



Environmental
Defenders Office

**Submission on the Exposure Draft National
Environmental Standard (Community Engagement) 2026**

7 July 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.

www.edo.org.au

Submitted to:

[Survey on the exposure draft National Environmental Standard for Community Engagement](#)
Department of Climate Change, Energy, the Environment and Water

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Acknowledgement of Country

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 and present 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 colonisation.

EDO recognises the right to self-determination of First Nations peoples, including their right to freely determine their own political status and freely pursue their economic, social and cultural development. This extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

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

A note on language

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

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

The role of EDO & First Nations Peoples

EDO is a non-Indigenous community legal centre that works on behalf of First Nations peoples around Australia in their efforts to protect their Countries and Cultural Heritage from damage and destruction. EDO has and continues to work with First Nations clients who have interacted with Western laws, including litigation and engaging in Western law reform processes.

Out of respect for First Nations self-determination, EDO's recommendations for Western law reform in relation to First Nations matters are high-level, so as to support First Nations to protect their Countries and Cultural Heritage as they see fit. These high-level recommendations are informed by EDO's engagement with and on behalf of First Nations clients and communities. In making this submission, EDO cannot and does not speak on behalf of First Nations peoples or groups.

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Executive Summary

1. Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the exposure draft of the National Environmental Standard (Community Engagement) 2026 (**Community Engagement Standard**) and the draft Policy Position Paper: National Environmental Standard for Matters of National Environmental Significance (**Policy Position Paper**).
2. The Community Engagement Standard is one of the Standards recommended by Professor Graeme Samuel AC in his independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (**the Samuel Review**).
3. EDO supports the creation of a Community Engagement Standard, as an important way to improve the quality and integrity of decisions by ensuring that local knowledge, scientific expertise and diverse community perspectives are considered in the decision-making process. This, in turn, will contribute towards improving public trust in environmental decision-making, which Professor Samuel acknowledged was a significant problem with the EPBC Act pre-reform: “The community... [does] not trust the EPBC Act and the regulatory system that underpins its implementation”.¹
4. However, we believe the Community Engagement Standard must be significantly strengthened to achieve these goals of improving quality and integrity in decision-making in order to build public trust.
5. Our submission is structured as follows:
 - Introduction
 - Key concerns with the exposure draft Community Engagement Standard:
 - The Community Engagement Standard should be finalised alongside the First Nations Engagement Standard.
 - Outcomes, Objectives and Definitions should be strengthened, to improve the definition of “engagement” and make clear project proponents are required to apply the Community Engagement Standard.
 - How the Community Engagement Standard applies to different subsets of the general public (e.g. “affected persons”) must be clarified and not overly restricted.
 - Provisions that displace the Objective and Outcomes should be removed, as they render the Objective and Outcomes largely irrelevant.
 - Provisions that undermine the detailed requirements in the Principles should be removed, as they mean those requirements don’t actually need to be met.
 - Principle 1 should be strengthened by referring to timing of engagement
 - Application of the Community Engagement Standard should be clarified, and should be applied for both approval decisions and pathway decisions.

¹ Professor Graeme Samuel AC, Independent Review of the EPBC Act – Final Report (October 2020). Available at: [Independent Review of the EPBC Act – Final Report October 2020 \(Samuel Review\)](#), page 81.

- Appendix A – Marked-up version of draft Community Engagement Standard.
6. Our summary of our key recommendations is set out below, and should be read together with the marked-up version of the draft Community Engagement Standard at **Appendix A**, which demonstrates how the recommendations could be implemented.

Summary of Recommendations

Recommendation 1: The First Nations Engagement Standard should be made publicly available for consultation as soon as possible, and the Community Engagement Standard should be finalised, with appropriate amendments, alongside the First Nations Engagement Standard.

Recommendation 2: The definition of “engagement” should be amended to require engagement that is meaningful, consistent with the Objective of the Community Engagement Standard, including that engagement is genuine, respectful, timely, focused and proportionate engagement, whereby community views are considered, inform the final decision and are responded to (including whether community views have been incorporated and if not, why not).

Recommendation 3:

- (a) “Project proponents” must be explicitly listed alongside other entities in the Objective, as a stakeholder also responsible for supporting meaningful engagement and co-operation under the EPBC Act.
- (b) Regulations which prescribe how and when the Community Engagement Standard applies, and other guidance or explanatory material, should make it clear that project proponents are required to act consistently with the Standard.

Recommendation 4: The Outcomes at section 6 should be strengthened by:

- (a) Amending section 6 to frame the Outcomes as achieving the Objective, rather than promoting the Objective.
- (b) Amending subsection 6(a) to remove the word “input” and replace with “early and ongoing participation”, to ensure public participation is genuine and commences before project design is well advanced.
- (c) Amending subsection 6(c) to add the word “public”, to clarify that the purpose of the Standard is to build public trust, as opposed to trust amongst industry or other stakeholders.

Recommendation 5:

- (a) The Community Engagement Standard should consistently use a single term such as “relevant persons”, defined as including “affected persons, relevant stakeholder groups and organisations, community leaders and relevant experts”. “Relevant persons” should be used at subsections 9(4)(a)(i)(E) and 11(4)(a)(ii)(B).
- (b) The definition of “affected person” should be amended to mean “persons whose interests will, or are likely to be, affected by the proposal, including because of their

geographical proximity to the site of the proposal”. “Affected persons” should be retained at subsections 9(4)(a)(iv) and 11(4)(a)(ii)(C).

- (c) Remove subsection 9(3), as it is unclear what “two-way dialogue with the affected persons” means.
- (d) Amend subsection 9(4)(a)(ii) so that the person undertaking the engagement is required to disclose all information required to be disclosed under the subsection, to the public.

Recommendation 6: Subsections 7(2) – 7(7) should be removed from the Community Engagement 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 7: Each Principle of the Community Engagement Standard should remove the “other evidence” pathway which only requires the person undertaking the engagement to provide “other evidence” to demonstrate consistency with the Standard. This would require the person undertaking the engagement to instead act consistently with the detailed, clear steps prescribed under the “optional step” (which would make this mandatory).

Recommendation 8: A new subsection 8(1)(d) should be added to Principle 1 – *Engagement is carefully planned, considerate, clear and adaptable*, to require that engagement on a proposal must also be planned with regard “to the timing of the engagement, which must be early in the assessment process and ongoing”. To assist with interpretation of “timing of the engagement”, we recommend a note be inserted which ensures consideration is given to holiday periods and public holidays.

Recommendation 9:

- (a) The Community Engagement Standard must be prescribed to both approval decisions *and* decisions regarding which EPBC pathway a proposal will be assessed and approved under.
- (b) To be eligible for the streamlined assessment pathway, it must be a prerequisite that a proponent has undertaken engagement consistent with the Community Engagement Standard.
- (c) Similar Principles under the Community Engagement Standard should underpin other government engagement as required under the EPBC Act, including for decisions around conservation planning.

Introduction

7. National Environmental Standards were the lynchpin of recommendations made by Professor Graeme Samuel AC in his independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (**the Samuel Review**).²
8. Professor Samuel recognised that “(t)he processes of the EPBC Act limit avenues for community participation in decision-making”³ and “(e)ffective, outcomes-based decision-making, where the community can engage with the process and understand the reasons for decisions, is the primary way to improve trust”.⁴
9. Community participation is important because it improves the quality and integrity of decisions by ensuring that local knowledge, scientific expertise and diverse community perspectives are considered in the decision-making process.
10. EDO supports the need for a Community Engagement Standard, to set clear and legally enforceable guidelines for how proponents must engage with the public on proposed projects.
11. However, we are concerned that the Community Engagement Standard as currently drafted does not set clear and strong requirements for project proponents, against which their proposals will be assessed by decision-makers.
12. This submission addresses EDO’s key concerns with the Community Engagement Standard, as follows:
 1. The Community Engagement Standard should be finalised alongside the First Nations Engagement Standard.
 2. Outcomes, Objectives and Definitions should be strengthened, to improve the definition of “engagement” and make clear project proponents are required to apply the Community Engagement Standard.
 3. How the Community Engagement Standard applies to different subsets of the general public (e.g. “affected persons”) must be clarified and not overly restricted.
 4. Provisions that displace the Objective and Outcomes should be removed, as they render the Objective and Outcomes largely irrelevant.
 5. Provisions that undermine the detailed requirements in the Principles should be removed, as they mean those requirements don’t actually need to be met.
 6. Principle 1 should be strengthened by referring to timing of engagement.
 7. Application of the Community Engagement Standard should be clarified, and should be applied for both approval decisions and pathway decisions.
13. This submission should be read together with the marked-up version of the draft Community Engagement Standard at **Appendix A**, which demonstrates how recommendations could be implemented.

² Samuel Review.

³ Samuel Review, page 80.

⁴ Ibid.

Key Concerns

1. The Community Engagement Standard should be finalised alongside the First Nations Engagement Standard

14. While the Government has indicated it is developing a First Nations Engagement Standard,⁵ the scope of that Standard and how it will apply to all First Nations people is unknown. We are concerned the application of a future First Nations Engagement Standard will be limited to Traditional Owners recognised as native title holders. This would potentially exclude the engagement of other First Nations people and ignore the various complex ways in which First Nations are recognised throughout Australian jurisdictions. If that is the case, or if a First Nations Engagement Standard fails to eventuate at all, it would mean only the general Community Engagement Standard (if finalised) would apply.
15. As drafted, the Community Engagement Standard is not fit-for-purpose when engaging with First Nations people, and does not outline requirements for engaging with First Nations people. For example, the Community Engagement Standard does not recognise key principles under the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), including the principle of Free, Prior and Informed Consent. It also does not recognise that engagement with First Nations people and communities must respect and protect their Indigenous Cultural and Intellectual Property (ICIP).
16. Given this uncertainty and risk, the Community Engagement Standard should be finalised, with appropriate amendments, alongside the First Nations Engagement Standard.

Recommendation 1: The First Nations Engagement Standard should be made publicly available for consultation as soon as possible, and the Community Engagement Standard should be finalised, with appropriate amendments, alongside the First Nations Engagement Standard.

2. The Outcomes, Objectives and Definitions should be strengthened

2.1. The definition of “engagement” must be strengthened

17. The definition section of the Community Engagement Standard only defines “engagement” as “planned consultation in which a person seeks input or feedback from the public to inform a proposal”. This definition is weak and vague, implying the proponent is only required to undertake a box-ticking exercise that does not require genuine processes of engagement with the public on environmental decisions.
18. We recommend that the definition of “engagement” be amended to describe engagement that is “meaningful”, to align with the Objective in section 5 of the Community Engagement Standard. For example, the definition of “engagement” should state that to be meaningful, engagement must be genuine, respectful, timely, focused and proportionate

⁵ Department of Climate Change, Energy, the Environment and Water, ‘Engagement with First Nations People for referrals under the EPBC Act’ (7 August 2025). Available at: [Engagement with First Nations People for referrals under the EPBC Act - DCCEEW](#).

engagement, whereby community views are considered, inform the final decision, and are responded to (including whether community views have been incorporated and if not, why not).

Recommendation 2: The definition of “engagement” should be amended to require engagement that is meaningful, consistent with the Objective of the Community Engagement Standard, including that engagement is genuine, respectful, timely, focused and proportionate engagement, whereby community views are considered, inform the final decision and are responded to (including whether community views have been incorporated and if not, why not). See **Appendix A** for marked up amendments to the definition of “engagement”.

2.2. The Objective should make clear project proponents are required to act consistently with the Community Engagement Standard

19. The Policy Position Paper refers throughout that “proponents must” do certain things consistent with the Community Engagement Standard e.g. “proponents must plan their engagement with consideration given to...” etc.⁶ That proponents (as opposed to other stakeholders such as government) are required to undertake community engagement as set out in the Community Engagement Standard is not adequately reflected in the Standard itself. This includes in the Objective at section 5, which omits explicitly listing project proponents as a stakeholder when ensuring “decisions... relating to the protection and management of protected matters are supported by meaningful engagement and cooperation between government, the community, landholders and Indigenous persons”.
20. Explicit reference to project proponents in the Community Engagement Standard is also inconsistent with the Policy Position Paper which states: “Consistency with the CE Standard will be achieved when **the proponent**, responsible person, or a Commonwealth minister or a state/territory government, demonstrates that their engagement is consistent with the Principles, and therefore the Outcomes and Objective of the CE Standard” (emphasis added).⁷
21. We therefore recommend that project proponents be explicitly referenced alongside other stakeholders listed in the Objective.
22. We also recommend that Regulations which prescribe how and when the Community Engagement Standard applies, and other guidance or explanatory material, should make it clear that proponents are required to act consistently with the Standard.

Recommendation 3:

- (a) “Project proponents” must be explicitly listed alongside other entities in the Objective, as a stakeholder also responsible for supporting meaningful engagement and co-operation under the EPBC Act.

⁶ Department of Climate Change, Energy, the Environment and Water ‘DRAFT Policy Position Paper: National Environmental Standard for Community Engagement’ (**Policy Position Paper**), page 9.

⁷ Policy Position Paper, page 17.

- (b) Regulations which prescribe how and when the Community Engagement Standard applies, and other guidance or explanatory material, should make it clear that project proponents are required to act consistently with the Standard.

2.3. The Outcomes should be strengthened

23. Section 6 of the Community Engagement Standard sets out the Outcomes, and states that “the following outcomes of this standard are intended to **promote** the objective... (emphasis added). This should be amended to frame the outcomes as achieving the objective, rather than promoting the objective. This would shift the framing to be more outcomes-focused (e.g. achieving the Objective) rather than process-focussed, and would be consistent with the language in section 514YD of the EPBC Act which frames Objectives as needing to be achieved.
24. Subsection 6(a) of the Outcomes reads “input from the public is sought...”. “Input” does not connote genuine opportunity for members of the public to be involved in environmental decision-making. We recommend this be strengthened, for example, by referring to “early and ongoing participation” rather than simply “input” from the public. “Participation” implies more active involvement from the public, and “early and ongoing” ensures that proponents must start engaging with the community at the beginning of and then throughout the planning process, and cannot wait to bring the community in late in the process, when project design is well advanced. See below where we recommend the Community Engagement Standard must apply prior to projects being referred under the EPBC Act.
25. Finally, we recommend that “public” be added before “trust” in subsection 6(c). This is consistent with the purpose of the Community Engagement Standard, as envisaged by the Samuel Review, that it is public trust in environmental decision-making that is a key purpose of the Community Engagement Standard, as opposed to trust amongst industry or other stakeholders.

Recommendation 4: The Outcomes at section 6 should be strengthened by:

- (a) Amending section 6 to frame the Outcomes as achieving the Objective, rather than promoting the Objective.
- (b) Amending subsection 6(a) to remove the word “input” and replace with “early and ongoing participation”, to ensure public participation is genuine and commences before project design is well advanced.
- (c) Amending subsection 6(c) to add the word “public”, to clarify that the purpose of the Standard is to build public trust, as opposed to trust amongst industry or other stakeholders.

See **Appendix A** for marked up amendments to the Outcomes at section 6.

3. How the Community Engagement Standard applies to different subsets of the general public (e.g. “affected persons”) must be clarified and not overly restricted

26. We support the general premise underpinning the Community Engagement Standard that engagement must be undertaken with the general public. This is because the EPBC Act protects matters of national environmental significance, which is in the interest of all Australians. The Community Engagement Standard appropriately recognises this by providing that engagement with the public generally is required, for example requiring that “engagement on a proposal must include an invitation to comment on the proposal that is published in a publicly accessible location and allows a reasonable period to comment on the proposal”.⁸
27. However, in some instances the Community Engagement Standard establishes requirements for different subsets of the public, and uses various terms to describe those subsets. For example, terms such as affected persons, relevant stakeholders, community leaders, relevant under-represented groups and interested persons are all used in the Community Engagement Standard.
28. We acknowledge that it may be appropriate for the Community Engagement Standard to recognise, at times, a difference between how a proponent must engage with the general public versus a person more directly affected by or interested in the proposed action. However, some of the terms used in the Standard are undefined, and having separate parts of the Standard apply to different subsets of the public is confusing, creates potential inconsistencies, and may inappropriately narrow the Community Engagement Standard’s application.
29. Where the Community Engagement Standard requires the proponent to give particular consideration to a subset of the public, it should do so consistently in a way that ensures all relevant persons are captured, and does not inappropriately exclude the general public. For example, the Community Engagement Standard should consistently use a single term such as “relevant persons”, defined as including “affected persons, relevant stakeholder groups and organisations, community leaders and relevant experts”. “Relevant persons” should then be used at subsections 9(4)(a)(i)(E) and 11(4)(a)(ii)(B).
30. The reference to subsets of the general public and the requirements on the proponent regarding different subsets highlights the importance of finalising the Community Engagement Standard alongside the First Nations Engagement Standard. Collectively, they must be clear about engagement requirements with all First Nations, and make appropriate provision for First Nations to be engaged in a way that reflects their rights (as espoused in UNDRIP), the principle of Free, Prior and Informed Consent, and their unique interest in, or potential impacts of a project (such as cultural impacts).
31. There may be a limited number of circumstances where it would be appropriate to further target consultation to “affected persons”- e.g. subsections 9(4)(a)(iv) and

⁸ Exposure Draft National Environmental Standard (Community Engagement) 2026, subsection 8(2).

11(4)(a)(ii)(C). However, the current definition of “affected persons” is too narrow: it would mean that only persons within “geographical proximity” (which is undefined) to the site of a proposal will be treated as an “affected person” under the Community Engagement Standard. An affected person could be someone whose interests are also affected beyond geographical proximity. For example:

- A downstream user of a river who may be impacted by a development upstream;
- Residents and services impacted by increased traffic because of the project, despite being some distance from the project site itself;
- A cultural leader or First Nations community who do not reside in proximity to the project site.

32. To capture these people, we recommend the definition of “affected person” be amended to “means persons whose interests will, or are likely to be, affected by the proposal, including because of their geographical proximity to the site of the proposal”.
33. In other instances, we recommend other references to “affected persons” be amended as follows:
 - a. Subsection 9(3) states “Engagement on a proposal should support a two-way dialogue with the affected persons”. We recommend this subsection be removed, as it is unclear what two-way dialogue means. If it is about responding and incorporating feedback from engagement, this could be addressed by changing the definition of engagement as outlined above.
 - b. Subsection 9(4)(a)(ii)(B) requires the persons undertaking the engagement to share relevant environmental performance and compliance outcomes, and monitoring results “with affected persons”. This information should be shared with the general public as a matter of transparency. There is no clear justification for why this information should be shared only with “affected person”, whereas subsection 9(4)(a)(ii)(A) requires that the information sources underpinning decisions relevant to the proposal, including methodologies and assumptions to be disclosed to the public.
34. Please refer to the marked-up version of the Community Engagement Standard at **Appendix A** of this submission, to see where the use of “affected persons” has been retained, replaced with “relevant persons”, or removed.

Recommendation 5:

- (a) The Community Engagement Standard should consistently use a single term such as “relevant persons”, defined as including “affected persons, relevant stakeholder groups and organisations, community leaders and relevant experts”. “Relevant persons” should be used at subsections 9(4)(a)(i)(E) and 11(4)(a)(ii)(B).
- (b) The definition of “affected person” should be amended to mean “persons whose interests will, or are likely to be, affected by the proposal, including because of their geographical proximity to the site of the proposal”. “Affected persons” should be retained at subsections 9(4)(a)(iv) and 11(4)(a)(ii)(C).

- (c) Remove subsection 9(3), as it is unclear what “two-way dialogue with the affected persons” means.
- (d) Amend subsection 9(4)(a)(ii) so that the person undertaking the engagement is required to disclose all information required to be disclosed under the subsection, to the public.

See **Appendix A** for marked up amendments which demonstrate these changes.

4. Provisions that displace the Objective and Outcomes should be removed, as they render the Objective and Outcomes largely irrelevant

35. Subsection 7(2) of the Community Engagement Standard requires that for a decision maker to be satisfied that the taking of an action is consistent with the Standard, they only need to be satisfied that there has been “engagement” undertaken on the proposed action, and “engagement is consistent with the principles in this standard”. This subsection operates to effectively displace the Outcomes and Objectives, by only requiring the decision-maker to be satisfied that a proponent has undertaken “engagement” (which as noted above is not well defined), and applied the process-based principles. Subsections 7(3)-(7) repeat these inadequate requirements for: approvals to undertake a class of action, accreditation of a management or authorisation framework or a NOPSEMA management or authorization framework, or the making or varying of a bioregional plan or bioregional guidance plan.
36. As explained in EDO’s submission on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance) 2026,⁹ these subsections may not be compliant with EPBC Act requirements under subsections 514YD(4)(a)-(b), which state a Standard *must* prescribe one or more Outcomes or Objectives, but *may* prescribe “principles by why an outcome or objective is to be achieved”. This demonstrates a legislative intent that the Outcomes and Objectives are to provide a clear, effective protection for the environment, with optional Principles to be added to guide how this can be achieved. Giving the Principles under the Community Engagement Standard primacy over the Outcomes and Objective, which is the effect of subsections 7(2)-(7(7)), may undermine this intent.
37. We recommend subsections 7(2) – 7(7) are removed from the Standard.

Recommendation 6: Subsections 7(2) – 7(7) should be removed from the Community Engagement 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.

⁹ Environmental Defenders Office, ‘Submission on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance) 2026’, (29 May 2025), available at: [Submission on the exposure draft of the National Environmental Standard \(Matters of National Environmental Significance\) 2026 - Environmental Defenders Office](#). See pages 9-12.

5. Provisions that undermine the detailed requirements in the Principles should be removed, as they mean those requirements don't actually need to be met

38. In general, EDO supports all four Principles set out in the Community Engagement Standard, including that the Principles are appropriately connected to the Outcomes and Objective.
39. We are however concerned that as drafted, a proponent can avoid the detailed elements of the Community Engagement Standard, and simply undertake engagement in a way they consider appropriate. Each of the four Principles in the Community Engagement Standard includes what the draft Policy Position Paper describes as “mandatory steps” (these are generally the first three subsections of the Principle, except for Principle 3), and then what the Policy Position Paper describes as “optional steps”, which are more detailed steps intended to be followed in order to achieve the mandatory steps.
40. For example, Principle 3, subsection (1) requires that engagement on a proposal is undertaken in a way that ensures the privacy of persons providing input is protected. Principle 3, subsection (2) then steps out how this can be done, for example by providing information about how data and information will be collected, recorded, stored, used and disclosed. A person applying the Community Engagement Standard (usually the proponent) can either undertake engagement in accordance with the “optional steps”, or in some other way and simply provide “other evidence” that demonstrates the engagement meets that Principle.
41. This creates uncertainty for both proponents and the public in understanding exactly what is required by the Community Engagement Standard. It also creates more discretion for decision making in determining whether the Community Engagement Standard has been met. This is at odds with the purpose of the Standards, which is to create clear and objective benchmarks and boundaries for decision making.
42. Please see **Appendix A** for a full marked up version of the Community Engagement Standard which shows the removal of this section for each Principle.

Recommendation 7: Each Principle of the Community Engagement Standard should remove the “other evidence” pathway which only requires the person undertaking the engagement to provide “other evidence” to demonstrate consistency with the Standard. This would require the person undertaking the engagement to instead act consistently with the detailed, clear steps prescribed under the “optional step” (which would make this mandatory).

Please see **Appendix A** for a full marked up version of the Community Engagement Standard which shows the removal of the relevant section for each Principle.

6. Principle 1 should be strengthened by referring to timing of engagement

43. Principle 1 at section 8 requires that “Engagement is carefully planned, considerate, clear and adaptable”. Subsection 8(1) then sets out that “engagement on a proposal must be planned with regard to...” and lists three important considerations, including how the public can be made aware of the purpose of the engagement.

44. We recommend the addition of a subsection 8(1)(d), to require that engagement on a proposal must also be planned with regard “to the timing of the engagement, which must be early in the assessment process and ongoing”. To assist with interpretation of “timing of the engagement”, we recommend a note be inserted which ensures consideration is given to holiday periods and public holidays.
45. To ensure genuine and meaningful engagement, it is important that community participation commences early in the design and assessment stages of a project. Community members should be given adequate time for their own deliberation and decision-making processes to occur, to support their proper participation in EPBC Act decision making processes.

Recommendation 8: A new subsection 8(1)(d) should be added to Principle 1 – *Engagement is carefully planned, considerate, clear and adaptable*, to require that engagement on a proposal must also be planned with regard “to the timing of the engagement, which must be early in the assessment process and ongoing”. To assist with interpretation of “timing of the engagement”, we recommend a note be inserted which ensures consideration is given to holiday periods and public holidays.

Please see **Appendix A** for a full marked up version of the Community Engagement Standard which shows this addition.

7. Application of the Community Engagement Standard should be clarified, and should be applied for both approval decisions and pathway decisions

46. On its face, it is unclear exactly how and when the Community Engagement Standard will be applied in decision making. For example, it is unclear whether the proponent will be required to act consistently with the Community Engagement Standard at the beginning of project design (i.e. pre-referral), in order for the decision-maker to be satisfied the action is consistent with the Standard, and therefore can be approved.
47. Notably, the Policy Position Paper states “[the Standard] will apply to approval decisions”.¹⁰ We are concerned this excludes decisions regarding what pathway a project will be assessed and approved under the Act, as the reformed EPBC Act now includes additional pathways. We recommend the Community Engagement Standard be prescribed to both approval decisions *and* decisions regarding which EPBC pathway a proposal will be assessed and approved under.
48. In particular, it must be clarified that the Community Engagement Standard applies as a condition of eligibility for the streamlined assessment pathway. Appendix B of the Policy Position Paper states “To be assessed under the streamlined assessment pathway, a proponent will need to be able to provide evidence of engagement that meets the Principles of the [Community Engagement] Standard at the time of referral”.¹¹ Given the streamlined assessment pathway allows proponents to provide upfront information about their project to be eligible to fast-track their application at the time of referral, it follows the

¹⁰ Policy Position Paper, page 17.

¹¹ Ibid.

decision-maker would consider how the proponent applied the Community Engagement Standard pre-referral, when making a decision about the assessment pathway. To be eligible for the streamlined assessment pathway, it must be a prerequisite that a proponent has undertaken engagement consistent with the Community Engagement Standard at the pre-referral stage.

49. We also note that the Community Engagement Standard is drafted for proponent-led approval applications. Similar principles should also underpin government engagement, including where consultation is required under the Act. This includes, for example, government decisions around conservation planning.

Recommendation 9:

- (a) The Community Engagement Standard must be prescribed to both approval decisions *and* decisions regarding which EPBC pathway a proposal will be assessed and approved under.
- (b) To be eligible for the streamlined assessment pathway, it must be a prerequisite that a proponent has undertaken engagement consistent with the Community Engagement Standard.
- (c) Similar Principles under the Community Engagement Standard should underpin other government engagement as required under the EPBC Act, including for decisions around conservation planning.

*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 Community Engagement Standard



EXPOSURE DRAFT

National Environmental Standard (Community Engagement) 2026

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

Dated

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

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1 Name

This instrument is the *National Environmental Standard (Community Engagement) 2026*.

2 Commencement

- (1) Each provision of this instrument 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 instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

3 Authority

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

4 Definitions

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

- (a) action
- (b) bioregional guidance plan
- (c) bioregional plan
- (d) impact
- (e) management and authorisation framework
- (f) NOPSEMA management and authorisation framework

In this instrument:

Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

affected persons means persons whose interests will, or are likely to be, affected by the proposal, including ~~that are affected or potentially affected by a proposal~~ because of their geographical proximity to the site of the proposal.

engagement means a planned consultation in which a person seeks input or feedback from the public to inform a proposal. ~~To be meaningful, engagement must be genuine, respectful, timely, focused and proportionate engagement, whereby community views are considered, inform the final decision and are~~

Commented [A1]: Definition of affected persons needs to be broadened so that where the Standard appropriately requires engagement with a subset of the public, it is not overly restricted.

Commented [A2]: Definition of engagement needs to be strengthened so that it refers to meaningful engagement in accordance with Objective

responded to (including whether community views have been incorporated and if not, why not).

proposal means a proposed action or class of actions.

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.

relevant persons means **affected persons**, relevant stakeholder groups and organisations, relevant community leaders and relevant experts.

5 Objective

The objective of this standard is to ensure decisions made under the Act relating to the protection and management of protected matters are supported by meaningful engagement and co-operation between **project proponents**, government, the community, landholders and Indigenous persons, and to assist in the cooperative implementation of Australia's international obligations.

6 Outcomes

The following outcomes of this standard are intended to **promote achieve** the objective in section 5:

- (a) **early and ongoing participation input** from the public is sought in relation to decisions under the Act to facilitate improved outcomes for protected matters and support ecologically sustainable development.
- (b) the processes for, findings of and responses to engagement are transparent and recognised in decisions made under the Act.
- (c) inclusive and respectful engagement builds confidence, **public** trust and accountability in decisions made under the Act.

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) A decision-maker may be satisfied that a decision to approve the taking of an action, taking account any conditions to be attached to the approval, is consistent with this standard if:~~

- ~~(a) there has been engagement undertaken on the proposed action; and~~
- ~~(b) that engagement is consistent with the principles in this standard.~~

~~(3) A decision-maker may be satisfied that a decision to approve the taking of an action or class of actions in accordance with an endorsed policy, plan or program, taking account any conditions to be attached to the approval, is consistent with this standard if:~~

- ~~(a) there has been engagement undertaken on the proposed action or class of actions to be taken in accordance with the endorsed policy, plan or program; and~~
- ~~(b) that engagement is consistent with the principles in this standard.~~

Commented [A3]: Where the Standard requires the proponent to give particular consideration to a subset of the public (i.e. broader than affected persons), it should do so consistently by referring to 'relevant persons'. This ensures all relevant persons are captured, and does not inappropriately exclude the general public. Subsequent amendments below demonstrate where this term should be used.

Commented [A4]: The Policy Position Paper refers throughout that "proponents must" do certain things consistent with the Standard e.g. 'proponents must plan their engagement with consideration given to... etc'. This requirement of proponents specifically is not adequately reflected in the draft Standard.

Further, the Policy Position Paper states: "Consistency with the CE Standard will be achieved when the proponent, responsible person, or a Commonwealth minister or a state/territory government, demonstrates that their engagement is consistent with the Principles, and therefore the Outcomes and Objective of the CE Standard." (Emphasis added)

Commented [A5]: This should be amended to frame the outcomes as achieving the objective, rather than promoting the objective. This would shift the framing to be more outcomes-focused (e.g. achieving the Objective) rather than process-focused, and would be consistent with the language in section 514YD of the EPBC Act.

Commented [A6]: "Input" does not connote genuine opportunity for members of the public to be involved in environmental decision-making. "Early and ongoing participation" implies more active involvement from the public, and ensures that proponents must start engaging at the beginning of and then throughout the planning process.

Commented [A7]: This addition would make it clear that building broad, public trust in environmental decision-making is a key purpose of the CE Standard, as was raised in the Samuel Review.

- ~~(4) A decision-maker may be satisfied that 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 the standard if this framework requires:~~
- ~~(a) engagement to be undertaken on any action or class of actions proposed to be approved under the management or authorisation framework; and~~
 - ~~(b) that engagement to either:~~
 - ~~(i) be consistent with the principles in this standard; or~~
 - ~~(ii) meet requirements that are equivalent in effect to the principles in this standard.~~
- ~~(5) A decision-maker may be satisfied that a NOPSEMA management or authorisation framework is not inconsistent with this standard if the framework requires:~~
- ~~(a) engagement to be undertaken on any action proposed to be approved under the NOPSEMA management or authorisation framework; and~~
 - ~~(b) that engagement to either:~~
 - ~~(i) be not inconsistent with the principles in this standard; or~~
 - ~~(ii) meet requirements that are equivalent in effect to the principles in this standard.~~
- ~~(6) A decision-maker may be satisfied that making or varying a bioregional plan is consistent with this standard if:~~
- ~~(a) there has been engagement undertaken on the proposed priority actions to be taken under the bioregional plan; and~~
 - ~~(b) that engagement is consistent with the principles in this standard.~~
- ~~(7) A decision-maker may be satisfied that making or varying a bioregional guidance plan is consistent with the standard if:~~
- ~~(a) there has been engagement undertaken on the proposed bioregional guidance plan; and~~
 - ~~(b) that engagement is consistent with the principles in this standard.~~

Commented [A8]: Deletion of 7(2) -7(7) is crucial, otherwise the outcomes and objectives have no effect.

8 Principle 1—Engagement is carefully planned, considerate, clear and adaptable

- (1) Engagement on a proposal must be planned with regard to:
- (a) how the public can be made aware of the purpose of the engagement;
 - (b) the level of information available on the proposal;
 - (c) the level of influence the public can have on the proposal.
 - (d) the timing of the engagement, which must be early in the assessment process and ongoing.

Note 1: For (1)(d) in determining the timing of the engagement, consideration must be given to holiday periods and public holidays, which should not be counted in what is decided as the period of engagement. Holiday periods are Christmas Day until New Year's Day (December 25 – January 1) and Easter (Good Friday to Easter Monday in April) and other extended holiday periods throughout the year.

Commented [A9]: To ensure genuine and meaningful engagement, it is important that consultation and participation of the community commences early in the design and assessment stages of a project. Community members should be given adequate time for their own deliberation and decision-making processes to occur, to support their proper participation in EPBC Act decision making processes.

- (2) Engagement on a proposal must include an invitation to comment on the proposal that is published in a publicly accessible location and allows a reasonable period to comment on the proposal.
- (3) The person undertaking the engagement must monitor the effectiveness of engagement and adapt engagement activities as needed.
- (4) Engagement on a proposal will be consistent with (1), (2) and (3) if either:
 - (a) the engagement meets all of the following:
 - (i) the engagement is the subject of an engagement plan that includes information on:
 - (A) the background of the project;
 - (B) the purpose of the engagement;
 - (C) any data and research relevant to the proposal;
 - (D) the level of influence the public can have on the outcome;
 - (E) how the engagement is proposed to be undertaken, including timelines for engagement;
 - (F) how the engagement is inclusive and accessible;
 - (G) how the outcome of the engagement will be reported;
 - (ii) the engagement plan is published in a location that is publicly accessible, unless it is inappropriate to do so;
 - (iii) the engagement includes an invitation for the public to comment on the proposal that is open for a period that is reasonable for the proposal and is no less than 10 business days;
 - (iv) the person undertaking the engagement regularly assesses progress and outcomes of the engagement against the engagement plan;
 - (v) the person undertaking the engagement documents any feedback received on the engagement process and, where appropriate, what steps have been taken to adapt the engagement in response to this feedback; or
 - ~~(b) the person undertaking the engagement has provided other evidence that demonstrates the engagement meets (1), (2) and (3);~~

Note 24: For (8)(2) and (4)(a)(ii), an example of a location that is publicly accessible is a publicly available website (including, but not limited to, the Department's website). Other examples may include newspapers, posters, websites, and social media.

Note 32: For (4)(a)(iii), in deciding what period is reasonable for the proposal, consideration should be given to the volume and complexity of the information available on the proposal.

9 Principle 2—Engagement is transparent, accountable and responsive

- (1) Engagement on a proposal must allow the public to understand the proposal and provide informed and relevant input.
- (2) The person undertaking the engagement must be transparent about where and how input from the public has influenced the planning and design of the proposal, while upholding privacy considerations.
- ~~(3) Engagement on a proposal should support a two-way dialogue with the affected persons.~~
- (4) Engagement on a proposal will be consistent with (1), (2) and (3) if either:

Commented [A10]: This provision (replicated below in the other Principles), undermines the detailed requirements in the Principles, and should be removed.

Commented [A11]: Unclear what two-way dialogue means. If it is about responding and incorporating feedback from engagement, this could be addressed by changing definition of engagement as above. 'Two-way dialogue' is also a tautology.

- (a) the engagement meets all of the following:
- (i) the person undertaking the engagement ensures that accurate, objective and comprehensive information about the proposal is included in the invitation for public comment, including information about:
 - (A) the location and scope of the proposal;
 - (B) a description of the activities proposed;
 - (C) any proposed timelines and key milestones, including the proposed duration of the proposal;
 - (D) the potential impacts of the proposal on protected matters;
 - (E) ~~relevant persons stakeholder groups, including any affected persons identified;~~
 - (ii) unless the person undertaking the engagement reasonably believes it is inappropriate to do so, that person ~~discloses to the public:~~
 - (A) ~~discloses~~ the information sources underpinning decisions relevant to the proposal, including methodologies and assumptions, ~~to the public;~~ and
 - (B) ~~shares~~ relevant environmental performance and compliance outcomes, and monitoring results, ~~with affected persons;~~
 - (iii) the person undertaking the engagement provides to the decision-maker a summary of input received from the public about the proposal, including information on what (if any) input is being used to inform any adjustments to the planning and design of the proposal;
 - (iv) the person undertaking the engagement:
 - (A) provides affected persons with appropriate ways to contact the person about a proposal and the engagement process;
 - (B) responds promptly to any queries received from affected persons about the proposal and the engagement process;
 - (C) where appropriate, offers follow-up conversations to discuss concerns relevant to a proposal; or

Note : For (4)(a)(iv)(A), an example of an appropriate way to contact the person about a proposal and the engagement process is through an email inbox facility that can be monitored and used to respond to affected persons.

~~(b) the person undertaking the engagement has provided other evidence that demonstrates the engagement meets (1), (2) and (3).~~

Commented [A12]: Per comment above, where the Standard requires the proponent to give particular consideration to a subset of the public (i.e. broader than affected persons), it should do so consistently by referring to 'relevant persons'

Commented [A13]: This type of information can be publicly shared - there's nothing that makes it obvious it should only be shared with affected persons, and is important to share with the public for transparency.

10 Principle 3—Engagement is ethical and protects privacy

- (1) Engagement on a proposal must be undertaken in a way that ensures the privacy of persons providing input is protected.
- (2) Engagement on a proposal will be consistent with (1) if either:
 - (a) the engagement meets both of the following:
 - (i) the person undertaking the engagement ensures the invitation to comment on a proposal includes the following information:
 - (A) the type of data and information that is being collected, including whether it includes personal information;
 - (B) the reasons why the particular data or information is being collected;

- (C) how data and information will be collected, recorded, stored, used and disclosed;
- (D) that the provision of data or information is voluntary and the participant has the right to withdraw at any time without providing a reason and without any consequences for the participant;
- (E) how and when the information will be destroyed; and
- (ii) when collecting, recording, storing, using or disclosing data or information provided during the engagement, the person undertaking the engagement:
 - (A) obtains informed consent from the participant;
 - (B) de-identifies and summarises any input that was acquired during the engagement before such data and information is published;
 - (C) only uses any contact details provided by a participant for the purposes agreed to during the engagement process;
 - (D) stores data and information provided during the engagement securely including, where appropriate, with password protection;
 - (E) avoids unnecessarily duplicating data and information provided during the engagement; or

~~(b) the person undertaking the engagement has provided other evidence that demonstrates the engagement meets (1).~~

11 Principle 4—Engagement is accessible and supports inclusivity

- (1) Engagement on a proposal must be undertaken in a way that ensures it is accessible to the public, including people from culturally and linguistically diverse backgrounds, and allows such persons to understand the proposal and its potential impacts on protected matters.
- (2) Engagement on a proposal must be undertaken in a way that allows all **interested** persons ~~that may be interested in the proposal~~ to provide comment on the proposal.
- (3) Engagement on a proposal must involve active attempts to overcome barriers to participation in the engagement.
- (4) Engagement on a proposal will be consistent with (1), (2) and (3) if either:
 - (a) the engagement meets both of the following:
 - (i) the person undertaking the engagement ensures the information relating to the proposal that is provided to a person as part of the engagement, including in the invitation to comment on the proposal, meets the following:
 - (A) information is provided in clear, user-friendly formats (for example, simple and appropriately sized fonts, and logical structure);
 - (B) the information is provided using plain English;
 - (C) the information is provided using non-technical and jargon-free language, where appropriate;

Commented [A14]: The term 'Interested persons' is used in section 475 of the EPBC Act (injunctions for contraventions of the Act), and using the same term here might cause confusion. We suggest slightly rewording to avoid any unintended confusion, by adopting the wording from section 11(4)(ii)(B) of this Standard.

- (D) translated versions of the information are provided, where appropriate; and
- (ii) the person undertaking the engagement:
 - (A) uses an online engagement method and includes this method in the invitation to comment on the proposal;
 - (B) clearly identifies the ~~different stakeholders and types of community leaders~~ relevant persons that may be interested in the proposal;
 - (C) ensures that any relevant under-represented groups and affected persons are included in the engagement;
 - (D) where in-person venues are used as part of the engagement – selects in-person venues that are physically and logistically accessible;
 - (E) uses alternative communication methods in areas with low internet connectivity (for example, posters, newspapers, and mailbox drop); or

~~(b) the person undertaking the engagement has provided other evidence that demonstrates the engagement meets (1), (2) and (3).~~

Commented [A15]: Per comment above, where the Standard requires the proponent to give particular consideration to a subset of the public (i.e. broader than affected persons), it should do so consistently by referring to 'relevant persons'