the mitigation hierarchy as to whether the proponent and decision-maker may elect to allow an impact to occur on the basis of provision of an offset.

Recommendation 13: Include sufficient, granular detail in the Standard itself rather than subsequent guidelines.

Principle 2: Actions appropriately consider impacts to protected matters

We generally support Principle 2, which provides:

Principle 2—Actions appropriately consider 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.

We support a requirement that cumulative impacts of actions are considered and given significant weight by both proponent and decision maker. Although we understand this to be the intent of Principle 2, the current drafting does not state this explicitly and is therefore confusing. We recommend that ‘cumulative impact’ assessment be specifically referred to, so as to avoid uncertainty. It should also be clearly defined.

We note that the Samuel MNES Standard explicitly required the consideration of cumulative impacts, which was clearly defined, as well as individual impacts for all MNES. For instance, the Samuel MNES Standard required that:

- 1) Actions, decisions, plans and policies that relate to MNES:

e) 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

i) use all reasonable efforts to prevent actions contributing to detrimental cumulative impacts or exacerbation of key threatening processes.

We also suggest that Principle 2 explicitly require consideration of climate change impacts, and the effectiveness of avoidance and mitigation measures under climate-change scenarios, on MNES. This would be consistent with recommendations made by the Samuel Review, and specifically recommendations that Standards should require development proposals to ‘explicitly consider the likely effectiveness of avoidance or mitigation measures on national protected matters under specified climate change scenarios’ (see **Appendix 1**). This could be achieved by strengthening Principle 2 so that the ‘context’ refers to the climate-related effects of any proposed action. Impact assessment under Principle 2 could also require assessment of the likely effectiveness of avoidance, mitigation or offset measures on MNES under specified climate change scenarios.

We further recommend that Note 2 should be amended to remove reference to ‘for instance, when considering bioregional plans and strategic assessments’, to remove any potential suggestion that the context details listed in Note 2 should be considered only for bioregional plans and strategic assessment, and not for all activities.

Recommendation 14: Amend Principle 2 to clearly reference and define cumulative impacts.

Recommendation 15: Amend Principle 2 to explicitly require consideration of climate change impacts, and the effectiveness of avoidance and mitigation measures under climate-change scenarios, on MNES

Recommendation 16: Remove reference to ‘for instance, when considering bioregional plans and strategic assessments’, in Note 2 of Principle 2, to ensure it clearly applies to all activities.

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

We generally support this principle but suggest the following amendments:

- remove the word ‘generally’, to eliminate any confusion as to when offsets can be relied upon, being only after the mitigation hierarchy has been implemented fully.
- add a note to this principle to cross-reference the definition of ‘compensate’ in section 4 (so it is clear that this has a specific meaning).
- make it clear that there are some residual significant impacts for which ‘compensation’ is not appropriate (e.g. where there are unacceptable impacts).

Recommendation 17: Amend draft MNES Standard Principle 3 to:

- (a) Remove ‘generally’ to eliminate any confusion as to when offsets can be relied upon, being only after the mitigation hierarchy has been implemented fully.
- (b) Add a note to cross-reference the definition of ‘compensation’ in section 4.
- (c) Make it clear that there are some residual significant impacts for which ‘compensation’ is not appropriate (e.g. where there are unacceptable impacts).

Principle 4 – Appropriate evidence, first nations engagement and consultation

We understand that a First Nations Engagement Standard and a Community Consultation Standard are being released, and that the Government is also currently ‘working on a standard around data and environmental information’.²⁵ The Samuel Review recommended implementation of all three of these Standards, in addition to others. We support urgent implementation of the three Standards consistent with the expectations set out in this submission, including that the Standards are clear, outcomes focused and legally enforceable.

Given the imminence of the three intended Standards, we are concerned that Principle 4 as drafted is unclear, pre-empts the finalisation of the anticipated Standards and risks inconsistencies between Standards.

We recommend that Principle 4 is removed from the draft MNES Standard to avoid future confusion and inconsistency. In the alternative, we recommend that Principle 4 is amended to specifically refer to the three intended Standards, as providing relevant thresholds of what activities would be considered sufficient to meet the requirements as currently listed in Principle 4.

Recommendation 18: Amend draft MNES Standard Principle 4 as follows:

- (a) Remove Principle 4 in its entirety to avoid future confusion and inconsistency with intended First Nations Engagement Standard, Community Consultation Standard and Data and Information Standard.
- (b) In the alternative, amend Principle 4 to specifically refer to the anticipated three Standards so as to provide relevant thresholds of what activities would be considered sufficient to meet the requirements as currently listed in Principle 4.

Additional principles

Reflecting on the content of the Samuel MNES Standard (see comparison table at **Appendix 1** of this submission), we suggest that the draft MNES Standard be amended to include a requirement that actions must be consistent with international agreements. This is consistent with new section 514YD(2)(b) of the EPBC Act.

Recommendation 19: Amend the draft MNES Standard to add a new principle requiring that actions must be consistent with international agreements.

3. Feedback on the legal framework for making and implementing Standards in the EPBC Act

In addition to our specific feedback on the draft MNES Standard (and separately, the draft Offsets Standard), this section of our submission highlights broader concerns with the legal framework for making and implementing Standards in the EPBC Act. Many of these concerns were raised in our *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*,²⁶

²⁵ Commonwealth, *Parliamentary Debates*, Senate, 27 November 2025, p 41 (Murray Watt, Minister for Environment and Water), available at: [Senate_2025_11_27.pdf;fileType=application/pdf](#)

²⁶ EDO, *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*, 18 November 2025, available at <https://www.edo.org.au/wp-content/uploads/2025/11/251118-EDO-submission-to-EPBC-reforms-package-1.pdf>.

however we repeat them here, as we have ongoing concerns that the framework for implementing the Standards is inadequate and must be strengthened so the Standards can perform the task of setting clear, measurable limits on environmental harm and lifting environmental outcomes, as envisaged by the Samuel Review.

3.1 Quality up to date data is key to supporting strong, effective Standards

The Samuel Review clearly stated the need for quality data, information and systems to describe and apply the Standards. This includes, for example, measuring population size and trends and definitive mapping of habitat critical to the survival of a species to provide greater clarity than a more general scientific description of that habitat.²⁷ The Samuel Review further stated that the provision of quality data, information and systems should underpin continuing improvements in the precision and quantitative outcomes that the Standards can provide, leading to both more efficient assessment processes and better outcomes for nature.²⁸

While the more frequent delivery of the State of the Environment Reports now required by the *Environment Information Australia Act 2025* (Cth) is a step forward, there is very limited guidance as to what is required to be provided for in the Reports to ensure they deliver the quality information needed to support environmental decision-making processes.

The Samuel Review called for ‘outcomes-focused law’ which ‘requires the capacity to effectively monitor and report on these outcomes, and to understand the difference made by management interventions’.²⁹ Specifically, the Samuel Review recommended setting clear outcomes through National Environmental Standards and performance audits (like those of the Auditor General), including annual reporting on performance of Commonwealth and accredited parties against those National Environmental Standards. This report should be provided to the Environment Minister, to be tabled in the Australian Parliament in a prescribed timeframe.³⁰

As drafted, the draft Standards do not provide for this. The draft Standards and new legislative framework also fail to establish broader monitoring and reporting requirements against the objects of the Act, or in relation to Australia’s progress on implementing the Global Biodiversity Framework. This lack of monitoring and evaluation compromises the ability of decision-makers, and all stakeholders, to properly assess and apply the Standards and the unacceptable impacts definitions, which rely on an understanding of the baseline of the environment.

Recommendation 20: Require and deliver funded research and public reporting of the current baseline of environmental values, to implement the MNES decision-making criteria, and to understand and map environmental trends over time to assist in evaluating the effectiveness of the Standard and the Act.

Recommendation 21: Require regular public reporting on environmental trends, and measurable outcomes in Standards, with the National Environmental Protection Agency (**EPA**) to report against performance of Standards against outcomes and Act objects regularly.

²⁷ Samuel Review, p 53.

²⁸ Samuel Review, p 53.

²⁹ Samuel Review, p iii (Foreword).

³⁰ Samuel Review, Recommendation 23.

Recommendation 22: Require Environment Information Australia (EIA) to regularly report against Australia’s progress on the Global Biodiversity Framework.

3.2 Application of Standards

The Samuel Review was clear that the EPBC 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’.³¹

The framework introduced into the reformed EPBC Act undermines this recommendation as follows:

- Rather than requiring that activities and decisions are (objectively) consistent with Standards, the Act provides that for decisions on whether or not to approve a development, or whether to accredit another framework, the Minister must be satisfied (a subjective test) that it will be consistent with any prescribed Standards. This turns the test from an objective one of whether or not the proposal complies, into a subjective matter based on what the Minister personally thinks. This inserts significant discretion into the decision, and makes regulatory enforcement of environmental outcomes, or external accountability for decisions very difficult.
- Inserting broad powers for the Minister to exempt certain proposals from meeting the Standards (e.g. national interest proposals), which go beyond the ‘rare’ and ‘demonstrably justified’ exemption power recommended by Samuel.³² Our concerns on the broad scope of exemptions in the framework are set out in our *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*.³³
- Rather than the Standards each applying to every decision as relevant, the Act provides that a regulation will specify which particular Standard applies to each decision. Further the Act specifies that a regulation can specify the way the Standard must be applied in the decision, potentially weakening the requirement to a decision-maker simply ‘having regard’ to the Standard for some decisions.
- While a ‘no regression’ principle has been introduced that requires that when Standards are varied or revoked, they cannot lower the level of environmental protection and community consultation provided by previous Standards, it does not apply within the first 18 months of a Standard being made.³⁴ EDO recommends that the no regression principle be amended to ensure that Standards that are varied or revoked must still meet the same criteria as when Standards are first made, particularly consistency with international agreements.

Further amendments are needed to the EPBC Act to ensure the Standards are properly integrated into EPBC Act decision-making in a way that meets the Samuel Review. Specific recommendations are outlined below.

³¹ Samuel Review, Recommendation 3(a).

³² Samuel Review, Recommendation 3(c).

³³ EDO, *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*, 18 November 2025, available at <https://www.edo.org.au/wp-content/uploads/2025/11/251118-EDO-submission-to-EPBC-reforms-package-1.pdf>

³⁴ EPBC Act, s 514YG.

Recommendation 23: Ensure that the application of National Environmental Standards is subject to an objective test that a decision or framework is consistent with all relevant Standards (i.e. not the Minister’s satisfaction).

Recommendation 24: Constrain provisions that exempt certain proposals from meeting the Standards. In particular:

- (a) Provide a limit on all national interest exemptions that refines what can be considered to be the ‘national interest’ to apply the exemption, specifically to national emergencies.
- (b) Remove the national interest proposal pathway, where existing national interest exemptions are sufficient and there has not been sufficiently demonstrated need for the national interest proposal pathway.

Recommendation 25: Standards should apply to all relevant decisions as the starting point, not just those prescribed by regulation.

Recommendation 26: The no regression principle should be amended to ensure that Standards that are varied or revoked must still meet the same criteria as when Standards are first made, particularly in relation to consistency with international agreements.

*Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.*

Appendix 1: Comparison of the initial MNES Standard provided by the Samuel Review and the Government’s draft MNES Standard

The Samuel Review helpfully provided a recommended initial MNES Standard within the report (from page 203) (**Samuel MNES Standard**) to demonstrate clearly what was envisaged as necessary.

EDO considers that while the Samuel Review draft Standards do not necessarily meet their intended purpose and could be improved, as acknowledged by and recommended in the Samuel Review,³⁵ they do provide an important baseline against which to measure the Government’s draft Standards.

Unfortunately, the draft MNES Standard put forward by the Government provides a weaker, less clear, less outcomes-focused and much less enforceable benchmark for projects and decisions to be held to and fails to meet the standard recommended by the Samuel Review.

Below is a table summarising key differences between the Samuel MNES Standard and the Government’s draft MNES Standard. We expand on these themes above.

Theme	Samuel MNES Standard	Draft MNES Standard
Clarity of Standard’s application	<p>Provides for hard lines in the Standards to protect critical assets and prevent unacceptable impacts. It does not simply state objectives.</p> <p>For example, where a Standard requires impacts on certain threatened species habitats to be avoided, for example critical breeding habitat, a system cannot deliver this if it allows for developments that adversely impact these habitats.</p>	<p>States an objective that ‘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’. It does not state a clear, hard line where this objective would not be achieved e.g. decisions should at a minimum avoid adverse impacts to habitat critical for the survival of a species.</p> <p>While the new provisions of the EPBC Act introduce standalone provisions that prevent unacceptable impacts from being approved,³⁶ there is still a need for clarity in the Standard (in order to achieve objectives), along with the need for sound understanding of the status of each environmental value to adequately draw the line on any</p>

³⁵ See, for example, Samuel Review p 53.

³⁶ See EPBC Act, new s 527F. This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

		individual action that may threaten the protected matter contrary to the threshold set in the Standard.
Use of qualified language	<p>Contains clear, unqualified requirements for actions, decisions, plans and policies.</p> <p>For example, the overarching outcome for the MNES Standard is that matters of national environmental significance ‘are protected and enhanced and decision-making actively contributes to improvements in their conservation and management.’</p>	<p>Qualifies requirements with phrases like ‘if possible’, ‘where necessary’; or focused on procedural rather than substantive/on ground matters (for example ‘appropriately consider’ and ‘having regard to’).</p> <p>For example, the objective is that ‘this Standard aims to ensure decisions provide for the protection, conservation, and, where necessary, recovery of... matters of national environmental significance’ (our emphasis).</p>
Subjective implementation	<p>The Samuel Review stated that ‘the decision by the Environment Minister to approve an action under the EPBC Act must not prevent a National Environmental Standard from being met’. It also stated that ‘the EPBC Act should provide discretion for the Environment Minister to make a decision inconsistent with [the Standards]’ however this power ‘should be a rare exception, justified in the public interest’, and the Minister should publish a statement of reasons if the power is exercised.</p>	<p>Implementation of the MNES Standard is subjective – it requires the Minister to be ‘satisfied’ the decision is ‘consistent with the Standard’. This will make it difficult for the public to hold a decision-maker to account where they fail to uphold the Standard meaningfully.</p> <p>In the case of national interest proposals, the framework allows the Minister to make a decision where that decision is inconsistent with the Standards. Here, the Minister may still approve an action if they are satisfied that the inconsistencies are ‘reasonably necessary’ for taking the action to result in the intended outcome of the national interest proposal. In making this assessment, the Minister must take into account (a) the extent to which the inconsistency could be reduced or removed without changing whether the taking of the action would be likely to result in the intended outcome; (b) the extent to which any conditions to be attached to the approval would reduce or remove the inconsistency.</p>

		We have ongoing concerns about the broad national interest proposal provisions. These are set out in our <i>Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills</i> . ³⁷
Application of mitigation hierarchy	The Samuel MNES Standard formulation of requirements around the application of the mitigation hierarchy are stronger and clearer than those in the draft MNES standard. For example the draft Samuel MNES Standard required that ‘actions, decisions, plans and policies that relate to MNES... minimise harm to MNES, including employing all reasonable measures to avoid and then to mitigate significant impacts, and then lastly apply appropriate offsets’.	<p>The application of the mitigation hierarchy in the draft Standard is weak and unclear. For example, the draft Standard simply requires that actions should be planned and taken ‘having regard to’ or ‘appropriately consider’ the mitigation hierarchy.</p> <p>There is a need for more clarity and prescription with respect to the steps of the mitigation hierarchy (avoidance, mitigation, repair, offset) to ensure they meet the proposed outcomes of the Standard, with particular recommendations outlined above.</p>
Application of cumulative impacts assessment	<p>The Samuel MNES Standard requirements around cumulative impacts assessment of proposed activities are stronger and clearer than those in the draft MNES Standard. For example the draft Samuel MNES Standard required that ‘actions, decisions, plans and policies that relate to MNES... address detrimental cumulative impacts... including use all reasonable efforts to prevent actions contributing to detrimental cumulative impacts’.</p> <p>The Samuel MNES Standard also contains a clear definition of cumulative impacts.</p>	<p>We have ongoing concerns that the draft Standard does not explicitly refer to or define ‘cumulative impact’ assessment in any significant detail.</p> <p>For example, where the draft Standard addresses cumulative impacts it is only for the decision-maker to have ‘regard’ to the ‘context in which the impact might occur’. Two notes then following which state the ‘context may... include: (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’ (our emphasis). Recommendations regarding how to provide greater certainty when applying cumulative impact assessments are outlined above.</p>

³⁷ EDO, *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*, 18 November 2025, available at <https://www.edo.org.au/wp-content/uploads/2025/11/251118-EDO-submission-to-EPBC-reforms-package-1.pdf>

International agreements	Required that the actions, decisions, plans and policies that relate to MNES are not inconsistent with relevant international agreements.	<p>The draft MNES Standard makes only reference to declared Ramsar wetlands and declared World Heritage properties, however does not clearly prescribe that actions, decisions, plans and policies that relate to MNES are consistent with relevant international agreements.</p> <p>We recommend above the draft MNES Standard be amended to add a principle that actions must be consistent with international agreements alongside the other four MNES Standard principles. This is consistent with new section 514YD(2)(b) of the EPBC Act.</p>
Monitoring and evaluation plan	Recommended each Standard for MNES should have a monitoring and evaluation plan, to ensure the effectiveness of the EPBC Act in achieving its environmental outcomes. This should be underpinned by a National Environmental Standard for environmental monitoring and evaluation.	No requirement in the draft MNES Standard for monitoring and evaluation plans. It will therefore be difficult for Government and the public to know if the intended outcomes of actions, decisions, plans and policies for each MNES are being achieved.
Application of recovery plans and threat abatement plans	Required that the actions, decisions, plans and policies which support the conservation and recovery of each listed threatened species and ecological community are not inconsistent with relevant recovery plans and threat abatement plans.	<p>There is no mention of how the Standard would interact with recovery plans and threat abatement plans.</p> <p>We note that there are specific in the provisions in the EPBC Act that set out requirements for how recovery plans and threat abatement plans are to be taken into account in decision making including requirements for certain decisions to be not inconsistent with recovery plans and threat abatement plans. New provisions also introduce protection statements that are intended to be used to clarify what a decision maker must consider during the approval of actions in protecting threatened species or ecological communities. Where protection statements are in place, decisions must not be inconsistent with those, but must only consider recovery plans and threat abatement plans.</p>

<p>Consideration of climate change impacts on MNES</p>	<p>The Samuel Review found that climate change is an increasing threat to Australia’s natural environment.³⁸ It recommended that Standards should require development proposals to ‘explicitly consider the likely effectiveness of avoidance or mitigation measures on national protected matters under specified climate change scenarios’.³⁹</p> <p>The Samuel MNES Standard requires consideration of climate change impacts on MNES by:</p> <ul style="list-style-type: none"> • Including in the definition of ‘habitat’ ‘biophysical media projected to become suitable for occupation under future climates if specified in the Conservation Advice’.⁴⁰ • In the matter-specific Standard for the protection of water resources from coal seam gas development and large coal mining development, requires that related actions, decisions, plans and policies ‘consider the potential multiple and cumulative impacts of the action and climate change on the water resource(s) over the full period that works or their impacts remain in the landscape (to at least 100 years).⁴¹ 	<p>Does not explicitly require consideration of climate change impacts, or the effectiveness of avoidance and mitigation measures under climate-change scenarios, on MNES.</p> <p>The Standard should refer to the impacts of climate change and the effectiveness of avoidance and mitigation measures in climate change scenarios on MNES.</p> <p>For example, this could be achieved by strengthening Principle 2 – Actions appropriately consider impacts to protected matters – so that the ‘context’ refers to the climate-related effects of any proposed action. Impact assessment under Principle 2 could also require assessment of the likely effectiveness of avoidance, mitigation or offset measures on MNES under specified climate change scenarios (see above where we make further recommendations in relation to Principle 2).</p>
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³⁸ Samuel Review, p ii (Foreword).

³⁹ Samuel Review, p 26.

⁴⁰ Samuel Review, p 217.

⁴¹ Samuel Review, p 223.