

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

The World Wide Fund for Nature-Australia (WWF-Australia) welcomes the opportunity to provide comment on the Draft National Environmental Standard (Matters of National Environmental Significance) 2025 legislative instrument and policy paper.

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to 'stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature'. WWF-Australia has offices around Australia and is backed by our 1.2 million supporters.

Summary of Recommendations

1. Include a legally enforceable measurable outcome in the Standard, as recommended by the Samuel review³. (p.3)
2. Rewrite the objectives and outcomes sections as precise, directive outcome-based statements that guide decisions, rather than describe the intent of the standard. Remove terms such as 'provide for' and 'contribute to'. (p.4)
3. Add an objective (or outcome) for protected matters to improve the integrity, connectivity and climate-resilience of MNES at the landscape level and assist the achievement of national restoration and protection targets. (p.5)
4. Remove outcome 3 'Decisions facilitate ecologically sustainable development' and include text as a principle. (p.5)
5. Remove discretionary language from Principle 1, including the terms 'appropriately consider' and 'if possible' and clarify that avoidance will need to be demonstrated (including in site selection), consistent with p. 12 of the Policy Paper. (p.5)
6. Include a requirement to consider the cumulative impacts of all projects. (p.6)
7. Require compensation to result in absolute net gain (using a fixed baseline), to be applied to all residual impacts on protected matters. (p.6)
8. Include a new principle that embeds inclusive governance with First Nations peoples throughout all processes and actions guided by the Standard, reinforcing Free Prior and Informed Consent and equitable benefit-sharing. (p.7)
9. Include a new principle to ensure decisions facilitate ecologically sustainable development, and the application of the precautionary principle (See also Recommendation 3). (p.7)

10. Include a new principle to ensure all actions, decisions, plans and policies are consistent with statutory documents, instruments and international obligations. (p.7)
11. Include a new principle to ensure regulatory performance in achieving the outcomes will be regularly reported to ensure the Standards build community trust in decision-making. (p.8)
12. Set out the requirements for a system of monitoring, reporting and evaluation to demonstrate compliance with this national environmental standard. (p.8)
13. In reference to the 'Proposed application of the MNES standard' in the policy paper, remove the terms 'satisfied that' and replace 'not inconsistent with' with 'consistent with' throughout. (p.9)
14. Clarify that approval decisions made under accredited processes must result in the outcomes described by the MNES Standard, and that compliance with this requirement is the responsibility of the NEPA. (p.9)
15. Remove options for the Minister to 'have regard to' Standards from the policy paper and instead rely on decisions 'must be consistent with' the Standard. (p.11)

Context

Nature is essential to our well-being and survival. It provides the air we breathe, the water we drink and the food we eat. Nearly half of our \$900 billion GDP depends on nature,¹ so a healthy natural environment is critical to our prosperity as a nation. But nature is being destroyed. The 2021 State of the Environment report sets out in detail this picture of accelerating species extinctions and failing environmental protections with most biodiversity indicators declining.²

Released in 2021, the Independent Review of Australia's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) led by Professor Graeme Samuel (the Samuel Review) found that 'Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. The EPBC Act is ineffective. It does not enable the Commonwealth to effectively protect environmental matters that are important for the nation.'³

As the Draft National Environmental Standard (Matters of National Environmental Significance) 2025 policy paper states 'the Review found that under the current EPBC Act decision-making requirements are not focused on outcomes for Matters of National Environmental Significance (MNES) and allow considerable discretion by the Minister'.

The topline message of the Samuel Review was that National Environmental Standards would enable the Commonwealth to rebuild trust and 'step up its efforts to deliver nationally important outcomes for the environment by setting clear outcomes through new, legally enforceable Standards ... [and] taking an adaptive approach, through better planning, measuring the effectiveness of implementation and adjusting where needed to achieve outcomes'.³

In late 2025 the Australian Government passed amendments to the EPBC Act which included the power for the Minister to make National Environmental Standards and apply them to certain decision-making under the Act. WWF and other groups have long advocated for National Environmental Standards to improve decision-making and welcomed these reforms, particularly the inclusion of a non-regression clause in the standards making framework. We have also encouraged the government to release drafts of the standards, alongside reforms so they could be made into legally enforceable instruments early in 2026. We therefore appreciate that two of the draft standards were available prior to the legislative reform bills being passed, and that the Minister for the Environment has committed to consulting on a First Nations Engagement Standard early in 2026.

In terms of the draft MNES Standard, the intent as set out in the objectives is positive and the inclusion of habitat and related concepts in the relevant protected matters objectives is welcomed. The inclusion of the mitigation hierarchy steps is also useful.

However, the MNES Standard as drafted fails by not providing a clear measurable statement of outcome to be achieved. As drafted it will not deliver on its intent to protect nature.

Comments on the draft legislative instrument

The MNES Standard Outcomes and Objectives

Overall, the MNES Standard is not enforceable as it does not include measurable outcomes, and the language is too discretionary. Below we provide alternative language and rationale for the needed changes.

Recommendation 1. Include a legally enforceable measurable outcome in the Standard, as recommended by the Samuel review.³

The draft MNES Standard currently falls short of what is needed to pivot to the “outcome-focused law” recommended by the Samuel Review. Samuel’s recommended MNES Standard (appended to the final report) had a measurable outcome, as did the MNES Standard that was developed under the previous term of government that was last consulted on in March 2024. Measuring the performance of decisions against a clear outcome ensures cumulative impacts are considered – key rationale for the Samuel Review recommending the use of standards to constrain decision-making.

The draft standard Samuel proposed described the outcome as ‘Matters of national environmental significance are protected and enhanced, and decision-making actively contributes to improvements in their conservation and management’.³ That outcome is measurable and clear. However, there are no measurable outcomes articulated in the draft 2025 MNES Standard and thus no mechanism to ensure decisions contribute to those outcomes. Suggested language that articulates a measurable outcome could include, for example:

- Matters of national environmental significance are protected and decision-making actively contributes to their conservation and recovery.
- Decisions result in absolute net gain for all Matters of National Environmental Significance

Though elements of the outcomes may be outside of the direct control of individual approval decisions, this does not mean that they are external to the implementation of the Act. In keeping with the recommendations of the Samuel Review, the Standards should apply not only to approval decisions, but also to policies, conservation planning, regional planning, and accreditation. Regardless of if the government wishes to apply the Standards to all activities (as recommended by the Samuel Review), or simply to prescribed decisions, measuring outcomes holistically will increase the utility of the MNES Standard in determining whether an unacceptable impact is likely. That is, the Standard can be applied to test if a decision to approve a proposed development can still deliver the outcome of protecting and recovering MNES. Although conditions such as climate change will indeed affect the trajectory of many species and places, decisions by the regulator need to be sensitive to these and other cumulative pressures.

The complexity of interacting threats often makes it difficult to attribute ecological outcome changes to particular actions (e.g. approval decisions); however this does not make it any less important to measure these outcomes. In fact, the siloing of decision-making from the broader system has led to the EPBC Act's poor performance. Measuring outcomes in the context of wholistic pressures on each MNES will account for cumulative impacts on impacted MNES and ensure the Act delivers more ecologically sustainable development (ESD). This is why a measurable outcome is so critical – see recommendation 1 above – not just for assurance and enforcement, but to address cumulative impacts.

Recommendation 2. Rewrite the objectives and the outcomes sections as precise, directive outcome-based statements that guide decisions, rather than describe the intent of the standard. Remove terms such as 'provide for' and 'contribute to'.

Professor Samuel recently stated that:

The Standards, to be developed in 2026, must be granular in their detail, avoiding the use of discretionary or judgmental terms ... Such terms are replete in the current EPBC Act. The Standards must leave no doubt in the minds of development proponents, conservationists and regulators as to their meaning and application. To be otherwise drafted, invites inconsistent decisions, uncertainty and legal challenges.⁴

The 2025 MNES Standard, as currently drafted, invites this uncertainty.

Part 6 of the draft legislative instrument (page 4) states:

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

There are two problems with the way this is drafted.

Firstly, the drafting describes what the intent of the Standard is but does not actually guide decisions. Hence the words in (1) above, i.e. "The outcomes which this Standard is intended to achieve are that decisions under the Act:....." deliver (a), (b) and (c) speak to the intent, whereas if this was changed to read simply "(1) Decisions under the Act:....." deliver (a), (b) and (c) this would actually guide decisions which is the whole purpose of the standard. The wording of the objectives is similarly vague and needs to be re-worded to actually guide decisions.

Secondly the qualifying phrases in (1) above 'provide for' and 'contribute to' (underlined above) introduce uncertainty. Without these phrases we can measure if MNES are protected, or if abundance is enhanced. However, it is unclear how we would measure if the 'outcome' of 'providing for the protection of' or 'contributing to the promotion and enhancement of the diversity' of protected matters is being achieved.

To be legally enforceable the Standard requires the use of clear, directive language. Alternative language based on the draft instrument that is more precise for example would be:

- decisions under the Act ensure that MNES are protected and recovered.

Recommendation 3. Add an objective (or outcome) for protected matters to improve the integrity, connectivity and climate-resilience of MNES at the landscape level and assist the achievement of national restoration and protection targets.

Although many decisions under the Act will be related to individual projects, it is important that the outcomes set by this Standard, including specific objectives for protected matters, have regard to broader landscape objectives and targets. The Australian Government has set targets in its Strategy for Nature in response to Global Biodiversity Framework commitments, including for landscape restoration and protection of representative ecosystems on land and sea. Implementation of these targets will progressively include spatial and other plans to guide this work. The Standard needs to reflect this, so decisions, particularly those relating to bioregional or landscape scale actions (including accreditation processes) assist in the delivery of these targets and avoid undermining them.

Recommendation 4. Remove outcome 3 'Decisions facilitate ecologically sustainable development' and include text as a principle.

The proposed outcome 3 'decisions facilitate ecologically sustainable development' is not appropriate to include as an outcome as it is more about a process. It could be a useful principle but is not an outcome for a MNES.

In setting out the draft National Environment Standard for MNES Samuel stated that 'The environmental outcomes articulated in the National Environmental Standards are the national intent for the protection and conservation of MNES'. The actual draft standard Samuel proposed described the outcome as 'Matters of national environmental significance are protected and enhanced, and decision-making actively contributes to improvements in their conservation and management'. These are outcomes for MNES, whereas ecologically sustainable development is how we go about getting there.

The MNES Standard Principles

In this section we make six points regarding the principles section of the standard, each with a recommendation for improvement (Recommendations 4-9).

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

Recommendation 5. Remove discretionary language from Principle 1, including the terms 'appropriately consider' and 'if possible' and clarify that avoidance will need to be demonstrated, consistent with p. 12 of the Policy Paper.

The words 'appropriately consider' should be removed from the draft Standard. It should be clear that the mitigation hierarchy must be demonstrably applied.

Avoidance is the first and most important step in the mitigation hierarchy. The Standard could be used to better operationalise avoidance. The Standards should more explicitly emphasise that avoidance starts with site selection (some sites are simply unsuitable for the intended use). Site selection needs to consider environmental impact, and poor site selection should not be a reason as to why avoidance is not possible. For example, the Standard could require that developments are Nature Positive¹ - which could direct developers to Global Standards and Frameworks to assess site suitability and would provide extra incentives to avoid and minimise impacts. The

¹ Nature Positive is a global goal - the intended state of the world's biodiversity and ecosystems—as a result of effective implementation of the Global Biodiversity Framework. Nature-Positive therefore means halting and reversing Nature loss by 2030, measured from a baseline of 2020.

standard should state that the financial cost of avoiding must not be considered an appropriate reason to move down the hierarchy.

We note that the definition of 'avoid' in the Policy Paper (page 12) is given as 'demonstrated measures taken to anticipate and prevent adverse significant impacts to protected matters'. WWF-Australia strongly supports the definition and support the proposed updating of regulations to outline the information needed to demonstrate that the mitigation hierarchy has been appropriately applied. The Standard should be clear that decision-makers require the provision of genuine and demonstrated steps taken to avoid and minimise impacts.

The term 'if possible' should be removed from Step 1 (page 4) of the Draft MNES Standard, to reduce the likelihood this will be simply a box-ticking exercise.

Principle 2 – Actions appropriately consider impacts to protected matters.

Recommendation 6. Include a requirement to consider the cumulative impacts of all projects.

The Standard should clarify that cumulative impacts must be considered for each project approval, as not all projects will be subject to landscape scale assessment. The Samuel Review was clear on this matter:

'For the purpose of the EPBC Act to be achieved, cumulative impacts on the environment need to be addressed'.

Whilst landscape scale planning was one of the Review's proposed solutions, this focussed on Regional Recovery Planning as the first step. Given that the Australian Government has not yet committed to developing Regional Recovery Plans it is premature to jump to greater use of Strategic Plans or accreditation, and the need to assess the cumulative impact of each project remains.

Assessment of cumulative impacts requires good data and a system that can adjust according to material changes in information. Environment Information Australia (EIA) (and the Department of Climate Change, Energy, the Environment and Water) must be adequately resourced to significantly improve the information available to proponents, decision makers and the public. As the Review noted 'The Department's systems for information analysis and sharing are antiquated ... Improved data and information will improve the efficiency of setting clear outcomes, effectively planning to deliver them, and regulating to achieve them'.

Likewise, conservation planning – including the assessment, listing and updating of threatened species and communities, the preparation and regular review of recovery plans (and protection statements), and the description and mapping of critical and irreplaceable habitat – must be much better resourced so that important scientific information can inform better assessment decisions that consider cumulative impact. Advances in modelling capability are not being used and should be harnessed to support this.

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

Recommendation 7. Require compensation to result in absolute net gain (using a fixed baseline) to be applied to all residual impacts on protected matters.

The need for the mitigation hierarchy to be applied, starting with avoidance, should be re-emphasised here. Guidance to ensure that offsets are feasible and available for any impacts that are not able to be avoided or mitigated should also be emphasised.

The current definition of net gain will continue to facilitate the decline of protected matters, as it is predicated on a declining baseline. The definition should be of *absolute* net gain, which uses a fixed baseline, and can lead to actual recovery of protected matters over time. Additionally, if the reforms are to provide for a net gain that leaves the environment better off - a worthy aim promoted by the Minister for the Environment - this must be applied to all residual impacts on protected matters as a consequence of the development, not just significant residual impacts. The fact that impacts on protected matters will not be fully addressed is inconsistent with the objects of the Act and the principles of ESD.

Recommendation 8. Include a new principle that embeds inclusive governance with First Nations peoples throughout all processes and actions guided by the Standard, reinforcing Free Prior and Informed Consent and equitable benefit-sharing.

As part of *Principle 4: Appropriate evidence, first nations engagement and consultation*, the MNES Standard recognises the need to consult with First Nations people and provide opportunities to contribute their knowledge. The proposed First Nations engagement standard is likely to define how this engagement is to occur. However, this is too limited and needs to reflect the importance of inclusive governance more generally, which is broader than just consultation and respect for knowledge, and be clearly reflected in the MNES Standard. This needs to include consideration of benefit sharing and must embed Free Prior and Informed Consent as a fundamental requirement, irrespective of how that may be subsequently addressed in a First Nations Engagement standard.

Including it here will also ensure it is a requirement of all processes and actions guided by the Standard including accreditation arrangements, strategic assessments, conservation planning and specific decisions and actions taken under the EPBC Act. It also reflects the objects of the Act, including 'to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity'.

It should therefore be expanded beyond the text in principle 4 and elevated to its own principle.

Recommendation 9. Include a new principle to ensure decisions facilitate ecologically sustainable development, and the application of the precautionary principle (see also Recommendation 4).

As discussed above, remove outcome three and add as new principle. Suggested wording for this additional principle is: *Principle XX - Decisions facilitate ecologically sustainable development.*

Recommendation 10. Include a new principle to ensure all actions, decisions, plans and policies are consistent with statutory documents, instruments and international obligations.

An additional principle is required to ensure the outcomes and objectives of the Standard are achieved. The existing principles provide guidance but merely suggest that actions 'appropriately consider' impacts to protected matters (Principle 2). An additional principle must provide the clarity needed to set expectation and support uplifting the quality and consistency of decision-making.

Suggested wording for this additional principle is: *Principle XX - Actions, decisions, plans and policies are consistent with conservation advices, recovery plans, threat abatement plans and MNES management plans, and Australia's international obligations.*

Recommendation 11. Include a new principle to ensure regulatory performance in achieving the outcomes will be regularly reported, to build community trust in decision-making.

It is reasonable to expect the Standards to clearly articulate the actual outcomes that will be achieved through their regulatory use and how the Government will hold themselves to high standards of performance. Given the deficit of community trust in the implementation of the EPBC Act, an additional principle should be added to ensure that Standards will be used to build community trust in decision-making. This will require regular reporting of regulatory performance.

Suggested wording for this additional principle is: *Principle 7 – Regulatory performance in achieving the outcomes will be regularly reported to ensure the Standards build community trust in decision-making.*

Monitoring, reporting and evaluation

Recommendation 12. Set out the requirements for a system of monitoring, reporting and evaluation to demonstrate compliance with this national environmental standard.

A framework for measuring and publicly reporting against the environmental outcomes needs to be developed. It should include the ability to evaluate different mechanisms and protection arrangements to ensure that Standards are solving the problems they were designed to address. The Standard should articulate how reporting will occur, and who has responsibility for reporting. Currently neither the National Environmental Protection Agency (NEPA) nor EIA are required to collect information or report on the performance of the Standards. All detail regarding the monitoring, reporting and evaluation of the Standard should be included in the Standard itself.

The draft MNES Standard Appended to the Samuel Review (Appendix B1: Recommended National Environmental Standards for Matters of National Environmental Significance) includes a detailed descriptions of the monitoring and reporting element: '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'. Further details for what each monitoring and evaluation plan must cover are included. This provides a useful model to follow.

Comments on the Policy Paper

Proposed application of the MNES Standard

We strongly support the integration of the non-regression clause into the EPBC Act and the Standards, and that the Standards are to provide 'legally enforceable outcomes'.

However, the second paragraph on page two of the policy paper states that 'it is proposed that the Minister will only be able to approve an action if satisfied that doing so is not inconsistent with any prescribed National Environmental Standard'. We note that the application of National Environmental Standards will now have to meet a positive test of a decision being 'consistent with' rather than 'not inconsistent with' the Standards as a result of amendment of the reform bills in the Senate.

Recommendation 13. Remove the terms 'satisfied that' and replace 'not inconsistent with' with 'consistent with' throughout.

The discretionary test of the minister's 'satisfaction' remains in all decisions. This is too discretionary. The test needs to be that the action is consistent with the Standard, not that the decision maker is satisfied that it is. Additionally, the term 'not inconsistent with' is a looser test that is difficult to enforce and should be replaced by 'consistent with' throughout.

Accredited parties

We note that no mention is made of approval decisions made under accredited processes (page 3). The policy paper must be clear that approval decisions made under an accredited process must result in the outcomes intended to be achieved by the MNES Standard. The Samuel Review clearly stated:

Sound and durable accreditation processes are required to provide the Australian Parliament and community with confidence that accredited parties have the capacity and capability to meet the National Environmental Standards. The Review recommends that the accreditation process includes:

1) National Environmental Standards that define clear outcomes for matters of national environmental significance and for important processes, including:

a) National Environmental Standards established in law, binding decision-makers, including accredited parties. The decisions of parties operating or accredited under the EPBC Act cannot be inconsistent with the Standards.

2) Accreditation assessment that allows parties to transparently demonstrate that their systems meet National Environmental Standards and can be effectively audited'.

The Review noted that 'strong Standards need to be supported by strong and independent oversight of the performance of all parties ... including accredited arrangements to meet the Commonwealth's outcomes as prescribed in the Standards'.

Recommendation 14. Clarify that approval decisions made under accredited processes must result in the outcomes described by the MNES Standard, and that compliance with this requirement is the responsibility of the NEPA.

Key elements of the MNES Standard

In this regulatory setting, objectives should be the specific aims or performance goals the standards are designed to achieve. Outcomes are the actual, measurable results or real-world effects that occur as a consequence of the standards being applied using the described principles. We support the use of outcome-orientated goals described for each MNES however we feel that these 'objectives' might be easier to communicate if they are repurposed as

matter specific outcomes and clearly linked to overarching outcome(s) for the Standard. A program logic could be used to explain how the key elements work together to achieve the overall outcome.

Program logic – how the Standard’s key elements result in outcomes



| Inputs | Activities (Regulator applies the principles) | Matter Specific outcomes Outcomes of the decision using the Standard (Granular regulatory outputs) | Overarching outcome(s) Outcome of the Standard overall (Impacts of regulation) |
|--|--|--|--|
| <p>Quantum shift in available information including for example:</p> <ul style="list-style-type: none"> - Status of MNES (high confidence, regularly updated) - Critical habitat mapping - Irreplaceable habitat mapping/definition - Cumulative impact information / Predictive modelling | <p>Principle 1 - Apply the mitigation hierarchy</p> <p>Principle 2 etc</p> | <p>Threatened Species:</p> <p>Habitat, including critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for a threatened species to remain viable in the wild, is protected, conserved and restored to support the survival and recovery of the threatened species.</p> <p>Protection and recovery actions support the viability of threatened species in the wild.</p> <p>etc</p> | <p>Matters of national environmental significance are protected and decision-making actively contributes to their conservation and recovery.</p> <p>Decisions result in absolute net gain for all Matters of National Environmental Significance.</p> <p>etc</p> |

MNES Standard outcomes - content for the Standard

We support the reference to ‘recovery’ in point (a) to provide for alignment with the Object of the Act and international commitments.

As described in detail above, there is no mention of measurement, reporting or enforceability of outcomes. We strongly suggest these key features are referenced as elements the Samuel Review noted were fundamental to improving the outcomes of the EPBC Act.

Attachment A: Legislative settings for the MNES Standard

We do not support further entrenching ministerial discretion by providing for the Minister ‘to be satisfied’ that the action is consistent with any Standard or having an unacceptable impact (noting that the test is no longer ‘not inconsistent with’). The Samuel Review, and the Hawke Review a decade earlier, made it clear that discretion of this kind is a fundamental cause of the Act’s failure and that the Standards need to be enforceable. Making the application of Standards subject to ministerial discretion will undermine the enforceability of the Standards. Consistency with the Standards should be an objective test and a matter of law rather than opinion.

Ability to make Regulations

In making decisions specified by the regulations, the different ways in which the MNES Standard could apply should not include an option for the decision-maker to “have regard to” the Standards.

In practice the requirement to “have regard” to existing instruments in decision-making under the Act results in little more than a box-ticking exercise. This will simply perpetuate the current process-oriented approach criticised by reviews of the Act’s implementation. Decisions ‘must be consistent with’ the Standard to ensure the Standards are met and are enforceable.

Recommendation 15. Remove options for the Minister to ‘have regard to’ Standards from the policy paper and instead rely on decisions ‘must be consistent with’ the Standard.

Conclusion

It is difficult to see how the MNES Standard, as currently drafted, will not repeat historic issues. Adoption of our recommendations will rectify these issues, improve the Standard and provide the clear rules and outcome-based law central to the Samuel Review’s recommendations.

References

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<https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>
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