



Environmental
Defenders Office

**Submission on the exposure draft of the National
Environmental Standard (Matters of National Environmental
Significance) 2026**

29 May 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 the draft National Environmental Standard for Matters of National Environmental Significance](#)
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 inherit 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

1. Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the exposure draft National Environmental Standard (Matters of National Environmental Significance) 2026 (**revised draft MNES Standard**) and the draft policy position paper: National Environmental Standard for Matters of National Environmental Significance (**draft MNES Policy Position**).
2. The MNES Standard is one of the most important of the National Environment Standards (**Standards**) in that it assists in providing more guidance to decision-makers when considering how to best protect matters of national environmental significance. The MNES Standard is a fundamental instrument for helping to improve environmental outcomes and to curb the extinction crisis across Australia.
3. We are disappointed to see that the latest version of the MNES Standard is a backwards step from the first draft consulted on.¹ The Outcomes and Objectives of the Standard have been rendered redundant in their application where broad Principles, largely provided for through the EPBC Act elsewhere, are met. While there are some positive improvements, it largely fails to not only address the main concerns raised in relation to the first draft, but now appears to be inconsistent with the EPBC Act requirements for drafting Standards.
4. The revised draft MNES Standard continues to fail to meet the aspirations for Standards expressed by Government, and by Professor Graeme Samuel AC in his independent review (**Samuel Review**) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). If the government is serious about improving environmental outcomes, the MNES Standard must be strengthened significantly.
5. Our key recommendations are set out below, and should be read together with the marked-up version of the draft Standard attached at **Appendix A**, which demonstrates how recommendations could be implemented.

¹ National Environmental Standard (Matters of National Environmental Significance) 2025. Available at: [National Environmental Standards for Matters of National Environmental Significance \(MNES\) and Environmental Offsets - Department of Climate Change, Energy, Environment and Water](#)

Key Recommendations

Recommendation 1: Remove subclauses 7(2) and (4) from the MNES Standard to ensure it is compliant with the EPBC Act requirements and that actions and decisions must meet the Outcomes, Objectives and Principles in the Standard.

Recommendation 2: Objective Items 1 – 3 must be amended to:

- a) Mirror the drafting in other Items by, as a starting point, requiring that the protected matter is protected, conserved and restored.
- b) Outline more specifically what that looks like – not just protecting habitat, but also populations and individual species, and addressing key threats.
- c) Guide how to apply the Principles for the purpose of achieving the Objectives and Outcomes, for example, in the case of the mitigation hierarchy (Principle 1) by outlining requirements to ‘avoid’ and ‘offset,’ by specifying which impacts are to be avoided and what offsetting must achieve in practice.

See suggested amendments to Items 1 - 3 as shown in EDO’s marked up Standard at **Appendix A**.

Recommendation 3: Objectives in the Table should become Outcomes within clause 6.

Recommendation 4: The qualifying phrase ‘where appropriate’ should be removed in the Objectives and Outcomes. If a qualification is considered necessary, we recommend reverting back to the use of ‘where necessary’ which was contained in the first draft MNES Standard, as a clearer term.

Recommendation 5: Subclause 5(1) should be amended to remove the words ‘decisions under the Act provide for’.

Recommendation 6: The words ‘have/having regard to’ in subclause 8(1) and the italicised heading preceding must be removed and replaced with the words ‘apply’ and ‘applying’, so they read: ‘requirement to apply the mitigation hierarchy’ and ‘actions must be designed applying the mitigation hierarchy’.

Recommendation 7: Step 1 – Avoidance at subclause 8(2) should remove the words ‘to the extent possible’ and replace them with the words ‘wherever possible’.

Recommendation 8: Steps 1, 2 and 3 at subclauses 8(2)-(4) must remove the word ‘should’ and replace with ‘must’, to require each step be met before a proponent moves on to the next step, rather than leave the completion of each step up to discretionary decision-making. The words ‘generally’ and ‘should’ must also be removed in subclauses 8(5) and 8(6) of Step 4 – Repair.

Recommendation 9: Amend Principle 2 to explicitly refer to cumulative impacts to avoid confusion that this must be considered when considering impacts on protected matters.

Recommendation 10: In Principle 2, the words ‘when considering bioregional plans and strategic assessments’ be removed and instead the words ‘the additional information available during bioregional planning and strategic assessments’ be included to the list of what can be considered when having regard to the context.

Recommendation 11: The notes in Principle 2 should be moved into the body of the Principle itself.

Recommendation 12: Require that compensation only be considered after the prior steps in the mitigation hierarchy have been exhausted in Principle 3, by replacing the words ‘should generally’ in Principle 3 subclause 10(1) with the word ‘must’.

Recommendation 13: Add a note to Principle 3 to clarify that compensation is required to meet the requirements in the National Environmental Standard (Environmental Offsets) 2026 and the ‘passing the net gain test’ in section 527 of the EPBC Act, where relevant.

Recommendation 14: Principle 4 must not displace the anticipated Standards for First Nations Engagement, Community Engagement and Data and Information.

Recommendation 15: In Principle 4 the words ‘including under accredited frameworks’ be added after ‘proposals for actions or classes of actions’, to ensure the Principle applies to all accredited frameworks, including bilateral agreements and NOPSEMA accreditation.

Recommendation 16: 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 17: Add an additional Objective to clause 5 as follows: ‘To promote resilience and, where relevant, adaptation of protected matters to climate change including incremental change and catastrophic impacts of natural disasters’.

Recommendation 18: Insert requirements in the MNES Standard for monitoring and evaluation of the outcomes of actions, decisions, plans and policies for each MNES.

Recommendation 19: Reframe the Standard to provide helpful guidance in decision-making and implementation of other processes, such as for plans, policies and programs under the Act like conservation planning instruments, bioregional plans and strategic assessments.

Recommendation 20: We recommend retaining Item 9 in the Table as included in the revised draft MNES Standard.

Introduction

6. Standards were recommended in the Samuel Review with the intention of setting hard-lines and measurable limits on environmental harm, to lift environmental outcomes and not merely manage decline of Australia's most important environmental matters.
7. The federal government adopted this intention behind the Standards: on 30 October 2025 at the National Press Club Environment Minister Murray Watt stated "Standards will set the boundaries for decisions, to ensure they deliver improved environmental outcomes",² and in a press release shortly after the Prime Minister and Environment Minister stated that Standards are intended to be "clear, strong guidelines to protect the environment."³
8. A first draft MNES Standard was released by the Department of Climate Change, Energy, the Environment and Water for public consultation from 5 November 2025 to 30 January 2026.
9. EDO made a detailed submission on that first draft MNES Standard on 30 January 2026 (**first submission**).⁴ We stated in that first submission that it '[fell] short of the vision outlined in the Samuel Review and, generally, the ambition stated by government'. Key concerns from our first submission that have not been addressed in the revised draft MNES Standard are discussed in this submission. Our first submission should continue to be considered as the draft Standard is further updated and finalised.
10. Unfortunately, the revised draft MNES Standard fails to meaningfully address concerns raised about the first draft Standard: that it was unclear and imprecise, focused on process not environmental outcomes, contained discretionary language and was likely difficult to enforce. Not only this, changes made to the revised draft MNES Standard create additional concerns, most significantly the introduction of subclauses 7(2)-(4) which effectively displace the critical Outcomes and Objectives.
11. Failing to address ongoing concerns, and weakening the MNES Standard even further, will have the consequence of providing no boundaries⁵ to protect the environment and prevent the decline of Australia's natural environment, as was the promise of the 2025 EPBC Act reforms.
12. Concerningly, the changes made to the draft MNES Standard and failure to address gaps mean the bar has been set low for states, territories, and NOPSEMA, who may seek to have their frameworks accredited to take over federal EPBC Act assessment or approval via bilateral agreements. The Commonwealth Government has an obligation to maintain responsibility for the protection of

² Minister for Environment Murray Watt, Address to the National Press Club (30 October 2025). Available at: [Address to the National Press Club | Ministers](#).

³ 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](#).

⁴ Environmental Defenders Office, 'Submission on the draft National Environmental Standard (Matters of National Environmental Significance) 2025' (30 January 2026). Available at: [Submission on the draft National Environmental Standard \(Matters of National Environmental Significance\) 2025 - Environmental Defenders Office](#)

⁵ Professor Graeme Samuel AC, Independent Review of the EPBC Act – Final Report (October 2020). Available at: [Second Independent Review of the EPBC Act - DCCEEW \(Samuel Review\)](#), page ii. The Samuel Review said the purpose of the Standards is to 'set the boundaries for decision-making to deliver the protections needed'.

matters of national environmental significance, in accordance with Australia's international agreements. Accreditation is a devolution of this responsibility. It must only ever be allowed if strong Standards are in place. There are too many risks in accrediting states and territories with approval powers, underpinned by weak Standards, at a time when Australia needs strong federal leadership and strengthened environmental laws.

13. This submission addresses EDO's key concerns with the revised draft MNES Standard, as follows:
 1. The Standard Objectives and Outcomes have been made irrelevant; and Standard may be inconsistent with EPBC Act requirements
 2. Outcomes and Objectives require further revision
 3. The Principles must be strengthened
 4. Climate change considerations must be incorporated into the MNES Standard
 5. The MNES Standard must require monitoring and evaluation of protected matters
 6. The MNES Standard is not framed to provide guidance for plans, policies and programs under the EPBC Act.

Key Concerns

1. The Standard Objectives and Outcomes have been made irrelevant; and Standard may be inconsistent with EPBC Act requirements

1.1. **New subclauses 7(2)-(4) displace the Objectives and Outcomes**

14. The most concerning change to the draft MNES Standard is the insertion of subclauses 7(2) and (4), under the Clause 7 - Principles.
15. Subclause 7(2) states: *An action or class of actions will achieve the outcomes or objectives in section 5 and 6 of this Standard where that action, or class of actions, is consistent with principles in sections 8, 9, 10 and 11 of this Standard.*
16. Subclause 7(4) then applies this application of the Principles to decisions to approve an action or class of actions, management or authorisation frameworks (including bilateral agreements), a NOPSEMA management or authorisation framework, the making or varying of a bioregional plan, or any specified manner of assessment.
17. This means that the test for determining whether an action, or any of the decisions listed above, will achieve the Outcomes and Objectives is simply whether the action is consistent with the Principles, and not whether the action is consistent with or will achieve the Outcomes or Objectives. In other words, if the Principles are met, the more detailed Outcomes and Objectives can essentially be ignored.
18. Provisions such as these are often referred to as a 'deeming' provision, meaning that it deems the Objectives and Outcomes to have been met simply by applying the Principles, rather than considering whether on the facts the Objectives or Outcomes have been met in their own right. This construction

will be applied by the decision-maker when determining whether a prescribed decision is overall consistent with the Standards, as required by the EPBC Act.

19. Further, as outlined below, there is potential ambiguity about whether subclause 7(2) is consistent with the Act's requirements for Standards, and how the Principles and Objectives interact within the Standard itself.
20. This insertion of subclause 7(2) is in direct contradiction to Samuel's intent behind the Standards, where he said 'Compliance should focus on whether environmental outcomes are being achieved (or if there are failings), rather than whether a process has been correctly adhered to'.⁶ He also said 'the outcome is important, not the path chosen to get to it'.⁷ By only requiring the Principles be met, the focus is only on the process, rather than the achievement of outcomes.
21. New subclause 7(2) (and subclause 7(4), as discussed below) must be removed from the revised MNES Standard. This change would ensure the Principles are not substituted for the Outcomes or Objectives. It would retain the important role of the Principles in informing how the Outcomes and Objectives are to be achieved, with achievement of the Outcomes and Objectives being what the Standard (and decisions consistent with the Standard) must achieve.

1.2. Weakened Standard will apply across all classes of actions and accredited frameworks

22. The addition of subclause 7(4) into the revised draft MNES Standard means problematic subclause 7(2) will apply to not only individual actions, but all of the following:
 - classes of actions (subclause 7(4)(a));
 - a management or authorisation framework, or an action taken in accordance with this framework (subclause 7(4)(b)). This includes assessment of bilateral assessment and approval agreements;
 - a NOPSEMA management authorisation framework, or an action taken in accordance with this framework (subclause 7(4)(c));
 - a 'specified manner of assessment', as specified in a bilateral agreement, which could include assessment by any person under a State or Territory law (subclause 7(4)(d));
 - the making or varying of a bioregional plan (subclause 7(4)(e)).
23. As we stated in our first submission, the devolution of EPBC Act powers via bilateral agreements and NOPSEMA accreditation was sold to the public on the basis of strong Standards working to ensure these accredited entities' frameworks and processes will be required to meet the Standards.⁸

⁶ Samuel Review, page 49.

⁷ Ibid, page 52.

⁸ See, for example Commonwealth, Parliamentary Debates, Senate, Thursday 27 November 2025, page 2426 (Murray Watt Minister for Environment and Water): "I know that there are people in the community who are concerned that, if a state government were to go rogue and not have the kinds of standards that we expect, there would be a risk that that state might approve projects that otherwise might have been rejected or heavily conditioned at the federal level. Some of the safeguards that are built into that process so as to avoid that kind of thing happening are, firstly, that the

24. Instead of meeting this promise, the changes to clause 7 of the revised draft MNES Standard reduces the safeguards for bilateral agreements, NOPSEMA frameworks, and other arrangements, because they will now only need to be consistent with narrow, process-focused Principles rather than meeting the Objectives and Outcomes.

1.3. New subclauses 7(2) and (4) do not align with the EPBC Act

25. The addition of subclauses 7(2) and (4) bring into question whether this MNES Standard is consistent with the requirements of the EPBC Act for Standards.
26. Subsection 514YD(4)(a) states a Standard *must* prescribe one or more Outcomes or Objectives.
27. By contrast, subsection 514YD(4)(b) states a Standard *may* prescribe ‘principles by which an outcome or objective is to be achieved’.
28. The Explanatory Memorandum of the Environment Protection Reform Act 2025 (Cth), which inserted into the EPBC Act the requirements for Standards, explains the specifications under subsection 514YD(4) as follows:

*For example, an outcome or objective of a national environmental standard relating to Indigenous engagement may focus on allowing for greater contribution by Indigenous persons to environmental decision-making and planning processes by ensuring they have access to meaningful information about project impacts and an opportunity to provide feedback early in the project development process. **The standard would then be able to set specific requirements that project proponents and decision-makers (as appropriate) would need to comply with in order to ensure this outcome is achieved, such as requiring consultation with relevant First Nations groups on certain proposals be conducted in a specified manner for a specified timeframe.***

*The requirement for **mandatory outcomes or objectives for national environmental standards is intended to ensure standards have clear purposes and requirements, so as to provide effective protections for the environment** (emphasis added).*

29. The legislative intent behind mandating that Standards include Outcomes and Objectives is that they provide a clear, effective protection for the environment and ensure Standards have a clear purpose, with optional Principles to be added to enable this and guide how this is to be achieved.
30. This primacy of the Outcomes and Objectives is further supported by other provisions of the reformed EPBC Act: the ‘non-regression’ principle requires that before varying or revoking a Standard, the Minister must be satisfied that the variation or revocation ‘does not reduce the likelihood that Outcomes and Objectives specified in the [Standard] will be achieved’.⁹ Further, the Act requires period reviews of each Standard, and these reviews must consider ‘the extent to which the [Standard] is achieving its Outcomes and Objectives’.¹⁰ These provisions do not refer to whether the Principles

states would be required to assess and approve the project against our national environmental standards”. Available at: [Senate 2025 11 27 Official with map.pdf;fileType=application/pdf](#)

⁹ See *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), new subsection 514YG(1)(d).

¹⁰ EPBC Act, new subsection 514YJ(4).

of the Standard are being achieved, demonstrating that the Objectives and Outcomes were intended to be key operative provisions within the Standard. The inclusion of subclauses 7(2) and (4) undermines this intent.

31. Further, subsection 514YD(4) of the Act requires an explicit link or connection between the Outcomes and Objectives and Principles: subsection 514YD(4)(b) states a Standard may prescribe 'principles by which an outcome or objective **is to be achieved**' (emphasis added). The Principles in the draft MNES Standard do not appear to make this clear connection with the Outcomes or Objectives: they make no explicit reference as to how they should be applied to achieve the particular Objective for each protected matter, or the listed Outcomes. Rather, these Principles are drafted so vaguely, without detailing any specifics, they seem to operate in complete isolation to the rest of the Standard.
32. For example, Principle 1 explains how to apply the mitigation hierarchy to actions impacting protected matters. However, the Principle as drafted does not make a link to any Objective of a protected matter, as listed in the Table at subclause 5(3) e.g. there is no mention of how the steps in the mitigation hierarchy would achieve the Objective of 'the ecological character of a declared Ramsar wetland is maintained, protected, conserved and ... restored'.
33. On this analysis, EDO considers that subclause 7(2) essentially displaces or undermines the mandated requirement for Standards to prescribe Outcomes or Objectives, elevating the Principles to something the legislation did not intend. This does not meet the requirements of the Act.
34. At the very least, how the Principles apply to the Outcomes and Objectives must be clear, and must be consistent with the Act's intention. The insertion of subclause 7(2) does not achieve this – subclause 7(2) read on its own can be interpreted narrowly to only require actions to be consistent with the Principles alone. However, when read with the requirements of s 514YD(4)(a)-(b) of the EPBC Act, consideration of the Objectives and Outcomes appears to be a requirement when applying the Principles. It is unclear which interpretation is the correct one.

1.4. New subclauses 7(2) and (4) create legal ambiguity

35. In addition to subclause 7(2) and (4) being inconsistent with legislative requirements, we are concerned that there is ambiguity arising from the interaction between the Objectives, the Principles and subclause 7(2) and (4).
36. As explained above, subclauses 7(2) and (4) provide that actions or class of actions and other decisions will achieve the Outcomes and Objectives where the decision is consistent with the Principles. When read with the s514YD(4)(a)-(b) of the Act, the Objectives and Outcomes must be considered when applying the Principles. This creates a tension and ambiguity when the Principles and Outcomes and Objectives within the Standard itself require different things.
37. For example, Principle 1 (clause 8) is that actions must be designed having regard to the mitigation hierarchy, which requires avoidance, mitigation, repair and offset of significant impacts, repairable impacts and residual significant impacts, respectively.

38. The requirements applied to an action under Principle 1 are different to the Objectives. For example, a requirement to protect irreplaceable habitat under Items 1-3 is not the same as a separate requirement to avoid significant impacts to any habitat.
39. Given the narrow framing of Items 1 - 3 (which we do not support – see section 2.1 below), it is unclear whether the Principles only need to be applied to the extent that they achieve the Objectives. However, if limited in this way the clauses may be inconsistent with the broader requirements in the EPBC Act to avoid, mitigate, repair and compensate damage caused by an action.
40. These inconsistencies must be addressed to bring the Standard into alignment with the EPBC Act's requirements. This can be achieved by removing subclauses 7(2) and (4) from the revised draft MNES Standard.
41. Section 3 of this submission provides further analysis of why compliance with the Principles alone is insufficient to meet the intent behind the MNES Standard.

Recommendation 1: Remove subclauses 7(2) and (4) from the MNES Standard to ensure it is compliant with the EPBC Act requirements and that actions and decisions must meet the Outcomes, Objectives and Principles in the Standard.

2. Outcomes and Objectives require further revision

2.1. **Objectives for listed threatened species, listed ecological communities, and listed migratory species must be strengthened**

42. The Objectives for Item 1 (listed threatened species), Item 2 (listed threatened ecological communities) and Item 3 (listed migratory species) have been amended in the latest revised draft, for example in the case of Item 1 by re-phrasing the Objective to only require protection, conservation and protection of irreplaceable habitat that is necessary for a species to remain viable in the wild; rather than the protection of listed threatened species more broadly.
43. This drafting limits the scope of protection to only habitat of threatened species, but not populations and individuals, or protection against key threatening processes. This means there is a possibility that even if a decision (e.g. the approval of the action) destroys a threatened species' population it may still be consistent with the Standard, which requires only protection of irreplaceable habitat.
44. This drafting is at odds with other Items in the Table, which require broad protection for each 'protected matter' (being matters protected under the EPBC Act, including listed threatened species, World Heritage, declared Ramsar wetlands etc.). For example, the Objective for Item 4 Wetlands of International Importance is 'the ecological character of a declared Ramsar wetland is maintained, protected, conserved and... restored in a manner consistent with Australia's obligations under the Ramsar Convention'. The Objective for Item 5 National Heritage places is 'the National Heritage values of the place are protected, conserved, managed and... restored'.

45. These Items do not restrict protection of the protected matter to a particular aspect in the way that Items 1 – 3 are restricted to irreplaceable habitat. Instead, they are drafted broadly to protect, conserve and restore the protected matter.
46. The drafting is also at odds with the Act’s intention to require decision makers to consider both national environmental standards,¹¹ and unacceptable impacts.¹² The language in Items 1 - 3 mirrors language found in the definition of ‘unacceptable impacts’ in new section 527F resulting in a duplication of protection. It was not intended for the Standard to simply require protection of unacceptable impacts, which is already achieved under other provisions in the Act. Instead, Standards are intended to more broadly promote the objects of the Act, including the protection of the environment, especially those aspects of the environment that are matters of national environmental significance.
47. Objective Items 1 – 3 must be amended to:
- Mirror the drafting in other Items by, as a starting point, requiring that the protected matter is protected, conserved and restored.
 - Outline more specifically what that looks like – not just protecting habitat, but also populations and individual species, and addressing key threats. This can draw on Samuel’s draft MNES Standard, where for example in relation to the MNES of threatened species and ecological communities, he explicitly refers to promoting the survival or enhancing the conservation status of threatened species by avoiding adverse impacts on critical habitat or the populations of threatened species¹³ and not exacerbating key threats.¹⁴
 - Guide how to apply the Principles for the purpose of achieving the Objectives and Outcomes. For example, in the case of the mitigation hierarchy (Principle 1) by outlining requirements to ‘avoid’ and ‘offset,’ by specifying which impacts are to be avoided and what offsetting must achieve in practice. We discuss this further at 2.2 below.
48. For example, Item 1 in relation to listed threatened species could be expanded to read as follows:

Listed threatened species

Listed threatened species are protected, conserved and restored to support survival and recovery of the species, including that:

(1) For habitat of listed threatened species:

- (a) adverse impacts to the extent or quality of critical habitat are avoided; and*
- (b) there is no net reduction of habitat of a threatened species.*

(2) For populations of listed threatened species:

- (a) impacts likely to result in the loss of individuals or populations of highly restricted or declining species are avoided; and*

¹¹ EPBC Act, new section 136A.

¹² EPBC Act, new section 136B.

¹³ Samuel Review page 211. See 7(a)-(b) of Samuel Standard.

¹⁴ Samuel Review page 212. See 7(d) of Samuel Standard.

(b) there is no net reduction in the population of a critically endangered or endangered species or important population of vulnerable species.

(3) Key threats to listed threatened species are not exacerbated.

(4) Protection, conservation, restoration and recovery actions support the viability of listed threatened species in the wild.

49. Please see **Appendix A** for a full marked up version of the Standards, with suggested drafting for Items 1 – 3. These changes ensure consistency with the other Items listed in the Table.

Recommendation 2: Objective Items 1 – 3 must be amended to:

- a) Mirror the drafting in other Items by, as a starting point, requiring that the protected matter is protected, conserved and restored.
- b) Outline more specifically what that looks like – not just protecting habitat, but also populations and individual species, and addressing key threats.
- c) Guide how to apply the Principles for the purpose of achieving the Objectives and Outcomes, for example, in the case of the mitigation hierarchy (Principle 1) by outlining requirements to ‘avoid’ and ‘offset,’ by specifying which impacts are to be avoided and what offsetting must achieve in practice.

See suggested amendments to Items 1 - 3 as shown in EDO’s marked up Standard at **Appendix A**.

2.2. Interaction between the Objectives and Outcomes, and the Principles should be clear

50. As outlined above, the EPBC Act envisages that Principles can guide how the Objectives and Outcomes of the Standard are to be achieved. As drafted, there is no clear interaction between the Objectives and Outcomes, and Principles in the draft Standard.
51. The Objectives in clause 5 should be amended to clearly demonstrate how application of the Principles is intended to achieve the Objectives. For example, the Table in clause 5 should make it clear how the mitigation hierarchy (Principle 1) is to be applied to protect, conserve and restore the protected matter, by specifying which impacts are to be avoided and what offsetting must achieve in practice.
52. Again, this specificity is drawn from the Samuel Review, which emphasised the important role of the Standards in articulating limits to protect critical assets and prevent unacceptable impacts, for example ‘where a Standard requires impacts on certain threatened species habitats to be avoided [as per Principle 1] , for example critical breeding habitat, a system cannot deliver this if it allows for developments that adversely impact these habitats’.¹⁵
53. If these practical objectives are not inserted, decision-makers cannot know when a proponent has applied the mitigation hierarchy so as to ‘avoid’ significant impacts or ‘offset’ residual significant impacts, and whether application of the mitigation hierarchy has achieved the Outcome or Objective. They are instead left with wide discretion in considering whether the Principles have been properly

¹⁵ Samuel Review, page 52.

applied and the Outcomes/Objectives have been met. This discretion does not guarantee that positive environmental outcomes will be achieved.

54. To address this concern, more prescription is needed to guide when impacts should be avoided, mitigated, repaired and offset, by clearly setting out how the mitigation hierarchy could be applied to these Objectives.
55. Our recommended changes to Items 1 – 3 (see above) demonstrate how this could be done. This is also included in our full marked up version of the Standards at **Appendix A**.

2.3. Objectives in the Table should become Outcomes within clause 6

56. In the revised draft MNES Standard, the Table listing the Items in clause 5 are better suited to sit underneath the Outcomes listed in clause 6 (rather than Objectives). These changes are shown in green in the marked-up version of the Standards, provided at **Appendix A**.
57. The items in the Table are drafted as specifics; setting a clear line and providing guidance for what is to be achieved under the Standard when applying the Principles. This purpose is better suited to Outcomes, which call for specific, tangible results on implementation of the criteria. By contrast, Objectives are better suited to high level, aspirational drafting that sets an aim or a goal for the Outcomes. Further, describing the specific in the Table as Outcomes gives greater clarity and direction as to how the mitigation hierarchy under Principle ought to be applied.
58. This purpose of Outcomes is reflected in the Samuel Review, when he recommended that the Standards ‘focus on outcomes for MNES and important processes for sound and efficient decision-making’.¹⁶

Recommendation 3: Objectives in the Table should become Outcomes within clause 6.

2.4. The use of ‘where appropriate’ in the Outcomes and Objectives must be removed

59. The revised draft MNES Standard has replaced ‘where necessary’ with ‘where appropriate’ throughout the Objectives and Outcomes of the Standard. For example, the Item 5 Objective for National Heritage places now states ‘values of the places are protected, conserved, managed and (where appropriate) restored’. Outcome (a) under clause 6 now reads ‘provide for the protection, conservation and, where appropriate, restoration and recovery of protected matters’.
60. The use of ‘where appropriate’ is unclear as criteria for determining whether restoration and/or recovery of protected matters is required. Its inclusion may mean that a proponent whose activity has caused an impact on a protected matter is only required to undertake conservation and management. A proponent should instead always restore a protected matter which has been impacted, and not be at risk of their obligations ceasing at conservation and management. This

¹⁶ Samuel Review, page 39.

qualifying term may also mean that irrelevant or inappropriate considerations are made when considering whether restoration or recovery is required, such as financial considerations.

61. To ensure clarity, we recommend removal of the qualifying phrase 'where appropriate'. If a qualification is considered necessary, we recommend reverting back to the use of 'where necessary' which was contained in the first draft MNES Standard, as a clearer term.

Recommendation 4: The qualifying phrase 'where appropriate' should be removed in the Objectives and Outcomes. If a qualification is considered necessary, we recommend reverting back to the use of 'where necessary' which was contained in the first draft MNES Standard, as a clearer term.

2.5. **Outcomes and Objectives must be outcomes focused, not process focused**

62. Objective at subclause 5(1) for example provides: 'This Standard aims to ensure **decisions under the Act provide for** the protection, conservation and, where appropriate, management, restoration and recovery of protected matters'.
63. The language here is focused on process (i.e. decision making) rather than outcomes (i.e. simply the protection, conservation, restoration and recovery of protected matters). This type of drafting should be amended to focus on outcomes.

Recommendation 5: Subclause 5(1) should be amended to remove the words 'decisions under the Act provide for'.

3. **The Principles must be strengthened**

64. The Principles in the Act need to be strengthened by:
 - providing granularity and guidance on the Act, not merely replicating obligations in the Act;
 - limiting discretion; and
 - better addressing cumulative impacts.
65. The Principles provided in the MNES Standard mostly replicate obligations in the broader EPBC Act framework, and matters likely to be addressed by other anticipated Standards for Community Consultation, First Nations Engagement and Data and Information. This, coupled with the ability to ignore the Outcomes and Objectives if applying the Principles, renders the MNES Standard largely ineffective in providing decision-makers and other stakeholders with improved guidance on how to make decisions – as intended for the Standards.
66. The Principles continue to lack a level of granularity and guidance that they are intended to. That is, the Principles merely set out a process that must be complied with rather than setting out a measurable outcome or clear benchmark that must be met. Because the Objectives and Outcomes in the Standard have effectively been displaced by the new subclauses 7(2)-(4), simply requiring actions to fulfil the Principles will do very little to lift environmental outcomes.

67. While the discretion for applying the Principles has been reduced in some instances, (e.g. actions ‘must’ be designed having regard to the mitigation hierarchy, rather than ‘should’), there is still discretionary language across the Principles, for example phrases such as ‘to the extent possible’ and ‘should generally’ still feature.
68. The Principles also fail to adequately address cumulative impacts.
69. We address these concerns in relation to each of the Principles below.

3.1. Principle 1: Actions appropriately apply the mitigation hierarchy

70. The reformed EPBC Act provides that, when setting conditions, the Minister must consider whether the proponent has taken appropriate measures to avoid, mitigate, or repair the impact or damage.¹⁷ Principle 1 is, in effect, simply replicating the requirements that already exist in the Act. The MNES Standard must instead provide a level of certainty to proponents and decision-makers regarding *how* the mitigation hierarchy should be applied. We recommend the following changes to achieve this.

Requirement to apply the mitigation hierarchy must be consistent with the rest of the Principle

71. According to the title for Principle 1, the revised draft MNES Standard now requires that ‘Actions appropriately **apply** the mitigation hierarchy’ (emphasis added). However, the subsequent subclause 8(1), and its preceding italicised heading, read ‘*Requirement to have regard to the mitigation hierarchy* (1) Actions must be designed **having regard to** the mitigation hierarchy provided for in this section’ (emphasis added).
72. The words ‘have/having regard to’ in subclause 8(1) and the italicised heading preceding must be removed and replaced with the words ‘apply’ and ‘applying’, consistent with the title of the Principle, so they read: ‘requirement to apply the mitigation hierarchy’ and ‘actions must be designed applying the mitigation hierarchy’. This change is important to not only ensure consistency within clause 8 itself, but to ensure that the mitigation hierarchy is applied to actions, and is not a mere consideration.

Recommendation 6: The words ‘have/having regard to’ in subclause 8(1) and the italicised heading preceding must be removed and replaced with the words ‘apply’ and ‘applying’, so they read: ‘requirement to apply the mitigation hierarchy’ and ‘actions must be designed applying the mitigation hierarchy’.

Step 1 – Avoidance must not be optional

73. The words ‘To the extent possible’ at the beginning of subclause 8(2) of Principle 1 (Step 1 – Avoidance) should be removed and replaced with the words ‘wherever possible’.
74. The words ‘to the extent possible’ leave too much discretion for proponents to choose whether or not they wish to avoid an impact. Strengthening this to ‘wherever’ possible will shift the presumption

¹⁷ See EPBC Act, new subsection 134(3F).

toward avoidance unless it is not possible to do so. That is consistent with the purpose of the mitigation hierarchy to exhaust avoidance, before causing significant damage and moving to repair or offset it.

Recommendation 7: Step 1 – Avoidance at subclause 8(2) should remove the words ‘to the extent possible’ and replace them with the words ‘wherever possible’.

Steps 1, 2 and 3 (avoidance, mitigation and repair) must not be optional

75. Replacing ‘should’ with ‘must’ across the three steps in the mitigation hierarchy will remove the possibility for any discretion to be exercised when determining whether an impact can be avoided, mitigated or repaired. For example, when a proponent is designing an action and works through the mitigation hierarchy under Principle 1, if an impact can be avoided through the design of the action or class of actions, it must be avoided. If it cannot be avoided, but it can be mitigated, then it must be mitigated. And so on.
76. Further vague and discretionary language under Step 3 – Repair should also be removed. This is the word ‘generally’ in subclause 8(5) and ‘should’ in subclause 8(6). This change will again ensure proponents and decision-makers are provided with clear guidance when applying the mitigation hierarchy.

Recommendation 8: Steps 1, 2 and 3 at subclauses 8(2)-(4) must remove the word ‘should’ and replace with ‘must’, to require each step be met before a proponent moves on to the next step, rather than leave the completion of each step up to discretionary decision-making. The words ‘generally’ and ‘should’ must also be removed in subclauses 8(5) and 8(6) of Step 4 – Repair.

3.2. Principle 2: Actions appropriately consider adverse impacts to protected matters

Cumulative impacts must be explicitly incorporated into Principle 2

77. As explained in EDO’s first submission, we reiterate that cumulative impacts must be explicitly referred to in the Standard. Principle 2 appears to intend to include cumulative impacts, by requiring consideration of the ‘context’ in which the nature, extent or severity of an adverse impact might occur. Notes 1 and 2 then provide examples of this context, including ‘the past, present and reasonably foreseeable future events’, and ‘the combined impacts of light, noise and habitat clearance’. We recommend explicitly referring to cumulative impacts so as to avoid confusion that this must be considered when considering impacts on protected matters, and that the Notes are examples of cumulative impacts that must be considered.
78. The Samuel MNES Standard 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**.*¹⁸

Recommendation 9: Amend Principle 2 to explicitly refer to cumulative impacts to avoid confusion that this must be considered when considering impacts on protected matters.

Principle 2 should not be limited to landscape scale assessments

79. Principle 2 is helpful in providing more guidance around assessing the context that proposed impacts will occur within and for each protected matter. However, we are concerned with the limitation in Note 2 which applies the criteria therein to only– ‘when considering bioregional plans and strategic assessments’. The criteria in Note 2 includes consideration of ‘individually minor, but collectively significant, actions taking place over a period of time’, as well as clarification that the ‘combination’ of past, present and reasonably foreseeable future events etc should be considered. These are important considerations when determining whether there is an adverse impact to protected matters. The qualifying sentence at the beginning has resulted in the subsequent criteria only applying to the landscape-scale assessments listed. We recommend that the words ‘when considering bioregional plans and strategic assessments’ be removed and instead the words ‘the additional information available during bioregional planning and strategic assessments’ be included to the list of what can be considered when having regard to the context. This would ensure each of the criteria apply to all actions and activities.
80. We also recommend the Notes in Principle 2 are moved into the body of the Principle itself.

Recommendation 10: In Principle 2, the words ‘when considering bioregional plans and strategic assessments’ be removed and instead the words ‘the additional information available during bioregional planning and strategic assessments’ be included to the list of what can be considered when having regard to the context.

Recommendation 11: The notes in Principle 2 should be moved into the body of the Principle itself.

3.3. Principle 3: Actions with residual significant impacts to protected matters are compensated

81. We are pleased to see this Principle has been improved by clarifying that if a residual significant impact is an unacceptable impact or is to a protected matter that is prescribed by regulations for the purposes of subsection 134(AC), the impact cannot be compensated and therefore the action or class of actions cannot be approved.
82. However, the requirement to compensate for residual significant impacts is already in the reformed EPBC Act, and compensation is also dealt with in the mitigation hierarchy in Principle 1, so this

¹⁸ Samuel Review, page 203.

Principle is not adding anything new to help guide assessment and decision-making. It also fails to explain how compensation for the purpose of Principle 3 interacts other requirements in both the draft National Environmental Standard (Environmental Offsets) 2026 and the Act (e.g. the ‘passing the net gain test in section 527K of the Act).

83. We recommend that Principle 3 subclause 10(1) require that compensation must only be considered after the prior steps in the mitigation hierarchy have been exhausted. At present the drafting states that compensation ‘should generally’ only be considered after the prior steps in the mitigation hierarchy have been exhausted. This is vague and undermines the need to apply meaningfully each step of the hierarchy, in avoiding, then mitigating impacts before turning to any compensatory measure. We recommend the words ‘should generally’ be replaced with the word ‘must’.
84. We also suggest that a note be added to this Principle to clarify that compensation is required to meet the requirements in the National Environmental Standard (Environmental Offsets) 2026 and the ‘passing the net gain test’ in section 527 of the Act, where relevant.

Recommendation 12: Require that compensation only be considered after the prior steps in the mitigation hierarchy have been exhausted in Principle 3, by replacing the words ‘should generally’ in Principle 3 subclause 10(1) with the word ‘must’.

Recommendation 13: Add a note to Principle 3 to clarify that compensation is required to meet the requirements in the National Environmental Standard (Environmental Offsets) 2026 and the ‘passing the net gain test’ in section 527 of the EPBC Act, where relevant.

3.4. Principle 4: Appropriate evidence, Indigenous engagement and consultation

85. We support the amendments made in the revised draft MNES Standard which removes the discretionary ‘should’ and replaces with ‘must’, and the amendments to subclause 11(c) which clarifies that proposals for actions must be supported by effective consultations with the public.
86. Further, we are generally supportive of the changes made to Principle 4, subclause 11(b). Under first draft MNES Standard, this Principle only said that actions ‘should be supported by appropriate and suitable... consultation with Aboriginal and Torres Strait people and contribution of their knowledge’. This has been substantially strengthened to now read under the revised MNES draft Standard ‘Proposals for actions or classes of actions must be supported by.... where relevant, effective and genuine engagement with, and contribution of knowledge from, Indigenous [sic] persons, where the engagement and contribution is appropriate and adapted to the nature of the interests of such persons’.
87. However, we query the operation of Principle 4 when the government has committed to make Standards in relation to First Nations Engagement, Community Engagement and Data and Information. We caution against Principle 4 displacing these Standards, which are in development.
88. We also note that Principle 4 as currently drafted only applies to proposals for actions or classes of actions. We recommend the words ‘including under accredited frameworks’ be added, to ensure that

the Principle applies to all accredited frameworks, including bilateral agreements and NOPSEMA accreditation.

Recommendation 14: Principle 4 must not displace the anticipated Standards for First Nations Engagement, Community Engagement and Data and Information.

Recommendation 15: In Principle 4 the words ‘including under accredited frameworks’ be added after ‘proposals for actions or classes of actions’, to ensure the Principle applies to all accredited frameworks, including bilateral agreements and NOPSEMA accreditation.

4. Climate change must be incorporated into the MNES Standard

89. It is deeply concerning that the revised draft MNES Standard continues to fail to include climate change resilience and adaptation of MNES as an Objective of the Standard, nor make provision that requires consideration of climate change impacts on MNES. This is a significant omission that must be addressed. It is well established that climate change is an increasing threat to Australia’s natural environment: 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’ (emphasis added).¹⁹

4.1. Impacts of climate change scenarios on MNES must be incorporated into Principle 2

90. Principle 2 requires actions to appropriately consider adverse impacts to protected matters. However, there is no consideration of climate change impacts. The Samuel Review recommended that Standards should include adequate assessment of impacts on MNES, including climate change impacts.²⁰

91. We recommend subclause 9 add likely climate change scenarios as a consideration, so that it reads as follows:

*in considering the nature, extent or severity of an adverse impact on a protected matter, regard should be had to the context in which the impact might occur, **including likely climate change scenarios, and the effectiveness of avoidance and mitigation measures under climate-change scenarios, on MNES** (emphasis added).*

4.2. Climate change resilience must be incorporated in the Objectives

92. Clause 5 lists the Objectives of the Standard. As stated above, given the impact of climate change on MNES it is appropriate for climate change resilience and adaptation be incorporated into the Standard.

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

²⁰ Samuel Review, page 51.

93. We recommend the following be added to clause (5):

(3) To promote resilience and, where relevant, adaptation of protected matters to climate change including incremental change and catastrophic impacts of natural disasters.

Recommendation 16: 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 17: Add an additional Objective to clause 5 as follows: ‘To promote resilience and, where relevant, adaptation of protected matters to climate change including incremental change and catastrophic impacts of natural disasters’.

5. The MNES Standard must require monitoring and evaluation of protected matters

94. Again, this latest draft MNES Standard is silent on the need to provide for monitoring and evaluation of decision outcomes for MNES. Without requiring monitoring and publicly available reporting, there will be no way to know if the Standard is being met or whether outcomes for MNES are being achieved. This is vital to ensure public trust that the Standards are working as they should: to protect the environment.
95. Again, 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.²¹ 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.²²
96. Suggested changes are contained in the marked-up version of the Standards, provided at **Appendix A**. The wording of this amendment is taken from the suggested MNES Standard drafted in the Samuel Review.²³

Recommendation 18: Insert requirements in the MNES Standard for monitoring and evaluation of the outcomes of actions, decisions, plans and policies for each MNES.

6. Standard is not framed to provide guidance for plans, policies and programs under the EPBC Act

97. The way the Standard has been drafted appears to be framed to apply to decisions with respect to actions, including accrediting frameworks to assess and decide decisions with respect to actions. The

²¹ Samuel Review, page 53.

²² Ibid.

²³ Samuel Review, page 204. The draft Samuel MNES Standard provided that ‘a plan must be prepared and implemented to monitor and evaluate the outcomes of actions, decision, plans and policies for each MNES by all parties responsible for applying the National Environmental Standards for MNES’.

drafting does not provide guidance for other specified decisions under the Act, such as to plans, policies and programs like recovery plans for threatened species or threat abatement plans.

98. This is a missed opportunity, where the MNES Standard could provide helpful assistance to guide the development of conservation planning instruments and landscape scale instruments.

Recommendation 19: Reframe the Standard to provide helpful guidance in decision-making and implementation of other processes, such as for plans, policies and programs under the Act like conservation planning instruments, bioregional plans and strategic assessments.

Hypothetical case studies

99. The following are hypothetical case studies to demonstrate how the revised draft MNES Standard, if enacted in its current form, could guide environmental decision-making, and ultimately, how this could impact the environment.

Individual project assessment for unconventional gas and fracking activity

100. An application for unconventional gas and fracking activities in central Queensland may be referred for assessment and approval under the EPBC Act. The project is likely to have significant impacts on groundwater resources that are home to rare and threatened spring species (a threatened ecological community) reliant on the groundwater, as well as being significant to local First Nations, and depended on by local farmers in areas subject to consistent drought.
101. While the Objectives of the draft MNES Standard require protection and conservation of the function and integrity of the water resource, its ecological components necessary to support a significant site, the reliability and supply of water and the cultural services provided by the water (Objective Item 9) – all of these important criteria can be ignored if the broad Principles of the draft MNES Standard are met. That is, all that the project needs to demonstrate is consistency with the Principles – not specifically that these Objectives have been met.
102. These Principles require the proponent and decision maker to:
- apply the mitigation hierarchy by **avoiding** the impacts, and if that's not possible seeking to **mitigate** the impacts, and if that's not possible, **offsetting** the impacts (via compensation in accordance with Principle 3);
 - consider in general the context of the protected matter that may be impacted;
 - provide for compensation (either an offset or a financial payment) to account for any significant residual impacts;
 - use the best available data and undertaken appropriate consultation with First Nations and the general public.
103. These are important Principles, but they are not focused on assisting the decision maker to know whether an impact to a protected matter should be allowed. Nor do they stipulate what the impact is that needs to be avoided or mitigated by the proponent and decision-maker and how to achieve this, compared to simply allowing the development impacts to go ahead on the basis of offsets.

104. A possible outcome for the application of this revised draft MNES Standard to this development is as follows:

- the gas company claims the development cannot be moved to a different site as the gas resources are mainly available at that site, and so the impacts cannot be avoided or mitigated due to the inability to change their operations;
- the gas company provides their impact assessment using otherwise appropriate information and undertakes consultation with First Nations and the public;
- the context of the protected matter is considered, but then isn't given much weight since the mitigation hierarchy as implemented has found it's not possible to avoid the impacts and have the development go ahead;
- the gas company offsets residual significant impacts, including by paying money into the restoration contribution fund;
- the development and the impacts to the groundwater resources and the threatened spring communities is allowed to go ahead;
- the Objectives of the MNES Standard are not achieved. There is no application of the Objective requiring the protection and conservation of the function and integrity of the water resource, including its ecological components/functions/processes, reliability and supply of water to support critical human water needs, nor availability of the water to support First Nations cultural values – these issues are not considered in assessment.

Inadequate safeguard for the accreditation of state and territory laws via assessment and approval bilateral agreements

105. Under this new draft MNES Standard it is also possible for bilateral assessment and approval agreements to accredit state and territory laws by only meeting the Principles outlined above, rather than ensuring that Outcomes and Objectives are achieved.

106. This could mean that in seeking accreditation any framework would only need to demonstrate the following:

- incorporation of the mitigation hierarchy into their assessment framework, including an offsets framework that incorporates the option of paying money into a fund in addition to providing real offsets for each individual project;
- consideration of the context in which the impact might occur – which should really be considered in environmental assessment if it is achieving its purpose;
- measures for compensating significant residual impacts, which could include offsets or payment into a fund;
- requirements that applications are supported by appropriate, suitable and best available data and information, and appropriate engagement occurs with First Nations and the general public.

107. These are all important and helpful Principles for assessment frameworks to include, but they do little to ensure strengthened environmental assessment and consistency in decision-making.

108. It is also unclear how they are contributing to the Outcomes and Objectives of the draft MNES Standard being achieved.
109. These case studies demonstrate that the draft MNES Standard is not lifting the bar for environmental protection or guaranteeing that Outcomes and Objects will be achieved.
110. It is likely that most state and territory frameworks will not need to significantly amend their frameworks to meet this Standard, and in fact some frameworks may be at risk of being weakened.
111. For example, having already found through multiple independent reviews that the financial settlement of offsets is jeopardising the operation of their environmental approvals framework, the NSW Government is now moving to tighten this option.
112. It is unclear what amendments the NSW Government may need to make to its framework to be consistent with the draft MNES Standard.

Improvements made to the revised draft

113. We acknowledge some improvements made in the revised draft MNES Standard. These reflect in part some of EDO's recommendations made in our first submission. Unfortunately, the positive amendments made in the revised draft are far outweighed by the other, negative changes made that EDO does address. The improvements EDO identifies and supports must be read in this context.

Improvements to the water trigger

114. In the revised draft MNES Standard, the Objective to protect water resources from unconventional gas development and large coal mining development (also known as the water trigger) has been strengthened, to more robustly protect these water resources.
115. Item 9(1) (subclause 5(3)) of the draft MNES Standard has been amended so that water resources are protected and conserved for sites of local, regional and national ecological significance, rather than limited to sites of regional and national significance. This adopts a recommendation made by EDO in our first submission.
116. Further, we are pleased the Objective has been further expanded by the addition of item 9(3), to protect and conserve 'provisioning, regulating, cultural and supporting services provided by the water resource'. This change somewhat reflects EDO's recommendation that the Objective be strengthened by referring to species and processes reliant on water. This addition ensures that the broad role of water resources is recognised, and is not only connected to particular sites or critical human water needs.

<p>Recommendation 20: We recommend retaining Item 9 in the Table as included in the revised draft MNES Standard.</p>

Removal of some discretionary language

117. A key recommendation EDO made in our first submission was that the Standards must use clear, unqualified language to ensure they are understood and are legally enforceable. We identified that contrary to the Samuel Review's finding that the EPBC Act does not provide sufficient constraints on discretion, the first draft MNES Standard used discretionary language throughout such as 'aims', 'is intended', 'reasonable', 'may', 'if possible', and 'where necessary'.
118. We are pleased that some of this discretionary language has been removed and replaced in the revised draft MNES Standard. For example:
- The title in Principle 1 (clause 8) has removed the words 'consider the application of' so it now reads 'Actions appropriately apply the mitigation hierarchy'. However we note that this has not been implemented throughout the content of the Principle, where vague language requiring decision-makers to 'have regard' to the mitigation hierarchy still exists.
 - Principle 1 (subclause 8(1)) has also removed the words 'should' with 'must' so that it now reads 'actions must be designed having regard to the mitigation hierarchy provided for in this section'. Elsewhere in the Standard the word 'should' has been replaced with 'must'.
119. While these changes are an improvement, the redrafting of the MNES Standard to simply require consistency with other Principles in order to meet the Standard (essentially making the Outcomes and Objectives redundant), and the ongoing omission of other key requirements, means the revised draft MNES Standard continues to fall significantly short of an instrument that that is intended to be used to lift environmental outcomes, not merely manage decline.

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

Appendix A – Marked-up draft MNES Standard



Classification

EXPOSURE DRAFT

National Environmental Standard (Matters of National Environmental Significance) 2026

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

Dated

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

Classification

Classification

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1 Name

This instrument is the *National Environmental Standard (Matters of National Environmental Significance) 2026*.

2 Commencement

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

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

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

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

3 Authority

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

4 Definitions

Note: A number of expressions used in this standard are defined in the Act, including:

- (a) action
- (b) Commonwealth heritage place
- (c) Commonwealth marine area

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(d)	critical habitat
(e)	declared Ramsar wetland
(f)	declared World Heritage property
(g)	ecological character
(h)	environment
(i)	Great Barrier Reef Marine Park
(j)	impact
(k)	indigenous heritage value
(l)	irreplaceable
(m)	National Heritage values
(n)	National Heritage place
(o)	Ramsar Convention
(p)	residual significant impact
(q)	restoration contribution charge
(r)	World Heritage Convention
(s)	world heritage values

In this standard:

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

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

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

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

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

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

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

Note: An example of a repairable impact may be an impact which occurs only during the construction phase of an action.

5 Objectives

- (1) This Standard aims to ensure ~~decisions under the Act provide for~~ the protection, conservation and, where appropriate, management, restoration and recovery of protected matters.
- (2) This Standard aims to promote and enhance the diversity, abundance, resilience, and integrity of protected matters across their entire geographic area to support the long term survival and continuation of such matters consistent with the principles of ecologically sustainable development.
- (3) This Standard aims to promote resilience and, where relevant, adaptation of protected matters to climate change including incremental change and catastrophic impacts from natural disasters.

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~~(3) The objectives for protected matters are specified in the following table.~~

6 Outcomes

(1) The following outcomes of the Standard are intended to ~~promote~~ achieve the objectives in section 5:

- (a) ~~provide for~~ the protection, conservation, climate resilience and, where appropriate, necessary, restoration and recovery of protected matters;
- (b) ~~contribute to the promotion~~ maintenance and enhancement of the diversity, abundance, resilience, and integrity of protected matters across their entire geographic area; and
- (c) facilitate ecologically sustainable development.

~~(2) The objectives~~ outcomes for protected matters are specified in the following table.

Outcomes/objectives for protected matters

Item	Outcome/objective
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1	Listed threatened species
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~~—Habitat of the~~ Listed threatened species (including critical habitat) where the habitat is irreplaceable and necessary for the species to remain viable in the wild is protected, conserved and restored to support survival and recovery of the species, including that:

- (1) For habitat of listed threatened species:
 - (a) adverse impacts to the extent or quality of critical habitat are avoided; and
 - (b) there is no net reduction of habitat of a threatened species.
- (2) For populations of listed threatened species:
 - (a) impacts likely to result in the loss of individuals or populations of highly restricted or declining species are avoided; and
 - (b) there is no net reduction in the population of a critically endangered or endangered species or important population of vulnerable species.
- (3) Key threats to listed threatened species are not exacerbated.
- (4) Protection, conservation, restoration and recovery actions support the viability of listed threatened species in the wild.

2	Listed threatened ecological communities
---	--

~~—Habitat of the~~ Listed threatened ecological community (including critical habitat) where the habitat is irreplaceable and necessary for the community to remain viable in the wild is protected, conserved and restored to support survival and recovery of the community, including that:

- (1) For listed threatened ecological communities:
 - (a) adverse impacts to the extent or quality of areas of highly restricted and sensitive threatened ecological communities, or to threatened ecological communities that meet high condition thresholds and classes, are avoided.
 - (b) there is no net reduction in the extent or condition of an endangered or critically endangered ecological community.
- (2) Key threats to threatened ecological communities are not exacerbated.
- (3) Protection, conservation, restoration and recovery actions support the viability of listed ecological communities.

Commented [A1]: This moving up of the Outcomes and the change to heading for 'Objectives' to 'Outcomes' in the table below is to reflect that the items in the table are actually outcomes in their framing, and assist in interpreting the '6 Outcomes' concepts.

Commented [A2]: a. As drafted, the scope of protection is limited, essentially only requiring protection of habitat that 'is irreplaceable and necessary for the species to remain viable in the wild'. This is inconsistent with other Items in the Table. The outcome must seek to protect, conserve and restore the "protected matter" – for example, being listed threatened species in Item 1. The suggested amendments here mirror wording in other Items of the table.

b. As drafted, Objective Items 1 – 3 only address habitat of threatened species, but not populations and individual species, or key threatening processes. These must be also addressed within the Item.

c. More prescription is needed to provide guidance on how listed threatened species should be protected, conserved and restored, including when impacts should be avoided and mitigated, by clearly setting out how the mitigation hierarchy could be applied to these Objectives. For example, by specifying which impacts are to be avoided (e.g. impacts likely to result in the loss of individuals or populations of highly restricted and small and declining threatened species) and what offsetting must achieve in practice (e.g. no net reduction in specified habitats and populations). This would help link the Principles to the Objectives. The specific suggestions here are drawn from the Samuel Review, Draft MNES Standard, p 211- 215.

Classification

Outcomes/objectives for protected matters	
Item	Outcome/objective
3	<p>Listed migratory species</p> <p>Habitat of the Listed migratory species where the habitat is irreplaceable and necessary for the species to remain viable in the wild is protected, conserved and restored to support survival and recovery of the species, including that:</p> <ol style="list-style-type: none"> (1) For habitat of listed migratory species: <ol style="list-style-type: none"> (a) adverse impacts to important habitat for listed migratory species are avoided, and (b) there is no net reduction in the habitat of a listed migratory species in Australia. (2) For populations of listed migratory species: <ol style="list-style-type: none"> (a) adverse impacts to the lifecycle (breeding, feeding, migratory pathways or resting behaviour) of an ecologically significant proportion of the population of a listed migratory species are avoided; and (b) there is no net reduction in the population of a listed migratory species in Australia. (3) Key threats to listed migratory species are not exacerbated. (4) Protection, conservation, restoration and recovery actions support the viability of listed migratory species in the wild.
4	<p>Wetlands of International Importance</p> <p>The ecological character of a declared Ramsar wetland is maintained, protected, conserved and (where it is in decline) restored in a manner consistent with Australia's obligations under the Ramsar Convention.</p>
5	<p>National Heritage places</p> <p>The National Heritage values of the place are protected, conserved, managed and (where necessary appropriate) restored.</p> <p>Indigenous heritage values of a National Heritage place are treated in a manner respectful of indigenous traditions and beliefs.</p>
6	<p>World Heritage properties</p> <p>The world heritage values of a declared World Heritage property are protected, conserved and (where necessary appropriate) restored in a manner consistent with Australia's obligations under the World Heritage Convention.</p>
7	<p>Great Barrier Reef Marine Park</p> <p>The biodiversity and heritage values that are part of the environment in the Great Barrier Reef Marine Park, are protected, conserved and (where appropriate) restored and recovered.</p>
8	<p>Commonwealth marine areas</p> <p>A marine ecosystem (or part of a marine ecosystem) that is part of the environment in a Commonwealth marine area, are protected, conserved and (where necessary appropriate) restored and recovered.</p>
9	<p>Protection of water resources from unconventional gas development and large coal mining development</p> <p>The function and integrity of the water resource are protected and conserved, including the:</p> <ol style="list-style-type: none"> (1) ecological components, functions and processes of the water resource necessary to support sites of local, regional and national ecological significance; (2) reliability and supply of water to support critical human water needs; and (3) provisioning, regulating, cultural and supporting services provided by the water resource.

Commented [A3]: 'appropriate' can be argued to be anything, whereas 'necessary' is a clearer test that isn't so relevant to financial means or broad considerations that are irrelevant to whether the thing needs to be restored

Classification

Outcomes/objectives for protected matters

Item	Outcome/objective
10	Protection of the environment from radiological exposure actions The environment affected, or part thereof, is protected, conserved and (where necessary appropriate) restored and recovered. The environment, including biological diversity, and the health of natural ecosystems and human health is protected from impacts of radiological exposure.
11	Actions taken on Commonwealth land or on Commonwealth heritage places overseas and actions taken by the Commonwealth The environment affected, or part thereof, is protected, conserved and (where necessary appropriate) restored and recovered.

6 Outcomes

The following outcomes of the Standard are intended to promote the objectives in section 5:

- (a) provide for the protection, conservation, and, where appropriate, restoration and recovery of protected matters;
- (b) contribute to the promotion and enhancement of the diversity, abundance, resilience, and integrity of protected matters across their entire geographic area; and
- (c) facilitate ecologically sustainable development.

7 Principles

- (1) For subsection 514YD(4) of the Act, the principles by which the outcomes and objectives in sections 5 and 6 of this Standard are to be achieved are the principles in sections 8, 9, 10 and 11 of this Standard.
- (2) ~~An action or class of actions will achieve the outcomes and objectives in section 5 and 6 of this Standard where that action, or class of actions, is consistent with the principles in sections 8, 9, 10 and 11 of this Standard.~~
- (3) The principles in sections 8, 9 and 10 of this Standard only apply to an action or class of actions to the extent that the impact is on a matter protected by a provision of Part 3 that is a controlling provision for the action or an action in the class of actions.

~~A decision maker may be satisfied that: (a) — a decision to approve the taking of an action or class of actions, taking into account any conditions to be attached to the approval, is consistent with this Standard if the action or class of actions is consistent with the principles in sections 8, 9, 10 and 11 of this Standard; — (b) — a management or authorisation framework or an approval of an action or class of actions in accordance with a management or authorisation framework is consistent with this Standard if the framework requires an action or class of actions to be consistent with the principles in sections 8, 9, 10 and 11 of this Standard; — (c) — a NOPSEMA management or authorisation framework or an approval of an action in~~

Commented [A4]: Deletion of 7(2) and 7(4) is crucial, otherwise the outcomes and objectives have no effect.

Classification

~~accordance with a management or authorisation framework is not inconsistent with this Standard if the framework requires an action to not be inconsistent with the principles in sections 8, 9 and 11 of this Standard; — (d) — a specified manner of assessment will be consistent with this Standard if the manner of assessment requires an action or class of actions to be assessed consistently with the principles in sections 8, 9, 10 and 11 of this Standard; — (e) — the making or varying of a bioregional plan is consistent with this Standard if the actions to be taken under the bioregional plan are consistent with the principles in sections 8, 9, 10 and 11 of this Standard.~~

8 Principle 1—Actions appropriately apply the mitigation hierarchy

Requirement ~~to~~ *apply have regard to* the mitigation hierarchy

- (1) Actions must be designed ~~having regard to~~ *applying* the mitigation hierarchy provided for in this section. ~~In applying the mitigation hierarchy, likely climate change scenarios should be identified and considered.~~

Commented [A5]: These are crucial changes to ensure the mitigation hierarchy is applied and not merely had regard to.

Step 1—Avoidance

- (2) ~~Wherever~~ *To the extent* possible, any significant impacts of an action, or class of actions, on a protected matter ~~must should~~ be avoided through the design of the action or class of actions.

Commented [A6]: The words 'to the extent possible' leave too much discretion for proponents to choose whether or not they wish to avoid an impact. Strengthening this to 'wherever' possible will shift the presumption toward avoidance unless it is not possible to do so. That is consistent with the purpose of the mitigation hierarchy to exhaust avoidance, before causing significant damage and moving to repair or offset it.

Step 2—Mitigation

- (3) Where a significant impact on a protected matter cannot be avoided, the impact ~~should must~~ be mitigated through a demonstrated process of identifying and implementing measures to reduce the impact including, where possible, below the level of significance.

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

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

Step 3—Repair

- (4) Following the application of any appropriate avoidance and mitigation measures, any repairable impacts on protected matters ~~must should~~ be repaired as soon as possible and as close to its original condition as possible.
- (5) Repair will ~~generally~~ be a viable option only where:
 - (a) repair can be done in a timely manner; and
 - (b) repair activities are feasible and sustainable in the long term for the protected matter.

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- (6) Repair activities ~~must should~~ focus on the significantly impacted protected matter and involve on-site works with specific goals for re-establishment of values-to reduce residual significant impacts.

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

Step 4—Offset

- (7) Following the application of any appropriate avoidance, mitigation and repair measures, any residual significant impact of the action or class of actions on a protected matter must be compensated for by an offset activity or a restoration contribution charge.

Note: An unacceptable impact on a protected matter cannot be compensated by an offset activity or a restoration contribution charge, except in limited circumstances where the action is a national interest proposal (see subsections 134(3AA) and (3AB) of the Act).

9 Principle 2—Actions appropriately consider adverse impacts to protected matters

(a) In considering the nature, extent or severity of an adverse impact, ~~including cumulative impacts~~, on a protected matter, regard should be had to the context in which the impact might occur, ~~including likely climate change scenarios, and the effectiveness of avoidance and mitigation measures under climate-change scenarios, on MNES.~~

~~Note 1:~~ (b) The context includes, ~~for example:~~

- (i) the unique context of a protected matter, including the past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter; and
- (ii) 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 class of actions.

~~Note 2:~~ ~~When considering bioregional plans and strategic assessments the context may also include the following: (a) — the combination of past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter; and (iii) individually minor, but collectively significant, actions taking place over a period of time.~~

- (iv) the additional information available during bioregional planning and strategic assessments.

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

- (1) Compensation for a residual significant impact ~~must should generally~~ only be considered after the prior steps in the mitigation hierarchy (avoidance, mitigation and repair) have been exhausted.
- (2) All residual significant impacts to protected matters must be compensated, unless the residual significant impact is an unacceptable impact or is to a protected

Commented [A7]: Explicit reference to cumulative impacts will avoid confusion that this must be considered when considering impacts on protected matters.

Commented [A8]: Principle 2 requires actions to appropriately consider adverse impacts to protected matters. However, there is no consideration of climate change impacts. The Samuel Review recommended that Standards should include adequate assessment of impacts on MNES, including climate change impacts.

Commented [A9]: These are important factors when considering whether there is an adverse impact. They should therefore be considered as part of Principle 2, and not restricted to notes.

Commented [A10]: The impact of individually minor but collectively significant actions is always relevant and crucial to impact assessment in proper context, and this should not be confined to strategic assessment & bioregional planning.

Commented [A11]: This is an essential change to ensure the mitigation hierarchy is fully exhausted before moving to offsetting.

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matter that is prescribed in regulations made for the purpose of subsection 134(3AC) of the Act.

- (3) Where a protected matter is prescribed in regulations made for the purposes of subsection 134(3AC) of the Act, an action or class of actions that has a residual significant impact on the protected matter cannot be approved.

Note : Subsection 134(3AC) of the Act allows the regulations to prescribe protected matters that cannot be the subject of a compensation condition. This means impacts on these protected matters are not able to be offset.

Note: Compensation is required to meet the requirements in the National Environment Standard (Environmental Offsets) 2026 and the 'net gain test' in section 527 of the Act.

11 Principle 4—Appropriate evidence, Indigenous engagement and consultation

Proposals for actions or classes of actions, including under accredited frameworks, must be supported by:

- (a) appropriate, suitable and best available data and information;
- (b) where relevant, effective and genuine engagement with, and contribution of knowledge from, indigenous persons, where the engagement and contribution is appropriate and adapted to the nature of the interests of such persons; and
- (c) effective consultation with the public in relation to the action.

12 Monitoring, reporting and evaluation

A plan must be prepared and implemented to monitor and evaluate on the outcomes of actions, decisions, plans and policies for each MNES by all parties responsible for applying the National Environmental Standards for MNES.

Commented [A12]: This additional note is required to clarify that compensation is required to meeting the Environmental Offsets Standard, and section 527 of the EPBC Act.

Commented [A13]: This addition ensures Principle 4 applies to accredited frameworks including bilateral agreements.

Commented [A14]: The Samuel Review clearly stated the need for quality data, information and systems to describe and apply the Standards. Without requiring monitoring and publicly available reporting, there will be no way to know if the Standard is being met or whether outcomes for MNES are being achieved.