

Environment Law Reform Taskforce  
Department of Climate Change, Energy, Environment and Water  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600  
Via online portal  
Cc: [minister.watt@dcceew.gov.au](mailto:minister.watt@dcceew.gov.au)

30 January 2026

Dear Environment Law Reform Taskforce,

**RE: Submission on the draft Standard for Matters of National Environmental Significance**

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Commonwealth Government on the draft National Environmental Standard for Matters of National Environmental Significance (MNES).

ALCA represents organisations that work to conserve, manage, and restore nature on privately managed land. The conservation efforts of our 22 member organisations have influenced over 9.3% of Australia with more than 4,000 landholders; we have over 70,000 supporters and our combined annual turnover exceeds \$400 million.

Together, ALCA and our members address some of the most pressing conservation issues across the country, by restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance and funding, and using nature-based solutions to tackle climate change.

## Recommendations

ALCA's two key recommendations are that the Government should:

1. **Adopt the standard international and Australian State-based approach to the mitigation hierarchy** – i.e. avoid, **minimise**, restore/rehabilitate, offset – rather than continue to retain the Commonwealth's unorthodox approach as proposed in the draft Standard [also see Recommendations 3 and 5 below].
2. **Significantly improve the integrity requirements in the Standard**, as the current language in the Standard consistently reflects an elastic, 'low bar' approach to integrity [see detailed legislative amendments as recommended below].

## Detailed legislative amendments to the Standard

**PLEASE ALSO REFER TO ‘TRACK-CHANGED’ AMENDMENTS TO THE DRAFT STANDARD, AS ENCLOSED WITH THIS SUBMISSION.**

### Principle 1 – Actions appropriately consider the application of the mitigation hierarchy [section 8]:

3. Whilst recognising that the Commonwealth Government has a legacy of utilising a ‘mitigate’ step within its approach to the mitigation hierarchy, this is an unorthodox approach that is not aligned with the international standard for mitigation hierarchy nor with the approaches adopted in most Australian jurisdictions.

**Specifically, it erroneously – and tautologically – replaces the ‘minimise’ step with ‘mitigate’ – yet the whole hierarchy is intended to mitigate impacts, not just one step within that hierarchy.**

The International Union for Conservation of Nature (IUCN) is the international standard setter on conservation matters. Their Policy on Biodiversity Offsets<sup>1</sup> describes the mitigation hierarchy as follows:

#### Mitigation hierarchy

The mitigation hierarchy comprises:

- a. **Avoidance:** measures taken to avoid creating impacts from the outset, such as careful spatial or temporal placement of elements of infrastructure, in order to completely avoid impacts on certain components of biodiversity. This results in a change to a ‘business as usual’ approach.
- b. **Minimisation:** measures taken to reduce the duration, intensity and / or extent of impacts that cannot be completely avoided, as far as is practically feasible.
- c. **Rehabilitation / restoration:** measures taken to rehabilitate degraded ecosystems or restore cleared ecosystems following exposure to impacts that cannot be completely avoided and / or minimised.
- d. Compensation or **Offset:** measures taken to compensate for any residual significant, adverse impacts that cannot be avoided, minimised and / or rehabilitated or restored.

The mitigation hierarchy for the NSW Government’s biodiversity offset scheme, contained within section 6.3A of the *Biodiversity Conservation Act 2016* (NSW)<sup>2</sup> is as follows:

#### 6.3A Avoid, minimise and offset hierarchy

For the purposes of the biodiversity offsets scheme, the *avoid, minimise and offset hierarchy* is the principle that avoiding, minimising and offsetting the impacts of actions on biodiversity values be approached as follows—

- (a) the proponent of the action first takes all reasonable measures to avoid the impacts of the action on biodiversity values,
- (b) after taking all reasonable measures under paragraph (a), the proponent then takes all reasonable measures to minimise the impacts that have not been avoided,
- (c) having taken the measures under paragraph (b), the proponent then takes biodiversity conservation measures under the biodiversity offsets scheme to offset or compensate for any residual impact on biodiversity values.

<sup>1</sup> [https://iucn.org/sites/default/files/2022-06/iucn\\_biodiversity\\_offsets\\_policy\\_jan\\_29\\_2016\\_0.pdf](https://iucn.org/sites/default/files/2022-06/iucn_biodiversity_offsets_policy_jan_29_2016_0.pdf)

<sup>2</sup> <https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063#sec.6.3A>

Similarly, the mitigation hierarchy for the SA Government's native vegetation offset scheme within section 3(4) of the recently enacted *Biodiversity Act 2025 (SA)* is as follows:

- (4) For the purposes of this Act, a reference to the **mitigation hierarchy** is a reference to an order of priority to be applied in relation to the clearance of native plants as follows:
  - (a) **avoidance**—measures must be taken to avoid clearance of native plants;
  - (b) **minimisation**—if clearance of native plants cannot be avoided, measures must be taken to minimise the duration, intensity and extent of the impacts of the clearance on biological diversity to the fullest possible extent (whether the impact is direct, indirect or cumulative);
  - (c) **rehabilitation or restoration**—measures should be taken to rehabilitate ecosystems that have been degraded, and to restore ecosystems that have been destroyed, by the impacts of clearance of native plants that cannot be avoided or further minimised;
  - (d) **offset**—where required under this Act, any adverse impact on native plants or ecosystems that cannot be avoided or minimised must be offset by the achievement of a significant environmental benefit that outweighs that impact.

Other State jurisdictions provide further examples of standard mitigation hierarchies that have not adopted the Commonwealth's proposed approach.

**ALCA recommends the Commonwealth replace its novel approach to its mitigation hierarchy with the standard 'avoid, minimise, restore/rehabilitate, offset' approach.**

4. The draft Standard proposes that the mitigation hierarchy does not need to apply – only that it “*should*” apply. The mitigation hierarchy will not be effective if there is no requirement to adhere to it – the language must be “*must*” for the Standard to be consistent with the Objectives of the Act (as per the Parliament's will), the Outcomes detailed in section 6 of the draft Standard, and to achieve at least a reasonable and general standard of integrity for environmental protection legislation.

Note again that this “*must*” / robust integrity approach is the generally adopted approach in the mitigation hierarchies of State jurisdictions; ALCA recognises that “*must*” will not apply to the ‘avoid’ step in the hierarchy, as this would result in offsets never being able to proceed.

5. It is unclear why ‘repair’ – the Commonwealth's analogue for the usual ‘restoration/rehabilitate’ step in the mitigation hierarchy – explicitly precludes rehabilitation activities, unless it is simply the Government's intention to preclude activities that might already be required under Commonwealth or State/Territory statute (e.g. mine rehabilitation). Rehabilitation activities that are genuinely ‘additional’ should not be precluded from the final mitigation hierarchy.

*Amendments to effect Recommendations 3 through 5 overleaf.*

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To effect recommendations 3 through 5, Principle 1 in the Standard should be amended as follows [amendments in **bold**; note that the “*should*” is deliberately retained in section 8(4); also see amendments to Principle 3, further below]:

8 Principle 1—Actions appropriately ~~consider the application of~~ **apply** the mitigation hierarchy

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

- (1) Actions **should must** be planned and taken ~~having regard to~~ **in accordance with** the mitigation hierarchy provided for in this section.

*Step 1—Avoidance*

- (2) **If Where** possible, impacts to protected matters should be avoided by taking measures to anticipate and prevent significant impacts to protected matters before those impacts occur.

*Step 2—~~Mitigation~~ Minimise*

- (3) Where significant impacts to protected matters cannot be avoided, the impact **should must** be **mitigated minimised** through a demonstrated process of identifying and implementing measures to reduce significant impacts on protected matters.

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

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

*Step 3—Repair*

- (4) Following the application of any appropriate avoidance and **mitigation minimisation** measures, any repairable impacts on protected matters should be repaired as soon as possible and as close to its original condition as possible.
- (5) Repair will generally be a viable option only where:
- repair can be done in a timely manner; and
  - repair activities are feasible and sustainable in the long term for the protected matter.
- (6) Repair activities **should must** focus on the significantly impacted protected matter and **should** involve on-site works with specific goals for re-establishment of values-to reduce residual significant impacts.

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

*Step 4—Offset*

- (7) Following the application of any appropriate avoidance, **mitigation minimisation** and repair measures, appropriate measures **should must** be taken to compensate for any residual significant impacts associated with the action.

**Principles 2 and 3 [sections 9 and 10]:**

6. Further to key recommendation 2 and recommended amendments to Principle 1 (both above), the following uplift in integrity requirements should be legislated to sections 9, 10 and 11 [amendments in **bold**]:

9 Principle 2—Actions appropriately consider impacts to protected matters

In considering the nature, extent or severity of an impact on a protected matter, regard **should must** be had to the context in which the impact might occur.

...

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

Compensation for a residual significant impact ~~should generally~~ **must** only be considered after the prior steps in the mitigation hierarchy (avoidance, **mitigation minimisation** and repair) have been exhausted.

**Principle 4—Appropriate evidence, first nations engagement and consultation [section 11]:**

7. Further to key recommendation 2, there should be an uplift in integrity requirements in section 11.

Further, there should be consideration on how to legislate a requirement for Free, Prior, and Informed Consent ('FPIC') in this section (and as further detailed the DCCEEW's publication on *First Nations Engagement, the principles of Free, Prior and Informed Consent, Better practice engagement with First Nations communities and people*<sup>3</sup>).

The integrity amendments are in **bold** below:

11 Principle 4—Appropriate evidence, first nations engagement and consultation

**Where appropriate, Actions should must** be supported by appropriate and suitable:

- (a) data and information;
- (b) consultation with Aboriginal and Torres Strait Islander people and contribution of their knowledge; and
- (c) consultation with other interested parties.

ALCA and its member organisations look forward to continuing to engage with DCCEEW to finalise the development of the Standard. If you have questions regarding this submission, please do not hesitate to contact ALCA via [michael@alca.org.au](mailto:michael@alca.org.au) (Mr Michael Cornish, Policy Lead).

**Australian Land Conservation Alliance**

<sup>3</sup> <https://www.dcceew.gov.au/sites/default/files/documents/free-prior-informed-consent-guidelines.pdf>

## About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Our twenty-two member organisations are:

- Arid Recovery
- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Biodiversity Legacy
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nari Nari Tribal Council
- National Landcare Network
- Nature Foundation
- North Australian Indigenous Land and Sea Management Alliance
- NRM Regions Australia
- Odonata
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)
- Wildlife Bank Trust
- World Wildlife Fund - Australia

ALCA member land conservation efforts have influenced over 9.3% of Australia with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$400 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spillover effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.



**EXPOSURE DRAFT**

## **National Environmental Standard (Matters of National Environmental Significance) 2025**

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

Dated

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

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## 1 Name

This is the *National Environmental Standard (Matters of National Environmental Significance) 2025*.

## 2 Commencement

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

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

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

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

## 3 Authority

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

## 4 Definitions

Note: The following expressions used in this standard are defined in the Act:

- (a) action
- (b) declared Ramsar wetland
- (c) declared World Heritage property
- (d) Great Barrier Reef Marine Park
- (e) impact
- (f) indigenous heritage value
- (g) National Heritage values
- (h) National Heritage place
- (i) residual significant impact
- (j) restoration contribution charge
- (k) World Heritage Convention
- (l) world heritage values

In this standard:

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

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

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

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

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

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

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

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

## 5 Objectives

- (1) This Standard aims to ensure decisions provide for the protection, conservation and, where necessary, recovery of:
  - (a) matters of national environmental significance; and
  - (b) the environment, in relation to actions taken on Commonwealth land or on Commonwealth Heritage places overseas or actions by a Commonwealth agency.
- (2) This Standard aims to promote and enhance the diversity, abundance, resilience, and integrity of protected matters consistent with the principles of ecologically sustainable development.
- (3) The objectives for protected matters are specified in the following table.

<b>Objectives for protected matters</b>	
<b>Item</b>	<b>Objective</b>
1	<p><b>Threatened species</b></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>
2	<p><b>Ecological communities</b></p> <p>Habitat, including critical habitat of the listed ecological community where the habitat is irreplaceable and necessary for an ecological community to remain viable in the wild, is protected, conserved and restored to support the survival and recovery of the ecological community.</p> <p>Protection and recovery actions support the viability of ecological communities in the wild.</p>

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**Objectives for protected matters**


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<b>Item</b>	<b>Objective</b>
3	<p><b>Migratory species</b></p> <p>Habitat, including critical habitat of the listed migratory species where the habitat is irreplaceable and essential for a migratory species to remain viable in the wild, is protected, conserved and restored to support the survival and recovery of the migratory species.</p> <p>Protection and recovery actions support the viability of migratory species in the wild.</p>
4	<p><b>Wetlands of International Importance</b></p> <p>The ecological character of a declared Ramsar wetland is maintained protected, conserved and (where it is in decline) restored.</p>
5	<p><b>National Heritage Places</b></p> <p>The National Heritage values of the place are protected, conserved and (where necessary) rehabilitated.</p> <p>Indigenous Heritage values of a National Heritage place are treated in a manner respectful of Indigenous traditions and beliefs.</p>
6	<p><b>World Heritage Properties</b></p> <p>The world heritage values of a declared World Heritage property are protected, conserved and (where necessary) rehabilitated in a manner consistent with Australia's obligations under the World Heritage Convention.</p>
7	<p><b>Great Barrier Reef Marine Park</b></p> <p>The environment, biodiversity and heritage values of the Great Barrier Reef Marine Park, and its individual components, are protected, conserved and (where necessary) restored.</p>
8	<p><b>Commonwealth Marine Areas</b></p> <p>Commonwealth Marine Areas, or part thereof, are protected, restored (where necessary) and sustainably managed.</p>
9	<p><b>Protection of Water Resources from Unconventional Gas Development and Large Coal Mining Development</b></p> <p>The function and integrity of the water resource are protected and conserved, including the:</p> <ol style="list-style-type: none"> <li>(1) ecological components, functions and processes of the water resource necessary to support sites of regional and national ecological significance, and</li> <li>(2) reliability and supply of water to support critical human water needs.</li> </ol>
10	<p><b>Protection of the Environment from Radiological Exposure Actions</b></p> <p>The environment affected, or part thereof, is protected, restored and sustainably managed.</p> <p>Human health is protected from radiological exposure.</p> <p>The environment, including biological diversity, and the health of natural ecosystems is protected from impacts of radiological exposure.</p>
11	<p><b>Actions taken on Commonwealth land or on Commonwealth Heritage places overseas and actions taken by the Commonwealth</b></p> <p>The environment affected, or part thereof, is protected, restored and sustainably managed.</p>

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## 6 Outcomes

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

## 7 Principles

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.

### 8 Principle 1—Actions appropriately ~~consider the application of~~ apply the mitigation hierarchy

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

- (1) Actions ~~should~~ must be planned and taken ~~having regard to~~ in accordance with the mitigation hierarchy provided for in this section.

*Step 1—Avoidance*

- (2) ~~If~~ Where possible, impacts to protected matters should be avoided by taking measures to anticipate and prevent significant impacts to protected matters before those impacts occur.

*Step 2—~~Mitigation~~ Minimise*

- (3) Where significant impacts to protected matters cannot be avoided, the impact ~~should~~ must be ~~mitigated~~ minimised through a demonstrated process of identifying and implementing measures to reduce significant impacts on protected matters.

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

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

*Step 3—Repair*

- (4) Following the application of any appropriate avoidance and ~~mitigation~~ minimisation measures, any repairable impacts on protected matters should be repaired as soon as possible and as close to its original condition as possible.

- (5) Repair will generally be a viable option only where:
- (a) repair can be done in a timely manner; and
  - (b) repair activities are feasible and sustainable in the long term for the protected matter.
- (6) Repair activities ~~should~~must focus on the significantly impacted protected matter and should involve on-site works with specific goals for re-establishment of values-to reduce residual significant impacts.

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

#### *Step 4—Offset*

- (7) Following the application of any appropriate avoidance, ~~mitigation-minimisation~~ and repair measures, appropriate measures ~~should~~must be taken to compensate for any residual significant impacts associated with the action.

### **9 Principle 2—Actions appropriately consider impacts to protected matters**

In considering the nature, extent or severity of an impact on a protected matter, regard ~~should~~must be had to the context in which the impact might occur.

Note 1: The context includes, for example, the unique context of a protected matter, including the past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter.

Note 2: The context may also, depending on the particular matter being considered (for instance, when considering bioregional plans and strategic assessments) include the following:

- (a) the interaction of different stressors, for example the combined impacts of light, noise, and habitat clearance to breeding success of endangered species as a result of an action or a number of actions;
- (b) the combination of past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter; and
- (c) individually minor, but collectively significant, actions taking place over a period of time.

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

Compensation for a residual significant impact ~~should generally~~must only be considered after the prior steps in the mitigation hierarchy (avoidance, ~~mitigation~~minimisation and repair) have been exhausted.

### **11 Principle 4—Appropriate evidence, first nations engagement and consultation**

~~Where appropriate, A~~actions ~~should~~must be supported by ~~appropriate and suitable:~~

- (a) data and information;
- (b) consultation with Aboriginal and Torres Strait Islander people and contribution of their knowledge; and

(c) consultation with other interested parties.