

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

29 May 2026

Dear Environment Law Reform Taskforce,

RE: Submission on the revised 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 revised 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 23 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. **Revert to the original outcomes-based assessment of impacts on nature** – as contained within the first draft MNES Standard – **rather than adopt a 'principle-based' approach**. This means proposed section 7 needs to revert to the draft section 7 from the consultation in January 2026¹. The currently proposed model is a drastically undermines the integrity of the entire standard and any confidence that it will deliver reasonable environmental outcomes.
2. In addition to Recommendation 1, **further improve other integrity requirements in the Standard**, as, despite some positive amendments, the current language in the Standard still reflects an elastic, 'low bar' approach to integrity [see detailed legislative amendments, as recommended below].

¹ See: section 7; https://storage.googleapis.com/files-au-climate/climate-au/p/prj38a8e553bef96ceb5490c/page/Draft_MNES_Standard_legislative_instrument_DOCX_331KB.docx

Detailed legislative amendments to the Standard

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

Principles [section 7]

3. Sections 7(2) through (4) are wholly inconsistent with an outcomes (or objectives) based approach to the Standard. If the Standard does not seek to deliver clear outcomes, but rather merely ‘adhere to principles’, it will not deliver a Standard with meaningful integrity. We can fully expect environmental outcomes in Australia to further decline if this proposed change is retained – **sections 7(2) through (4) should be deleted if the Government is serious about environmental protection.**

Principle 1 – Actions appropriately apply the mitigation hierarchy [section 8]:

4. 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 Offsets² 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)³ is as follows:

² https://iucn.org/sites/default/files/2022-06/iucn_biodiversity_offsets_policy_jan_29_2016_0.pdf

³ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063#sec.6.3A>

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.

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.

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.
6. For environmental offsets to have integrity, it is not sufficient that actions must merely 'have regard to' – rather than be 'in accordance with' (i.e. apply) – the mitigation hierarchy.

Amendments to effect Recommendations 4 through 6 overleaf.

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 must be planned and taken ~~having regard to~~ **in accordance with** the mitigation hierarchy provided for in this section.

Step 1—Avoidance

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

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 the impact including, where possible, below the level of significance.

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

Note 2: ~~Mitigation~~ **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, any residual significant impact of the action or class of actions on a protected matter must be compensated for by an offset activity or a restoration contribution charge.

Principles 2 and 3 [sections 9 and 10]:

7. 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.

...

ALCA and its member organisations look forward to continuing to engage with DCCEEW to finalise the development of the Standard.

Australian Land Conservation Alliance

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
- Rainforest Rescue
- 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.