



# Environmental Defenders Office

## Explainer on EPBC Act reforms: National Environmental Standards

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### What is this explainer about?

This explainer outlines what National Environmental Standards are and suggests how it should be embedded in the EPBC Act. It covers what the Standards may include, how they may apply to decision-making under the EPBC Act, how often they will be reviewed, the process for drafting and finalising these Standards, and the priorities needed to make them effective.

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### Overview

National Environmental Standards (**Standards**) are new instruments intended to provide clear, prescriptive, outcomes focused and legally enforceable criteria to improve decision-making under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). Standards were a key recommendation of Professor Graeme Samuel AC in the independent review of the EPBC Act in 2020 (**Samuel Review**), which noted that Standards are the ‘centrepiece’ needed for the reforms to lead to improved environmental outcomes and clarity in decision-making. They are intended to include

hard lines to ensure these decisions ‘protect critical assets and prevent unacceptable impacts’.<sup>1</sup>

Standards do not have immediate, universal application. The Regulations will prescribe when and how specific Standards (once made) will apply to certain decisions made under the EPBC Act.

The federal government has so far released two draft Standards for consultation, being the draft Standards on Matters of National Environmental Significance (**MNES**) and Environmental Offsets. To date, these draft Standards fall far short of the government’s ambition to ‘ensure clear, strong guidelines to protect to the environment’,<sup>2</sup> and significant improvements must be made.

There have been two draft Standards released for comment which closed on 30 January 2026 – for MNES and Offsets. You can see the government’s page providing the drafts and information around consultation [here](#).

The EDO has provided submissions to these drafts, available here:

- EDO [Submission on the draft National Environmental Standard \(Environmental Offsets\)](#)
- EDO [Submission on the draft National Environmental Standard \(Matters of National Environmental Significance\)](#)

These two draft Standards will be out again for public consultation for the 20 business day period, to comply with the statutory consultation requirements. Further Standards are expected to be also released in the coming months, relating to Community Consultation, First Nations Engagement and Data and Information.

## Your right to comment on the draft Standards

Before making, changing or revoking a Standard, Part 19B of the EPBC Act requires the Minister to publish a draft on the Department’s website,<sup>3</sup> invite public submissions for at least 20 business days,<sup>4</sup> and consider any relevant submissions received in that period.<sup>5</sup> This public consultation requirement does not apply to minor or machinery changes.<sup>6</sup>

Where a proposed standard relates to engagement with Indigenous persons, the Minister must also invite comments from the Indigenous Advisory Committee within a reasonable

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<sup>1</sup> Professor Graeme Samuel AC, Independent Review of the EPBC Act – Final Report (**Samuel Review**), p 52.

<sup>2</sup> Media Release, Prime Minister Anthony Albanese and Minister for the Environment and Water Murray Watt, 27 November 2025. Available at: [Joint media release: Albanese Government to pass historic environmental reforms | Ministers](#)

<sup>3</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth (**EPBC Act**), ss 514YH(1)(a).

<sup>4</sup> *Ibid* s 514YH(1)(b).

<sup>5</sup> *Ibid* s 514YH(1)(c).

<sup>6</sup> *Ibid* s514YH(2).

period, as specified in the invitation,<sup>7</sup> and consider any comments the Committee provides within that specified period.<sup>8</sup> The Minister can still proceed if the Committee does not respond within that period.<sup>9</sup>

## Background

In 2020 the Samuel Review found that Australia's national environmental law is too discretionary, too inconsistent, does not deal with cumulative impacts, and often fails to prevent environmental decline. Professor Samuel found that without fundamental reform, the EPBC Act cannot deliver the level of environmental protection the community expects, and that is necessary to curb the extinction crisis occurring in Australia. His 'centrepiece' recommendation was for the creation of clear, binding Standards. Professor Samuel intended for these Standards to 'set the boundaries for decision-makers to deliver protections needed',<sup>10</sup> by requiring that any decisions made under the EPBC Act should be consistent with Standards.

Standards are intended to lift environmental outcomes in decision-making by:

- **Setting clear, measurable limits** on environmental harm
- **Providing transparent rules** that guide decisions under the EPBC Act
- **Lifting environmental outcomes**, not merely managing decline
- **Ensuring governments, proponents and regulators** operate with consistency, clarity and accountability.<sup>11</sup>

Professor Samuel recommended there be at least nine Standards, and went so far as including four draft Standards as appendices to his final Report: for Matters of National Environmental Significance, Indigenous Engagement and Participation in Decision-Making, Compliance and Enforcement, and for Data and Information. These draft Samuel Standards were not intended to be the ultimate form of the Standards. In fact, the Samuel Review noted that the Standards as initially drafted are to be a starting point which should evolve to become more granular and measurable over time with increasing data informing their review, to ensure the achievement of ecologically sustainable development.

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<sup>7</sup> Ibid s 514YI(1)(a).

<sup>8</sup> Ibid s 514YI(1)(b).

<sup>9</sup> Ibid s 514YI(2).

<sup>10</sup> Samuel Review, p ii.

<sup>11</sup> See Samuel Review, p viii and the Department of Climate Change, Energy, the Environment and Water, *Next steps on environmental law reform*, 20 February 2026, available at: [Next steps on environmental law reform - DCCEE](#)

## When must a Standard be made and what must be included?

The power for the Minister to make Standards and the requirement to apply them to EPBC Act decisions were inserted into the EPBC Act in amendments passed in late November 2025. There is no requirement to make any Standards in the EPBC Act as reformed. The new provisions state that:

- The Minister *may* make a Standard if satisfied the Standard would:
  - promote the objects of the EPBC Act; and
  - would not be inconsistent with certain specific international agreements (new s 514YD(2));
- A Standard must set out one or more outcomes or objectives;<sup>12</sup>
- A Standard may specify:
  - parameters within, or principles by which, an outcome or objective is to be achieved;<sup>13</sup>
  - processes or actions to be followed or taken in achieving an outcome or objective.<sup>14</sup>
- Before making, varying, or revoking a Standard, the Minister must undertake public consultation.<sup>15</sup>

## Will the Standards apply equally to all decisions under the EPBC Act?

There is no requirement for the Minister to apply any Standards to any particular decisions.<sup>16</sup> Regulations made under the EPBC Act will specify which Standard must be applied to which decision or process under the Act. The Act specifies that some decisions must be ‘consistent’ with the Standards prescribed for that decision. These decisions include, for example:

- whether to approve or refuse referred activities, and conditions placed on those activities;<sup>17</sup>

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<sup>12</sup> EPBC Act s 514YD(4)(a).

<sup>13</sup> Ibid s 514YD(4)(b)(i).

<sup>14</sup> Ibid s 514YD(4)(b)(ii).

<sup>15</sup> Ibid s 514YH.

<sup>16</sup> Ibid s 514YD(1).

<sup>17</sup> See EPBC Act new s 136A. This provisions has not yet commenced – see Environment Protection Reform Act 2025 (Cth), available at: [Environment Protection and Biodiversity Conservation Act 1999 - Federal Register of Legislation](#).

- the accreditation of management or authorisation frameworks,<sup>18</sup> such as state or territory laws to devolve federal powers under the EPBC Act via a bilateral agreement;<sup>19</sup> and
- the approval of strategic assessments,<sup>20</sup> and bioregional plans.<sup>21</sup>

However, regulations can also prescribe any other way that Standards must be applied to a decision where it is not otherwise specified. For example the regulation may state that the Standard simply has to be ‘considered’ or ‘had regard to’ or it can provide for a strong requirement to apply and be consistent with the Standard.

### Will the Standards be subject to review regularly?

The Act requires the Environment Minister to arrange a review of a Standard within 18 months of the Standard commencing, and at least five years after that.<sup>22</sup> These reviews must at least consider the extent to which the Standard is achieving its outcomes and objectives.

Further, the Act requires that Standards are subject to the **no-regression principle**.<sup>23</sup> This means that if a Standard is varied or revoked, it cannot lower the level of environmental protection and community consultation provided by previous Standards. However, this no-regression principle does not apply in relation to a variation or revocation of a national environmental standard within 18 months of the standard being made – so it does not apply to the first review of the Standards.<sup>24</sup>

### What is the process for drafting and finalising National Environmental Standards?

In early November 2025, shortly after the federal government introduced to parliament the package of bills amending the EPBC Act, the federal Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) opened consultation on two draft Standards – the draft Matters of National Environmental Significance Standard (**draft MNES Standard**) and the draft Environmental Offsets Standard (**draft Offsets Standard**).<sup>25</sup>

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<sup>18</sup> Ibid new ss 33(3)(e)-(f).

<sup>19</sup> Ibid new ss 46(3)(e)-(f).

<sup>20</sup> Ibid new s 146FA.

<sup>21</sup> Ibid new s 177AQ(2).

<sup>22</sup> EPBC Act s 514YJ.

<sup>23</sup> Ibid s 514YG.

<sup>24</sup> Ibid s 514YG(4).

<sup>25</sup> DCCEEW, *National Environmental Standards for Matters of National Environmental Significance (MNES) and Environmental Offsets*, available at: [National Environmental Standards for Matters of National Environmental Significance \(MNES\) and Environmental Offsets - Department of Climate Change, Energy, Environment and Water](#).

Consultation closed on 30 January 2026. You can read EDO's submission on the [draft MNES Standard here](#) and [draft Offsets Standard here](#). DCCEEW has stated that a revised version of both the draft MNES and the draft Offsets Standard will be provided for statutory consultation, for a minimum of 20 business days, at a release date to be determined.<sup>26</sup>

DCCEEW has stated in Senate Estimates that the government will soon release consultation drafts of the Community Consultation Standard, the First Nations Engagement Standard and a Data and Information Standard.<sup>27</sup> These were all recommended by the Samuel Review.

DCCEEW has also stated that the government intends to finalise the five Standards being prepared currently by mid-2026, or at least by December 2026 when the EPBC Act reform Bills must be commenced by.<sup>28</sup>

Standards will be legislative instruments, which means once they are finalised by the Minister they must be tabled in Parliament and are disallowable.<sup>29</sup>

As stated above, regulations made under the EPBC Act will specify which Standard must be applied to which decision or process under the Act. These regulations will also be tabled in Parliament as disallowable instruments.

### **Senate Committee Inquiry into the EPBC Act reform Bills also considered Standards**

The Senate Standing Committee on Environment and Communications (**Senate Committee**) commenced an inquiry on the Environment Protection Reform Bill 2025 and six related bills. The Albanese Government rushed the Bills through parliament, passing them on 28 November 2025, three months prior to the due date for the Inquiry's final report. At around the same time the Bills were introduced into Parliament, the two draft MNES and Environmental Offsets Standards were also released for public consultation.

Given the 'size, significance and complexity of reforms',<sup>30</sup> the Committee decided to continue the inquiry even after passage of the legislation. In particular they continued to take evidence on one key aspect of the reforms: the National Environmental Standards (**Standards**).

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<sup>26</sup> Senate Environment and Communications Legislation Committee, *Estimates* (9 February 2026), p 31 (Mr Shane Gaddes, Head of Environment Law Reform Taskforce Division), available at: [Environment and Communications Legislation Committee 2026 02 09.pdf;fileType=application/pdf](#).

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*, p 33.

<sup>29</sup> EPBC Act s 514YD(1).

<sup>30</sup> Senate Inquiry Final Report para 1.7.

The Inquiry's final report was tabled on 2 April 2026 and made 14 recommendations, some of which reflect the EDO's submissions and evidence given at public hearings held by the Inquiry, as discussed below. The final report is available [here](#).

## Five top priorities for effective National Environmental Standards

In summary, EDO's recommendations to strengthen the two draft MNES and Offsets Standards are:

- 1) To lift environmental outcomes, Standards must be strong, clear and legally enforceable.
- 2) The MNES Standard should explicitly require consideration of cumulative impacts and the impacts on MNES under different climate scenarios.
- 3) Criteria should be included in the Standards, not buried in further guidelines.
- 4) The Offsets Standard must ensure offsets deliver genuine environmental outcomes.
- 5) Monitoring and evaluation must be required to track effectiveness.

More detail is provided below.

### **1. To lift environmental outcomes, Standards must be strong, clear and legally enforceable.**

As stated above, a centrepiece recommendation of the Samuel Review was for the creation of clear Standards that bind decision-makers. These Standards should set hard-lines and measurable limits on environmental harm, to lift environmental outcomes and not merely manage decline. Unfortunately, the two draft Standards put forward by the government (for MNES and Offsets) provide a weaker, vague, less outcomes-focused and much less enforceable benchmark for projects and decisions to be held to compared to the Standard recommended by the Samuel Review and the aspirations of Government. These draft Standards must be substantially improved by using clear and mandatory language.

In its final report, the Senate Committee picked up EDO's repeated call for the Standards to clearly specify environmental outcomes and set out clear, legally enforceable criteria. It recommended:

- The Standards should facilitate clear, consistent, timely, and effective decision-making under the EPBC Act and to provide clear standards and benchmarks to allow the National Environmental Protection Agency to enforce compliance.<sup>31</sup>

The following provides examples of how the Standards must be drafted to ensure they are strong, clear and legally enforceable.

- **Standards must use clear, outcomes focused criteria, rather than providing more process:**

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<sup>31</sup> Recommendation 5.

For example, we demonstrate how the draft Standards released for public consultation could be improved:

Draft Standard	Suggested improvement
<p>The objective of the <b>draft MNES Standard</b> is qualified and focused on process (our emphasis):</p> <p><i>‘aims to ensure <b>decisions</b> provide for the protection, conservation, and <b>where necessary</b>, recovery of... matters of national environmental significance’.</i></p>	<p>The object could be amended in line with the overarching outcome of the <b>Samuel MNES Standard</b>, which provides a clear focus on environmental outcomes:</p> <p>matters of national environmental significance <i>‘are protected and enhanced and decision-making actively contributes to improvements in their conservation and management’.</i></p>
<p>The Object of the <b>draft Offsets Standard</b> is process focused and vague (our emphasis):</p> <p><i>‘to <b>provide a framework</b> in which offsets (where permitted) <b>adequately compensate</b> for residual significant impacts to deliver a net gain and contribute to the protection and enhancement of protected matters’.</i></p>	<p>The object could be amended as follows to provide more outcomes focus and clarity:</p> <p><i>‘the object of this Standard is to ensure offsets (where possible) are effectively achieved and managed to ensure ecologically appropriate compensation for residual significance impacts to deliver a net gain and contribute to the protection and enhancement of protected matters’.</i></p>

- **Standards must provide clear, enforceable obligations, and not allow discretionary considerations:**
  - Application of the mitigation hierarchy in the draft MNES Standard only requires the action to ‘appropriately consider’ or ‘have regard to’ it. This is discretionary and vague language. By comparison, the draft Samuel Standard requires actions to ‘employ all reasonable measures to avoid etc’. This is a clearer obligation to meet the hierarchy.
  - The draft Offset Standard’s Principle 1: Feasibility states that ‘the delivery of offset activities should be... based on appropriate and suitable data and information which shows, with a high degree of certainty, that the offset activity *will likely contribute to* the recovery or conservation of the affected protected matter’. The words ‘will likely contribute to’ are vague and weaken the criteria provided in the criteria; they should be removed. Further, the word ‘should’ (used in Principle 1 and other Principles) should be replaced with the word ‘must’.

- **Standards must include more detailed parameters, processes or actions needed to achieve each objective and outcome.**

The provisions in the EPBC Act enabling Standards to be drafted provide that Standards may prescribe: (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. Neither the draft MNES Standard nor draft Offsets Standard has prescribed parameters, processes or actions. These features would enable the Standard to be sufficiently prescriptive and detailed to ensure that the environmental outcomes specified in the Standard are met. The draft Samuel MNES Standard provided examples of parameters that could be included in the Standards, for example ‘definitive mapping of habitat critical to the survival of a species’ which ‘will provide greater clarity than a more general scientific description of that habitat’.

## **2. The MNES Standard should explicitly require consideration of cumulative impacts and the impacts on MNES under different climate scenarios**

The Samuel Review found that the EPBC Act’s focus on ‘project-by-project assessment and approvals’ resulted in a failure to ‘to fully factor in other pressures on the environment, resulting in underestimation of the broadscale cumulative impacts on a species, ecosystem or region’.<sup>32</sup> Professor Samuel wrote that ‘[i]ndividually, developments may have minimal impact on the national environment, but their combined impact can result in significant long-term damage’.<sup>33</sup> As such, the draft Samuel MNES Standard explicitly made provision to address cumulative impacts in environmental decision-making, and included a definition of cumulative impacts: ‘the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline’.<sup>34</sup>

Despite the Samuel Review’s clear acknowledgement of the importance of addressing cumulative impacts on MNES, they are not explicitly mentioned in the draft MNES Standard. There should be explicit mention of cumulative impacts, as included in the draft Samuel MNES Standard, to ensure the full impact on MNES is considered in decision-making.

The Samuel Review specifically 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’.<sup>35</sup> Unfortunately, the draft MNES Standard does not consider the impact of climate change on MNES. Principle 2 of the Standard (‘Actions appropriately consider impacts on protected matters’) could be improved, for example, by including climate-

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<sup>32</sup> Samuel Review, p 127.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid p 205.

<sup>35</sup> Ibid p 26.

related impacts as a specific consideration when having regard to the context in which the impact on a protected matter might occur.

### **3. Criteria should be included in the Standards, not buried in further guidelines**

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.'<sup>36</sup> To provide effective, clear and enforceable Standards, and to provide the granular detail envisaged by the Samuel Review, 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.

Unfortunately, the Policy Positions on the draft Standards contain important detail and criteria that are then left out of the Standards themselves, or there is reference to further information being provided in future regulations. For example, the Offsets Policy Position, provided separately to the draft Offsets Standard, includes granular, detailed information on circumstances where an offset would not be feasible e.g. suitable areas are not available for protection or restoration. These should be included in the Offsets Standard proper, not in the Policy Position.

### **4. The Offsets Standard must ensure offsets deliver genuine environmental outcomes**

The Offsets Standard should establish a robust, ecologically sound offsets framework. To achieve this, the draft Offsets Standard should be amended, for example, by:

- **Including definitions of key terms and clarifying how the Standard interacts with other elements in the EPBC Act:** For example, the term 'net gain' must be clearly defined when used in the Objective of the Offsets Standard. The Standard must also clarify how it is intended to interact with 'passing the net gain test' in the EPBC Act.<sup>37</sup>
- **Clarifying circumstances where offsets are not appropriate or permitted:** This includes by cross-referencing relevant mechanisms of the Act that will allow the Minister to make declarations to specify certain entities (e.g. threatened species) that are not able to be offset via a restoration contribution fund.<sup>38</sup> An initial tranche of protection statements and declarations should be released alongside the final Offsets Standard which can help inform decisions to declare entities under section

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<sup>36</sup> Ibid p 52.

<sup>37</sup> EPBC Act new s 527K. This provisions has not yet commenced – see Environment Protection Reform Act 2025 (Cth), available at: [Environment Protection and Biodiversity Conservation Act 1999 - Federal Register of Legislation](#).

<sup>38</sup> Ibid new s 134AA.

134AA.<sup>39</sup> The Standard could reference these, and also itself specify circumstances or entities where offsets are not permitted.

The Senate Committee's final report again adopted further EDO recommendations to improve the Environmental Offsets Standard, by making recommendations that pick up EDO's concerns about securing offsets before commencement of a project, the application of the like for like principle,<sup>40</sup> and the need to tightly regulate the Restoration Contributions Holder.<sup>41</sup>

## **5. Monitoring and evaluation must be required to track effectiveness**

Neither of the draft MNES Standard nor Offsets Standard require monitoring and evaluation of how the Standards are being achieved. This was suggested in the draft Samuel MNES Standard and is essential to ensure evaluation of whether each of the Standards are achieving their aims or needs amendment and whether the outcomes are being met. This is needed to inform future reviews of the Standards to ensure they meet their intended objectives.

## **Conclusion**

Whether the reforms made to the EPBC Act in 2025 will lift environmental outcomes will hinge on the strength of National Environmental Standards. Standards should be applied to multiple environmental decisions made under the Act, including individual activity approvals and the accreditation of state and territory frameworks. To ensure these decisions do not result in environmental decline, the Standards must comprehensively specify environmental outcomes and set out clear, unqualified and legally binding measures by which these will be achieved. The government are yet to finalise any Standards, and it remains unclear which Standards will be prescribed to which decisions. EDO will continuously review and provide feedback and public comment on draft Standards and other relevant regulations as they are released.

## **Evaluate this resource**

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If you have any concerns or suggestions regarding this legal resource, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

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<sup>39</sup> Ibid.

<sup>40</sup> Recommendation 13.

<sup>41</sup> Recommendation 9. See also recommendations 10 and 11.

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