

**Environment and Communications Legislation**  
Answers to questions on notice  
**Agriculture, Water and the Environment Portfolio**

**Committee:** Environment and Communications Legislation  
**Inquiry:** Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020  
**Question No:** 1  
**Hearing Date:** 23 November 2020  
**Division/Agency:** Environment Protection Reform Division  
**Topic:** Draft national environmental standards  
**Hansard Page:** 49-50  
**Question Type:** Spoken

**Senator Green asked:**

Senator GREEN: Thank you, Chair. We had some witnesses give evidence this morning that an iteration of the national environment standards was provided at a consultation meeting a couple of weeks ago. Can I begin by asking the department: do you know what date that meeting was held?

Mr Tregurtha: Yes. The date of that meeting was 6 November.

Senator GREEN: Is it correct that a copy of the draft national environment standards was provided to the participants at that meeting?

Mr Tregurtha: A copy of Professor Samuel's recommended environmental standards was circulated at that meeting for reference and it was collected at the end of that meeting.

Senator GREEN: Why was it collected at the end?

Mr Tregurtha: The government continues to consider the recommendation in regards to the standards that Professor Samuel has put to them. They were concerned that, at the moment, it was essentially just Professor Samuel's recommendation rather than a set of standards the government has agreed to.

Senator GREEN: They're not the same standards that are in the interim report?

Mr Tregurtha: They're an evolution of those standards. As you'd be aware, Professor Samuel and a number of the witnesses today have discussed the consultative group that Professor Samuel convened between the interim and the final report. On the basis of the discussions of that group, Professor Samuel has modified his standards. So it's a modification of the set of standards that was attached to the interim report.

Senator GREEN: Can you table a copy of the draft national environment standards to this committee?

Mr Tregurtha: I don't have a copy of those standards with me today.

Senator HANSON-YOUNG: Why not? What did you think we were going to be asking you about?

CHAIR: Order, Senator Hanson-Young. You can seek a point of order, but you can't just intervene.

Senator HANSON-YOUNG: I seek a point of order, Chair, and ask that those standards be tabled. I don't think we should be waiting days; we've got a very tight time frame for doing this inquiry. Someone can send them through to the secretariat and we can get them today.

CHAIR: The department can take that on notice.

Mr Tregurtha: We're happy to take that on notice. We'll come back to you as soon as we can.

Senator GREEN: It's no surprise I am going to ask a few questions about this. Why don't you have a copy with you today, given it's the topic of the inquiry that we're asking questions about?

Mr Tregurtha: My briefing notes go to the bill before the Senate. It was my understanding that this discussion was in relation to the bilateral amendment bill that's before the parliament at

the moment.

Senator GREEN: Sure, but the reform itself, as is made quite clear in the Samuel report, deals with the national environment standards, which are, in his words: 'the centrepiece of the reform'. You don't have a copy with you or someone at the back there, rustling through papers, doesn't have a copy?

CHAIR: Senator Green, as the official has pointed out, this inquiry is into the bill and, as a number of the witnesses have pointed out, the bill does not actually contain the standards. Please proceed with your question.

Senator GREEN: Chair, I've heard that evidence. I don't accept that evidence. I'm going to keep moving on. When will you be able to table a copy of that? I assume it's on the environment department's server. Will you be able to table a copy of that for us before the end of today?

Mr Tregurtha: We'll do our best.

Mr Knudson: I would say that the standards, which Professor Samuel has included in his final report to the government, are part of his overall final review of the act. That is with the government and it remains a decision for government when they release that full document.

Senator GREEN: Sure. I guess I'm wondering why—

Senator PATRICK: Point of order, Chair.

CHAIR: Senator Patrick?

Senator PATRICK: Witnesses are not allowed to simply state that something is advice to government or something is a decision of government. There are proper public interest immunities that can be advanced, and what the witness just advanced is not one of them. Can we please have the witness directed to respond to the question properly?

CHAIR: The witness can refer that to a senior officer or to a minister for a response. So back to you, the department.

Mr Edwards: Perhaps I can provide some clarity. We're working on the basis that the final report from the review and the standards that form an appendix to it are a document subject to the tabling provisions of parliament. Those provisions, which I understand are a longstanding convention, set out that that material is to be held, within confidence, within government and they are under embargo until they're presented to parliament as part of the tabling process.

Senator GREEN: Are you making a public interest immunity claim on that document? Is that what's happening?

Mr Edwards: No. I was just referring to the convention that we're following. We'd have to take notice.

**Answer:**

A copy of Professor Samuel's recommended National Environmental Standards for Matters of National Environmental Significance are **attached**.

# Recommended National Environmental Standards for Matters of National Environmental Significance

## **National Environmental Standards for matters of national environmental significance**

Matters of national environmental significance (MNES) are identified in the EPBC Act. The National Environmental Standards for matters of national environmental significance includes an overarching Standard that relates to all MNES and matter-specific Standards. These elements should be read together, and in conjunction with other National Environmental Standards and the existing requirements of the EPBC Act.

The environmental outcomes articulated in the National Environmental Standards are the national intent for the protection and conservation of MNES.

Decisions at all scales and by all parties should work together to protect, conserve and improve outcomes for MNES. Progress towards the environmental outcome will result from the collective achievements of the combination of activities.

## **Application of the National Environmental Standards by the Commonwealth**

National Environmental Standards should be made and implemented by the Commonwealth Environment Minister.

The collective activities and decisions made by the Commonwealth Environment Minister under the EPBC Act should be consistent with the Standard. The Standards are relevant to activities and decisions at all scales including policies, plans and programs.

This includes decisions regarding the approval of individual projects or actions, where they trigger the EPBC Act. A decision by the Commonwealth Environment Minister to approve an action under the EPBC Act must not prevent a National Environmental Standard from being met.

In considering the accreditation of the regulatory processes or arrangements of third parties under the EPBC Act, the Commonwealth Environment Minister must be satisfied that the processes or arrangements proposed for accreditation can meet the National Environmental Standards, and that the parties assure accountability for the outcomes.

The EPBC Act should provide discretion for the Commonwealth Environment Minister to make a decision that is inconsistent with the National Environmental Standards. The use of this power should be a rare exception, justified in the public interest. When doing so, the Minister should publish a statement of reasons.

## **Application by third parties following accreditation**

The National Environmental Standards enable the outcomes for the EPBC Act to be more effectively integrated into broader environmental management responsibilities and activities of others (such as a State or Territory), so long as they can demonstrate that they can act consistently with the Standards.

The collective activities and decisions of a third party under an accredited regulatory process or arrangement should be consistent with the National Environmental Standards. The Standards are relevant to activities and decisions at all scales including policies, plans and programs. This includes decisions regarding the approval or authorisation of individual projects or actions. An accredited party



## Independent review of the **EPBC Act**

must not allow an activity, such as an individual project, that prevents a Standard from being met.

In limited circumstances, such as where an accredited party believe it is in the national interest and/or public interest to undertake an activity or make a decision that would prevent them from meeting a National Environmental Standard, the party must refer that activity to the Commonwealth Environment Minister for decision.

## Overarching MNES Standard

Element	Description
<b>Environmental Outcome</b>	Matters of national environmental significance are protected and enhanced, and decision-making actively contributes to improvements in their conservation and management.
<b>National Standard</b>	<ol style="list-style-type: none"> <li>1) Actions, decisions, plans and policies that relate to MNES: <ol style="list-style-type: none"> <li>a) are consistent with the <b>objects of the EPBC Act</b> and the <b>principles of ecologically sustainable development</b> (including the <b>precautionary principle</b>) and reflect a <b>principle of non-regression</b>,</li> <li>b) do not have <b>unacceptable</b> or <b>unsustainable</b> impacts on MNES, having regard to the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts,</li> <li>c) minimise harm to MNES, including employing all reasonable measures to avoid and then to mitigate <b>significant impacts</b>, and then lastly apply appropriate <b>offsets</b>,</li> <li>d) are not inconsistent with relevant international agreements, recovery plans, management plans and threat abatement plans, and have regard to and ensure decisions reflect any approved conservation advice where relevant,</li> <li>e) maintain and improve conservation, recovery and sustainable management, address detrimental <b>cumulative impacts</b> and key threatening processes and fill information gaps that impede recovery and appropriate management, including: <ol style="list-style-type: none"> <li>i) use all reasonable efforts to prevent actions contributing to detrimental <b>cumulative impacts</b> or exacerbation of <b>key threatening processes</b>, and</li> </ol> </li> <li>f) are based on the best available information. Data and information should be stored and shared consistent with best practice data and information management.</li> </ol> </li> <li>2) Engagement is undertaken with governments, the community, land-holders and Indigenous peoples, consistent with the EPBC Act and national environmental standards.</li> <li>3) Monitoring, reporting and evaluation demonstrates compliance with national environmental standards.</li> </ol>

# Independent review of the EPBC Act

Element	Description
<b>Monitoring and Reporting</b>	<ol style="list-style-type: none"> <li>1) 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. Each monitoring and evaluation plan must: <ol style="list-style-type: none"> <li>a) address impacts for the relevant MNES, and be designed to understand and track all <b>cumulative impacts</b> at the relevant scale (e.g. national, state-wide, regional plan areas or project site),</li> <li>b) cover all actions, activities, decisions, plans, or policies that impact the outcomes for MNES, relevant to the scale,</li> <li>c) establish the baseline, key indicators and targeted outcomes, monitoring activities, evaluation and reporting processes relevant to the protected matter and the activities being conducted,</li> <li>d) be based on the best available evidence, and accord with best practice for data and information management, and other relevant National Environmental Standards and guidelines,</li> <li>e) be over a time frame and area relevant to the potential risk or benefit to the MNES,</li> <li>f) be designed to ensure the state of the MNES and any changes in its state can be quantified, with the power of analysis to detect change in the MNES explicitly identified, and</li> <li>g) identify thresholds of change in the MNES (distribution, abundance, condition, or integrity) at all relevant scales that will trigger specific mitigation or recovery actions.</li> </ol> </li> <li>2) The monitoring plan, results, analyses, evaluation of performance against indicators and thresholds, underpinning data and information on which they are based, must be made publicly available consistent with the EPBC Act and national environmental standards, and any relevant conditions of approval or accreditation.</li> <li>3) Plans must be reviewed and updated every 5 years.</li> </ol>
<b>Review</b>	National Environmental Standards should be reviewed and updated regularly, including when there are substantive changes to the EPBC Act or relevant administrative arrangements, or major events that may impact the status of protected matters.

This Standard should be applied in conjunction with relevant National Environmental Standards.

## Definitions

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

**Key threatening processes:** means a threatening process included in the list referred to in section 183 of the EPBC Act.

**Objects of the EPBC Act:** see section 3 of the EPBC Act.

**Offset:** measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets

## Independent review of the **EPBC Act**

must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be **achievable** and **ecologically feasible**:

- An **offset** is **achievable** where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An **offset** is **ecologically feasible** where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

**Principles of ecologically sustainable development** (including the **precautionary principle**): see section 3A of the EPBC Act.

**Principle of non-regression:** this principle seeks to ensure the overall protection of the environment is not diminished over time. It is consistent with the principles of ecologically sustainable development, the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time) and the Australian Government commitment to maintain environmental protections.

**Significant impact:** a 'significant impact' is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment, and upon the intensity, duration, magnitude and geographic extent of the impacts. All of these factors should be considered when determining whether an action is likely to have a significant impact. See the *Significant Impact Guidelines 1.1: Matters of National Environmental Significance* (2013) for more information about assessing the significance of impacts on matters of national environmental significance.

**Unacceptable or unsustainable:** section 46(3)(c) of the EPBC Act requires that actions approved under a bilateral agreement not have unacceptable or unsustainable impacts on relevant MNES. Whether impacts are unacceptable should be determined with reference to the nature and context of the proposed action, past decisions, and best available information.

## Matter-specific Standards

### World Heritage

World Heritage properties are cultural and/or natural heritage places considered to have Outstanding Universal Value by the international community. They are properties inscribed on the UNESCO World Heritage List that Australia has committed to protect under the World Heritage Convention for present and future generations.

Element	Description
<b>Environmental Outcome</b>	The <b>Outstanding Universal Value</b> of Australia's <b>World Heritage properties</b> is identified, protected, conserved, presented and transmitted to future generations.
<b>National Standard</b>	<p>The conservation and management of World Heritage properties is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Protect and manage the <b>World Heritage values</b>, including the <b>Outstanding Universal Value</b> and <b>associated attributes</b> and conditions of <b>integrity and/or authenticity</b> of each <b>World Heritage property</b> in accordance with the <b>World Heritage Management Principles</b>, and with input from the Australian community, from those with rights or interests in the place, particularly Traditional Owners, and from experts.</li> <li>2) Ensure the <b>Outstanding Universal Value</b> of the property, and associated <b>attributes</b> and conditions of <b>integrity and/or authenticity</b> are not adversely impacted, taking into account both individual and <b>cumulative impacts</b>, including by ensuring that decisions, at a minimum: <ol style="list-style-type: none"> <li>a) avoid actions within, or that have an impact on, a <b>World Heritage property</b>, unless consistent with the <b>Outstanding Universal Value(s)</b> of the property.</li> </ol> </li> <li>3) Are not inconsistent with a management plan for the property made in accordance with the EPBC Act.</li> <li>4) Develop and implement management arrangements that ensure the <b>Outstanding Universal Value</b> of the property, and associated <b>attributes</b> and conditions of <b>integrity and/or authenticity</b> of <b>World Heritage properties</b> are conserved and maintained.</li> <li>5) Monitor and report on the state of the values, attributes and conditions of <b>World Heritage properties</b>.</li> </ol>
<b>Further Information</b>	<p><a href="#">International commitments relating to World Heritage:</a></p> <p>Australia is a signatory to the <i>Convention for the Protection of the World Cultural and Natural Heritage</i> (commonly known as the 'World Heritage Convention'). Signatories to the convention agreed to take effective and active measures for the protection, conservation and presentation of the cultural and natural heritage.</p> <p>See also:</p> <p><a href="#">General information about Australia's listed heritage places</a></p> <p><a href="#">Australian Heritage Database</a></p> <p><a href="#">UNESCO World Heritage List – Australian properties</a></p>

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.



# Independent review of the EPBC Act

## Definitions

**Attributes:** attributes are the tangible or intangible elements, aspects or processes of a property through which its Outstanding Universal Value is manifest. Attributes should be understood in accordance with the use of the term in the *World Heritage Operational Guidelines* (2019).

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

**Integrity and authenticity:** integrity and authenticity should be understood in accordance with the definitions at paragraphs 79 – 95 of the *World Heritage Operational Guidelines* (2019). Adverse impacts on integrity and authenticity may include detrimental change to the integrity of key habitats, threatened species or ecosystem processes which are attributes of a World Heritage property, and detrimental change to the ability of a site to authentically express its cultural values through its attributes, such as Traditional Owners' expression of culture through country.

**Outstanding Universal Value:** Outstanding Universal Value should be understood in accordance with paragraphs 49-53 and 77-78 of the *World Heritage Operational Guidelines* (2019), and includes the criteria under which the property is inscribed on the World Heritage List, the statements of authenticity and/or integrity, and the statement of protection and management. These may include natural, human or cultural values related to listed property.

**World Heritage Management principles:** defined in regulation 10.01 of the EPBC Regulations.

**World Heritage property:** defined at section 13 of the EPBC Act. Includes the areas within the boundary of the listed property. Where properties have a buffer zone these zones should be taken into account.

**World Heritage Values:** defined at section 12(3) of the EPBC Act.

## National Heritage

National Heritage places comprise natural, historic and Indigenous places of outstanding heritage significance to Australia. National Heritage places also support Australia's commitments under international conventions.

Element	Description
<b>Environmental Outcome</b>	The <b>National Heritage values</b> of Australia's National Heritage places are identified, protected, conserved, presented and transmitted to future generations.
<b>National Standard</b>	<p>The conservation and management of National Heritage places is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Protect and manage the <b>National Heritage values</b> of a place in accordance with the <b>National Heritage Management Principles</b>, and with input from the Australian community, from those with rights or interests in the place, particularly Traditional Owners, and from experts.</li> <li>2) Ensure the <b>National Heritage values</b> of a place are not adversely impacted, taking into account both individual and <b>cumulative impacts</b>, including by ensuring that decisions, at a minimum: <ol style="list-style-type: none"> <li>a) avoid actions within, or that have an impact on, a <b>National Heritage place</b>, unless consistent with its <b>National Heritage values</b> of the place.</li> </ol> </li> <li>3) Are not inconsistent with a management plan for the place made in accordance with the EPBC Act.</li> <li>4) Develop and implement management arrangements that ensure the <b>National Heritage values</b> of <b>National Heritage places</b> are conserved and maintained.</li> <li>5) Monitor and report on the state of the <b>National Heritage values</b> of <b>National Heritage places</b>.</li> </ol>
<b>Further Information</b>	<p><a href="#">Australian Heritage Database</a></p> <p><a href="#">General information about Australia's listed heritage places</a></p>

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.

### Definitions

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

**National Heritage place:** defined at section 324C(3) of the EPBC Act. Includes the areas within the boundary of the listed place.

**National Heritage Management Principles:** defined in regulation 10.01E of the EPBC Regulations.

**National Heritage values:** defined at section 324D of the EPBC Act. Identified in the gazetted National Heritage listing instrument and are published on the Australian Heritage Database. These may include natural, human or cultural values related to listed place.

## Wetlands of International Importance (Ramsar wetlands)

Wetlands of international importance are globally recognised important wetlands and listed under the Convention on Wetlands of International Importance (Ramsar Convention), or declared by the Minister to be a declared Ramsar wetland under section 16 of the EPBC Act.

Element	Description
<b>Environmental Outcome</b>	The <b>ecological character</b> of each <b>Ramsar wetland</b> is maintained through the conservation, management and wise use of the wetland, having regard to ecologically sustainable development.
<b>National Standard</b>	<p>The conservation, management and wise use of <b>Ramsar wetlands</b> is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Protect and manage the <b>ecological character</b> of <b>Ramsar wetlands</b> in accordance with the <b>Ramsar Management Principles</b>, and with input from the Australian community, from those with rights or interests in the place, particularly Traditional Owners, and from experts.</li> <li>2) Prevent <b>detrimental change</b> to the <b>ecological character</b> of a <b>Ramsar wetland</b>, taking into account both individual and <b>cumulative impacts</b>, including by ensuring that decisions, at a minimum: <ol style="list-style-type: none"> <li>a) avoid actions within, or that have an impact on the <b>ecological character</b> of, a <b>Ramsar wetland</b>, unless they promote the conservation, management and/or wise and sustainable use of the wetland.</li> </ol> </li> <li>3) Develop and implement management arrangements that ensure the <b>ecological character</b> of <b>Ramsar wetlands</b> are conserved and maintained.</li> <li>4) Monitor and report on the state of the ecological character of Ramsar wetlands.</li> </ol>
<b>Further Information</b>	<p><a href="#">International commitments relating to wetlands</a></p> <p>Australia is a signatory to the Convention on Wetlands of International Importance especially as Waterfowl Habitat (the 'Ramsar Convention'). Signatories to the convention agreed to halt and, where possible, reverse, the worldwide loss of wetlands and to conserve those that remain through wise use and management.</p> <p>See also:</p> <p><a href="#">General wetlands information</a></p> <p><a href="#">Australian wetlands database</a> - information about Australia's Ramsar wetlands, including location and boundary maps, Ramsar Information Sheets and Ecological Character Descriptions.</p> <p><a href="#">Australian National Guidelines for Ramsar Wetlands</a></p>

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.

### Definitions

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

## Independent review of the **EPBC Act**

**Detrimental change:** a change which results in:

- areas of the wetland being destroyed or substantially modified
- a substantial and measurable change in the hydrological regime of the wetland, for example, a substantial change to the volume, timing, duration and frequency of ground and surface water flows to and within the wetland
- the habitat or lifecycle of native species, including invertebrate fauna and fish species, dependent upon the wetland being seriously affected
- a substantial and measurable change in the water quality of the wetland – for example, a substantial change in the level of salinity, pollutants, or nutrients in the wetland, or water temperature which may adversely impact on biodiversity, ecological integrity, social amenity or human health, or
- an invasive species that is harmful to the ecological character of the wetland being established (or an existing invasive species being spread) in the wetland.

See *Significant Impact Guidelines 1.1: Matters of National Environmental Significance* (2013).

**Ecological character:** the combination of the ecosystem components, processes and benefits/services that characterise a wetland at a given point in time (Ramsar Resolution IX.1 Annex A para 15). The ecological character of each Australian Ramsar wetland is as described in its Ecological Character Description and Ramsar Information Sheet.

The Australian wetlands database provides information about Australia's Ramsar wetlands. Some Ramsar wetlands have catchments that cross state or territory borders. Catchment mapping is available.

**Ramsar Management Principles:** defined in regulation 10.02 of the EPBC Regulations.

**Ramsar wetland(s):** includes the areas within the boundary of the listed wetland, and its buffer zone (as relevant). The Australian wetlands database provides information about location and boundaries of Australia's Ramsar wetlands. Some Ramsar wetlands have catchments that cross state or territory borders. Catchment mapping is available.

## Threatened Species and Ecological Communities

Threatened species and ecological communities are listed under section 178 of the EPBC Act, following a scientific assessment of their threat status against a set of criteria in the EPBC Act. The Australian Government and all states and territories have agreed to a common assessment method for the assessment and listing of threatened species.

Element	Description
<b>Environmental Outcome</b>	Threatened species and ecological communities are protected, conserved, managed and recovered over time.
<b>National Standard</b>	<p>The conservation and recovery of each <b>listed threatened species and ecological community</b> is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Are not inconsistent with relevant <b>recovery plans</b> and <b>threat abatement plans</b>.</li> <li>2) Have regard to relevant <b>conservation advices</b>, and ensure decisions reflect that advice.</li> <li>3) Consider <b>best available information</b> and data to ascertain areas of <b>habitat</b> (including <b>habitat critical to survival</b>), <b>important populations</b> and <b>condition thresholds</b>.</li> <li>4) Employ all reasonable measures to avoid and then to mitigate impacts to <b>listed threatened species and ecological communities</b>.</li> <li>5) Employ <b>achievable</b> and <b>ecologically feasible offsets</b> to counterbalance residual significant impacts, only after all reasonable steps to avoid and mitigate impacts are taken.</li> <li>6) Support the rights of Indigenous Australians to practice customary activities and traditions, consistent with <b>section 211 of the Native Title Act 1993</b>.</li> <li>7) Promote the survival and/or enhance the conservation status of <b>listed threatened species and ecological communities</b>, taking into account both individual and <b>cumulative impacts</b>, by: <ol style="list-style-type: none"> <li>a) Maintaining and improving <b>habitat</b> of all <b>listed threatened species</b>, including by ensuring that actions and decisions, at a minimum: <ol style="list-style-type: none"> <li>i) avoid adverse impacts to the extent or quality of <b>habitat critical to the survival</b> of the species, and</li> <li>ii) ensure <b>no net reduction</b> of <b>habitat</b> of a <b>listed threatened species</b>.</li> </ol> </li> <li>b) Maintaining and improving <b>population</b> numbers for all <b>listed threatened species</b>, including by ensuring that actions and decisions, at a minimum: <ol style="list-style-type: none"> <li>i) avoid adverse impacts that are likely to result in the loss of individuals or <b>populations</b> of <b>highly restricted and small and declining species</b>, and</li> <li>ii) ensure <b>no net reduction</b> in the <b>population</b> of a <b>critically endangered or endangered species</b> or <b>important population</b> of a vulnerable species.</li> </ol> </li> </ol> </li> </ol>

# Independent review of the EPBC Act

Element	Description
	<p>c) Maintaining and improving the extent and condition of <b>endangered and critically endangered</b> ecological communities, including by ensuring that actions and decisions, at a minimum:</p> <ul style="list-style-type: none"> <li>i) avoid adverse impacts to the extent or quality of areas of <b>highly restricted and sensitive ecological communities</b></li> <li>ii) avoid adverse impacts to areas of ecological communities that meet high <b>condition thresholds and classes</b>, and</li> <li>iii) ensure <b>no net reduction</b> in the extent or condition of an <b>endangered or critically endangered</b> ecological community.</li> </ul> <p>d) Not exacerbating <b>key threats</b> to the listed threatened species or ecological community.</p> <p>e) Developing and implementing management arrangements that address <b>cumulative impacts</b> and key threats and support the recovery of <b>listed threatened species and ecological communities</b>.</p> <p>Requirements in Commonwealth areas:</p> <p>8) Do not kill, injure, take, trade, keep or move a <b>listed threatened species or ecological community</b>, except where a <b>permit</b> is issued.</p>
Further Information	<p><a href="#">International commitments relating to threatened species and ecological communities:</a></p> <p>Australia is a signatory to the following international conventions that aim to protect, conserve and restore biological diversity and natural resources:</p> <ul style="list-style-type: none"> <li>• <i>Convention on Biological Diversity</i> (Biodiversity Convention)</li> <li>• <i>Convention on Conservation of Nature in the South Pacific</i> (Apia Convention)</li> <li>• <i>Convention on International Trade in Endangered Species of Wild Fauna and Flora</i> (CITES).</li> </ul> <p>See also:</p> <p>The <a href="#">Species Profiles and Threats (SPRAT)</a> database contains links to Recovery Plans and Conservation Advices as well as an interactive map showing the species modelled habitat and other important information sources like listing advices and Threat Abatement Plans.</p>

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.

## Definitions

**Best available information:** is the best and most up to date information available for species and communities that provide important context for consideration in actions, decisions, plans and policies and which may not be reflected in all statutory documents. This may be through research, monitoring, unpublished recent listing assessments and/or conservation action implemented as part of statutory plans, or population or habitat impacts which arise from unexpected events that change a species situation in the wild for example; Wildfires, disease outbreaks, drought, cyclones or contamination events.

**Condition Thresholds and Classes:** most Ecological Community listings since 2007 specify condition thresholds and classes. These are intended to focus national legal protection on patches or occurrences of a TEC that are functional, relatively natural and in relatively good condition. They

## Independent review of the **EPBC Act**

specify a minimum condition and higher condition classes to understand relative importance of a patch, and to guide management and goals for restoration.

**Conservation advice:** an approved conservation advice is a document prepared in accordance with section 266B(2) of the EPBC Act.

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

**Habitat:** the biophysical medium or media: (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; and (b) once occupied (continuously, periodically or occasionally) by an organism or group of organisms and into which organisms of that kind have the potential to be introduced, and (c) biophysical media projected to become suitable for occupation under future climates if specified in the Conservation Advice.

**Habitat critical to the survival of a species or ecological community:** habitat identified in a recovery plan or conservation advice for the species or ecological community as habitat critical for that species or ecological community, or habitat listed on the Register of Critical Habitat maintained by the Minister under the EPBC Act. Where no Recovery Plan is in force under the EPBC Act, habitat critical to the survival includes areas that are demonstrated to be necessary for a listed threatened species or ecological community:

- for activities such as foraging, breeding, roosting, or dispersal,
- for the long-term maintenance of the species or ecological community (including the maintenance of species essential to the survival of the species or ecological community, such as pollinators),
- to maintain genetic diversity and long-term evolutionary development, or
- for the reintroduction of populations or recovery of the species or ecological community.

This definition is consistent with the *Significant Impact Guidelines 1.1: Matters of National Environmental Significance* (2013).

**Highly restricted and small and declining species:** critically endangered or endangered listed species with distributions, population sizes and decline which is highly precarious to their survival as demonstrated by species that meet Criteria B, C or D of the [Common Assessment Method](#).

**Highly restricted and sensitive ecological communities:** ecosystems that meet the criteria for Critically Endangered or Endangered under Criterion 2 of regulation 7.02 of the EPBC Regulation because their geographic distribution is very restricted or restricted and the nature of its distribution makes it likely that the action of a threatening process could cause it to be lost in the near or immediate future.

**Important population:** a population that is necessary for a species' long-term survival and recovery. This may include populations identified as such in Conservation Advices and Recovery Plans, and/or that are demonstrated to be:

- key source populations either for breeding or dispersal
- populations that are necessary for maintaining genetic diversity, and/or
- populations that are near the limit of the species' range.

This definition is consistent with the *Significant Impact Guidelines 1.1: Matters of National Environmental Significance* (2013).

**Key threats:** the threats to a species or ecological community identified in a Recovery Plan, Key Threatening Process or Threat Abatement Plan as key threats to that species or community.

## Independent review of the **EPBC Act**

**Listed threatened, endangered or critically endangered species or ecological community:** should be understood with reference to section 528 of the EPBC Act.

**No net reduction:** the net outcome of activities to avoid, mitigate and offset impacts as a result of an action, measured against a stipulated baseline. See *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time) for further information.

**Offset:** measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be **achievable** and **ecologically feasible**:

- An **offset** is **achievable** where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An **offset** is **ecologically feasible** where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

**Permit:** a permit required under Part 13 of the EPBC Act.

**Population:** a population of a species or ecological community means an occurrence of the species or community in a particular area, as defined under section 528 of the EPBC Act.

**Recovery plan:** a plan made or adopted under section 269A of the EPBC Act.

**Section 211 of the *Native Title Act 1993*:** provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities.

**Threat Abatement Plan:** a plan made or adopted under section 270B of the EPBC Act.



## Migratory Species

Migratory species are those animals that migrate to Australia and its external territories or pass through or over Australian waters during their annual migrations. Examples of migratory species are species of birds (e.g. albatrosses and petrels), mammals (e.g. whales) or reptiles (e.g. marine turtles). Migratory species are those listed on international migratory species conventions and agreements to which Australia is a party.

Element	Description
<b>Environmental Outcome</b>	Migratory species are protected, conserved and managed within Australia.
<b>National Standard</b>	<p>The protection, conservation and management of migratory species within Australia is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Are in accordance with a relevant <b>Wildlife Conservation Plan</b> and are not inconsistent with a relevant <b>Threat Abatement Plan</b>.</li> <li>2) Consider <b>best available information</b> and data to ascertain areas of <b>important habitat</b> and <b>ecologically significant proportions</b> of a listed migratory species.</li> <li>3) Employ all reasonable measures to avoid and then to mitigate impacts to listed migratory species.</li> <li>4) Employ <b>achievable</b> and <b>ecologically feasible offsets</b> to counterbalance residual significant impacts, after all reasonable steps to avoid and mitigate impacts are taken.</li> <li>5) Support the rights of Indigenous Australians to practice customary activities and traditions, consistent with <b>section 211 of the Native Title Act 1993</b>.</li> <li>6) Promote the survival and/or enhance the conservation status of listed migratory species taking into account both individual and <b>cumulative impacts</b>. <ol style="list-style-type: none"> <li>a) Maintain and improve <b>habitat</b> and the conditions supporting <b>ecologically significant proportions</b> of the <b>population</b> of listed migratory species within Australia, including by ensuring that actions and decisions, at a minimum: <ol style="list-style-type: none"> <li>i) avoid adverse impacts to <b>important habitat</b> for a listed migratory species,</li> <li>ii) avoid adverse impacts to the lifecycle (breeding, feeding, migratory pathways or resting behaviour) of an <b>ecologically significant proportion</b> of the <b>population</b> of a listed migratory species,</li> <li>iii) ensure <b>no net reduction</b> in the <b>population</b> of a listed migratory species in Australia, and</li> <li>iv) ensure <b>no net reduction</b> in the <b>habitat</b> of a listed migratory species in Australia.</li> </ol> </li> <li>b) Not exacerbate <b>key threats</b> to listed migratory species.</li> <li>c) Develop and implement management arrangements that address <b>cumulative impacts</b> and key threats and support the recovery of listed migratory species.</li> </ol> </li> </ol>

# Independent review of the **EPBC Act**

Element	Description
	<p>Requirements in Commonwealth areas:</p> <p>7) Do not kill, injure, take, trade, keep or move a listed migratory species in a Commonwealth Area, except where a <b>permit</b> is issued.</p> <p>Requirements for cetaceans:</p> <p>8) Do not take, keep, move, interfere with (harass, chase, herd, tag, mark or brand), treat (divide or cut up, or extract any product from the cetacean) or possess a cetacean, except where a <b>permit</b> is issued.</p>
Further Information	<p>International commitments relating to migratory species:</p> <p>Australia is a signatory to the following international conventions and agreements that aim to protect, conserve and restore populations and habitats of migratory species:</p> <ul style="list-style-type: none"> <li>• <i>Convention on the Conservation of Migratory Species of Wild Animals</i> (Bonn Convention)</li> <li>• China Australia Migratory Birds Agreement (CAMBA)</li> <li>• Japan Australia Migratory Birds Agreement (JAMBA)</li> <li>• Republic of Korea Australia Migratory Birds Agreement (ROKAMBA)</li> </ul> <p>See also:</p> <p>The <a href="#">Species Profiles and Threats (SPRAT)</a> database contains links to Wildlife Conservation Plans and as well as an interactive map showing the species modelled habitat and other important information sources like listing advices, Threat Abatement Plans, survey guidelines and policy statements.</p> <p><a href="#">EPBC Act Policy Statement 3.21 - Industry guidelines for avoiding, assessing and mitigating impacts on EPBC Act listed migratory shorebird species</a></p> <p><a href="#">National Light Pollution Guidelines for Wildlife Including Marine Turtles, Seabirds and Migratory Shorebirds</a></p>

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.

## Definitions

**Best available information:** is the best and most up to date information available for migratory species that provide important context for consideration in actions, decisions, plans and policies and which may not be reflected in all statutory documents. This may be through research, monitoring, and/or conservation action implemented as part of statutory plans, or population or habitat impacts which arise from unexpected events that change a species situation in the wild for example; Wildfires, disease outbreaks, drought, cyclones or contamination events.

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

**Ecologically significant proportion:** listed migratory species cover a broad range of species with different life cycles and population sizes. Therefore, an 'ecologically significant proportion' of the population varies with the species. Factors that should be considered include the species' population status, genetic distinctiveness and species-specific behavioural patterns (site fidelity, and dispersal rates). See *Significant Impact Guidelines 1.1: Matters of National Environmental Significance* (2013).

## Independent review of the **EPBC Act**

**Habitat:** the biophysical medium or media: (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; and (b) once occupied (continuously, periodically or occasionally) by an organism or group of organisms and into which organisms of that kind have the potential to be introduced, and (c) biophysical media projected to become suitable for occupation under future climates if specified in the Conservation Advice.

**Important habitat:** for a migratory species is:

- Habitat utilised by a migratory species occasionally or periodically within a region that supports an ecologically significant proportion of the population of the species; and/or
- Habitat that is of critical importance to the species at particular life-cycle stages; and/or
- Habitat that is utilised by a migratory species which is at the limit of the species range; and/or
- Habitat within an area where the species is declining.
- Habitat as specified in the relevant Wildlife Conservation Plan.

This definition is consistent with the *Significant Impact Guidelines 1.1: Matters of National Environmental Significance* (2013). Important habitat for migratory shorebirds is defined in *EPBC Act Policy Statement 3.21 - Industry guidelines for avoiding, assessing and mitigating impacts on EPBC Act listed migratory shorebird species* (2015).

**Key threats:** the threats to a listed migratory species identified in a Wildlife Conservation Plan, Key Threatening Process or Threat Abatement Plan as key threats to that listed migratory species.

**No net reduction:** the net outcome of activities to avoid, mitigate and offset impacts as a result of an action, measured against a stipulated baseline. See *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time) for further information.

**Offset:** measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be **achievable** and **ecologically feasible**:

- An **offset** is **achievable** where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An **offset** is **ecologically feasible** where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

**Permit:** a permit required under Part 13 of the EPBC Act.

**Population:** a population of a species or ecological community means an occurrence of the species or community in a particular area, as defined under section 528 of the EPBC Act.

**Section 211 of the Native Title Act 1993:** provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities.

**Threat Abatement Plan:** a plan made or adopted under section 270B of the EPBC Act.

**Wildlife Conservation Plan:** a plan made or adopted under section 285 of the EPBC Act.

# Independent review of the **EPBC Act**

## Commonwealth Marine Environment

The Commonwealth marine area is any part of the sea, including the waters, seabed, and airspace, within Australia's exclusive economic zone and/or over the continental shelf of Australia, that is not state or Northern Territory waters. The Commonwealth marine area stretches from 3 up to 200 nautical miles from the coast. The Commonwealth marine area includes most of Australia's oceans. The EPBC Act protects 'the environment' of the Commonwealth marine area.

Element	Description
<b>Environmental Outcome</b>	The environment of <b>Commonwealth marine areas</b> is protected and sustainably managed.
<b>National Standard</b>	<p>The protection of the Commonwealth marine environment is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Are not inconsistent with <b>marine park management plans</b> and have regard to relevant <b>marine bioregional plans</b>.</li> <li>2) Take all reasonable steps to avoid and then to mitigate impacts to the environment of the <b>Commonwealth marine area</b>, including by ensuring that actions and decisions, at a minimum: <ol style="list-style-type: none"> <li>a) not result in a known or potential pest species becoming established in the <b>Commonwealth marine area</b></li> <li>b) not modify, destroy, fragment, isolate or disturb an important or substantial area of habitat such that an adverse impact on marine ecosystem functioning or integrity in a <b>Commonwealth marine area</b> results</li> <li>c) maintain connectivity of <b>population(s)</b> of a marine species or cetacean including its life cycle (for example, breeding, feeding, migration behaviour, life expectancy) and spatial distribution</li> <li>d) maintain and improve air quality or water quality (including temperature) which may adversely impact on biodiversity, ecological integrity; social amenity or human health</li> <li>e) not result in persistent organic chemicals, heavy metals, mainland run-off, pollution or other potentially harmful substances accumulating in the marine environment such that biodiversity, ecological integrity, social amenity or human health may be adversely affected, or</li> <li>f) not damage or destroy heritage values of the <b>Commonwealth marine area</b> (including underwater cultural heritage).</li> </ol> </li> <li>3) Employ <b>achievable</b> and <b>ecologically feasible offsets</b> to counterbalance residual significant impacts, after all reasonable steps to avoid and mitigate impacts are taken.</li> <li>4) Ensure the management arrangements of fisheries operating in <b>Commonwealth marine areas</b> are consistent with the <i>Guidelines for the Ecologically Sustainable Management of Fisheries</i> (as updated from time to time).</li> </ol> <p>Requirements in Commonwealth areas:</p> <ol style="list-style-type: none"> <li>5) Do not kill, injure, take, trade, keep or move a listed threatened species or ecological community, except where a <b>permit</b> is issued.</li> </ol>

# Independent review of the **EPBC Act**

Element	Description
Further Information	<a href="#">Marine park management plans</a> <a href="#">Marine Bioregional Plans</a> <a href="#">Guidelines for the Ecologically Sustainable Management of Fisheries</a> (as updated from time to time) <a href="#">EPBC Act Policy Statement 2.1 - Interaction between offshore seismic exploration and whales: Industry guidelines</a>

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.

## Definitions

**Commonwealth marine area:** defined by section 24 of the EPBC Act.

**Marine bioregional plans:** section 176 of the EPBC Act provides for the making of bioregional plans. The Minister must have regard to Marine Bioregional Plans in making any decision under the EPBC Act to which the plans are relevant.

**Marine park management plans:** section 366 of the EPBC Act requires that marine parks must have management plans in place as soon as practicable after being proclaimed. Section 367 requires that management plans must provide for the protection and conservation of the parks.

**Offset:** measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be **achievable** and **ecologically feasible**:

- An **offset** is **achievable** where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An **offset** is **ecologically feasible** where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

**Permit:** a permit required under Part 13 of the EPBC Act.

**Population:** a population of a species or ecological community means an occurrence of the species or community in a particular area, as defined under section 528 of the EPBC Act.

# Independent review of the EPBC Act

## Great Barrier Reef Marine Park

The Great Barrier Reef Marine Park has a special status, as it is the substantial part of a World Heritage area (listed in 1981) as well as a separate matter of national environmental significance. The Great Barrier Reef Marine Park's inclusion as a separate matter of national environmental significance ensures the assessment and approval processes of the EPBC Act are more clearly and completely applied to the Great Barrier Reef Marine Park itself, particularly in relation to the management activities of the Great Barrier Reef Marine Park Authority. The Marine Park is fundamental to and underpins regulation and management of the Great Barrier Reef.

Element	Description
<b>Environmental Outcome</b>	The environment, biodiversity and heritage values of the Great Barrier Reef Marine Park are protected and conserved for current and future generations.
<b>National Standard</b>	<p>The long-term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Marine Park is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Protect and manage the Great Barrier Reef, consistent with: <ol style="list-style-type: none"> <li>a) management arrangements for the Great Barrier Reef Marine Park,</li> <li>b) the Objectives and Guiding Principles of the Great Barrier Reef Intergovernmental Agreement 2015,</li> <li>c) the Objectives of the Reef 2050 Long-Term Sustainability Plan, and</li> <li>d) all other relevant plans relating to the Great Barrier Reef Marine Park.</li> </ol> </li> <li>2) Employ all reasonable measures to avoid and then to mitigate impacts to the environment, biodiversity and heritage values of the Great Barrier Reef Marine Park.</li> <li>3) Employ <b>achievable</b> and <b>ecologically feasible offsets</b> to counterbalance residual significant impacts, only after all reasonable steps to avoid and mitigate impacts are taken.</li> <li>4) Manage <b>key threats</b> and <b>cumulative impacts</b> on the condition of the GBR, including: <ol style="list-style-type: none"> <li>a) comply with the <a href="#">Reef 2050 Cumulative Impact Management Policy</a> and the <a href="#">Net Benefit Policy</a>, and other relevant management arrangements for the Great Barrier Reef, or where these are unavailable use all reasonable efforts to prevent detrimental <b>cumulative impacts</b> or exacerbation of <b>key threats</b>.</li> </ol> </li> <li>5) Support the rights of Indigenous Australians to practice customary activities and traditions, consistent with <b>section 211 of the Native Title Act 1993</b>.</li> </ol>
<b>Further Information</b>	<p><a href="#">Marine Park management plans</a></p> <p><a href="#">Marine Bioregional Plans</a></p> <p><a href="#">Guidelines for the Ecologically Sustainable Management of Fisheries</a> (as updated from time to time)</p> <p>The Commonwealth Harvest strategy policy</p> <p>The Commonwealth Bycatch strategy</p> <p><a href="#">Great Barrier Reef Intergovernmental Agreement 2015</a></p>

## Independent review of the **EPBC Act**

Element	Description
	<a href="#">Reef 2050 Long-Term Sustainability Plan</a> <a href="#">Reef 2050 Water Quality Improvement Plan 2017-2022</a> <a href="#">Reef 2050 Plan Cumulative Impact Management Policy</a> <a href="#">Reef 2050 Plan Net Benefit Policy</a> <a href="#">EPBC Act Referral Guidelines for the Outstanding Universal Value of the Great Barrier Reef World Heritage Area</a> Statutory Zoning Plan for the GBR The Retrospective Statement of Outstanding Universal Value for the Great Barrier Reef Strategic Assessment for the Great Barrier Reef 2014 Great Barrier Reef Outlook Report 2019 Reef 2050 Long-Term Sustainability Plan Australian Heritage Database Additional policies, plans and position statements are available from the <a href="#">Great Barrier Reef Marine Park Authority</a>

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.

### Definitions

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

**Key threats:** the threats to the Great Barrier Reef identified in Management Plans, Key Threatening Processes or Threat Abatement Plans as key threats to the Great Barrier Reef.

**Offset:** measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be **achievable** and **ecologically feasible**:

- An **offset** is **achievable** where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An **offset** is **ecologically feasible** where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

**Section 211 of the *Native Title Act 1993*:** provides that holders of native title rights covering certain activities do not need authorisation required by other laws to engage in those activities.



## Protection of the Environment from Nuclear Actions

The Australian Government is committed to maintaining high levels of radiation protection, and of nuclear safety and security in Australia and around the world. The EPBC Act protects the whole of the environment from impacts of nuclear actions.

The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) sets a consistent approach to radiation protection and safety in the Commonwealth, consistent with international best practice in radiation and nuclear regulation.

Element	Description
<b>Environmental Outcome</b>	The community and the environment are protected from the harmful effects of radiation and radioactive material that may result from <b>nuclear actions</b> .
<b>National Standard</b>	<p>The protection of the community and the environment from the harmful effects of radiation and radioactive material is supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Are consistent with the <b>ARPANSA national codes</b> for radiation protection, and provide an evidence-based approach to assessment, mitigation and management of radiation risks, including that: <ol style="list-style-type: none"> <li>a) both human health and environmental outcomes are considered, and decisions made with knowledge and understanding of radiation risks,</li> <li>b) radiological impact on biological diversity, the conservation of species and the natural health of ecosystems is demonstrated and provides assurance that radiation protection objectives are met, and</li> <li>c) the best level of radiation protection under the prevailing circumstances through an ongoing, iterative process is demonstrated and implemented.</li> </ol> </li> <li>2) Ensure that mining and mineral processing actions that meet or exceed the radioactivity level prescribed in EPBC Act regulations provide and implement best practice radiation protection plans, arrangements and targets, consistent with <b>ARPANSA national codes</b> including: <ol style="list-style-type: none"> <li>a) progressive approach to radiation protection for the life cycle of an operation including siting, construction, operation, rehabilitation, closure and post closure and include iterative evaluations at each stage,</li> <li>b) final landform and land use that reflects the lowest reasonably achievable residual impact on the community and environment from residual risks of radiation and radioactive material, including management of voids and out-of-pit waste rock dumps and tailings storage facilities, and</li> <li>c) independent assessment of the closure cost estimate of the mine and facilities, accompanied by assurance of the availability of the necessary resources (financial and otherwise) to achieve closure.</li> </ol> </li> </ol>
<b>Further Information</b>	ARPANSA <a href="#">Regulatory Publications</a> , including fundamental principles for radiation protection and safety, codes referenced by legislation, regulations or conditions of licence and guides that provide recommendations on how to comply.

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.





# Independent review of the **EPBC Act**

## **Definitions**

**ARPANSA National codes:** the regulatory Codes and Standards as set and updated from time to time by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

**Nuclear actions:** defined under section 22 of the EPBC Act.

## Protection of Water Resources from Coal Seam Gas Development and Large Coal Mining Development

The Australian Government listed the ‘water trigger’ as a matter of national environmental significance in 2013, in response to community concerns regarding the impacts of coal seam gas and coal mining on water resources such as groundwaters, rivers, wetlands and springs.

The Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) was established to provide independent scientific advice to the Australian Government Environment Minister and relevant state ministers on the potential water-related impacts of proposed coal seam gas or large coal mining developments, and to provide greater transparency in the regulatory process.

Element	Description
<b>Environmental Outcome</b>	Protection of a <b>water resource</b> , which is or is likely to be significantly impacted by <b>coal seam gas or large coal mining developments</b> , including any impacts of associated salt production and/or salinity.
<b>National Standard</b>	<p>The protection of <b>water resource(s)</b> from the impacts of <b>coal seam gas and large coal mining developments</b> are supported by actions, decisions, plans and policies that:</p> <ol style="list-style-type: none"> <li>1) Ensure all relevant components of an action, plan or policy are considered together in determining its potential to impact on a <b>water resource</b>.</li> <li>2) Consider <b>best available information</b> and data consistent with IESC Information Guidelines, and other relevant policies, including: <ol style="list-style-type: none"> <li>a) a scientifically robust evidence base to enable full assessment of all risks, impacts and mitigation measures, including trigger points,</li> <li>b) baseline and impacted conditions (encompassing natural spatial and temporal variability),</li> <li>c) <b>uncertainty</b> associated with all risks should be quantified where possible and reduced to acceptable levels, and</li> <li>d) monitor, evaluate and report on the biodiversity, water quality and ecosystem functions of the water resource(s) before, during and – where legacy effects are likely – after an action.</li> </ol> </li> <li>3) Obtain and take into account independent expert scientific advice from the IESC. <ol style="list-style-type: none"> <li>a) both the advice and response should be published by the decision-maker consistent with the EPBC Act and National Environmental Standards, and any relevant conditions of approval or accreditation.</li> <li>b) Consider the potential multiple and <b>cumulative impacts</b> of the action and climate change on the water resource(s) over the full period that works or their impacts remain in the landscape (to at least 100 years).</li> </ol> </li> <li>4) Ensure conditions within <b>water resource(s)</b>, including water level/pressure and water quality, maintain (and where possible improve) <b>ecosystem services</b> and access by <b>associated users</b>.</li> <li>5) Employ <b>achievable</b> and <b>ecologically feasible offsets</b> to counterbalance residual significant impacts, only after all reasonable steps to avoid and mitigate impacts are taken.</li> </ol>

## Independent review of the EPBC Act

Element	Description
Further Information	IESC Information Guidelines, Explanatory Notes and Fact Sheets, available at: <a href="http://www.iesc.environment.gov.au">www.iesc.environment.gov.au</a> .

This Standard should be applied in conjunction with the Overarching MNES Standard, relevant matter-specific Standards and other National Environmental Standards.

### Definitions

**Best available information:** is the most comprehensive information possible, based on and including all the available data, to enable the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) to provide robust scientific advice to government regulators on the water-related impacts of coal seam gas and large coal mining development proposals. See *Information guidelines for proponents preparing coal seam gas and large coal mining development proposals* (2018) for further explanation of the IESC's information requirements.

**Coal seam gas or large coal mining developments:** as defined in section 528 of the EPBC Act

**Cumulative impacts:** the collective impacts from all actions, decisions, plans, policies and other pressures, measured against a stipulated baseline. See *Significant Impact Guidelines 1.2* (2013), *Significant Impact Guidelines 1.3* (2013) and *Reef 2050 Plan: Cumulative Impact Management Policy* (2018) for further explanation of the concept of cumulative impacts.

**Ecosystem services:** The benefits and services obtained from water resources. These include:

- provisioning services (e.g. use by other industries and use as drinking water)
- regulating services (such as the climate regulation or the stabilisation of coastal systems)
- cultural services (including recreation and tourism, science and education); and
- supporting services (e.g. maintenance of ecosystem function).

**Offset:** measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be **achievable** and **ecologically feasible**:

- An **offset** is **achievable** where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An **offset** is **ecologically feasible** where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

**Water resource(s)** (as defined by the *Water Act 2007*) means:

- a) surface water or ground water; or
- b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it); and
- c) includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource)



## Independent review of the **EPBC Act**

**Uncertainty:** the state, even partial, of deficiency of information related to the understanding or knowledge of an event, its consequence, or its likelihood.

**Environment and Communications Legislation**  
Answers to questions on notice  
**Agriculture, Water and the Environment Portfolio**

**Committee:** Environment and Communications Legislation

**Inquiry:** Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020

**Question No:** 2

**Hearing Date:** 23 November 2020

**Division/Agency:** Environment Protection Reform Division (EPRD) G5

**Topic:** Budget measure for digital transformation of environmental approvals

**Hansard Page:** 60

**Question Type:** Spoken

**Senator Green asked:**

Senator GREEN: There's a letter from the minister to Minister Dawson, the WA Minister for the Environment. That's dated 26 May 2020. I believe there's an FOI reference there, but it should be on the department's website. In the letter, the minister says that the Prime Minister made clear in his letter to Premier McGowan that updating the bilateral assessment agreement is a prerequisite to implementing any potential approval bilateral agreement and it is a condition for Commonwealth funding for the digital transformation of environment approvals. Would you just explain what that Commonwealth funding relates to? I'm trying to understand exactly what that is.

Mr Knudson: Sure. I don't have the exact dollar figures, but it was less than \$10 million. It was to enter into a partnership with the Western Australian government to effectively do two things. One is to build a digital platform of all environmental biodiversity information that we hold as a government, that the WA government holds as well as, ideally, as many companies as possible hold so that whatever data we have with respect to the biodiversity is made publicly available. The intention there is that helps inform all sorts of different actions, whether it's a conservation group trying to figure out where to try to protect a particular species et cetera. That's one piece. The second piece is to try to work on developing an integrated workflow system so that if you're a citizen or a company et cetera you can see where your environmental assessment is at, what sorts of public comments have been achieved and how it's working its way through the process. Both of those were announced under the program that you mentioned. Like I said, I don't have the exact figure, but I'm sure we can come back on notice on that.

Senator GREEN: Okay. Is that a measure in the budget? Will I be able to find that in the budget?

Mr Knudson: I believe it was, but I'll come back on notice on that, if you don't mind.

**Answer:**

1. A program of measures was announced as part of the 'New Deregulation Agenda' forming part of the 2019-20 Mid-Year Economic and Fiscal Outlook, to 'streamline regulatory compliance processes and reduce the cost of doing business, including by targeted investment in technology'. The package of measures included \$26.8 million over three years from 2019–20 to partner with the Western Australian Government to develop an online platform for environmental assessment and approval processes, supported by a database of biodiversity information.

**Environment and Communications Legislation**  
Answers to questions on notice  
**Agriculture, Water and the Environment Portfolio**

**Committee:** Environment and Communications Legislation

**Inquiry:** Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020

**Question No:** 3

**Hearing Date:** 23 November 2020

**Division/Agency:** Environment Protection Reform Division (EPRD) G5

**Topic:** Bilateral agreement template

**Hansard Page:** 65

**Question Type:** Spoken

**Senator Patrick asked:**

Senator PATRICK: It might be a matter for the Senate if we refuse to pass the bill without it. In terms of the accreditation process that you go through—I'll just step back. You've indicated that the bilateral agreement will change depending on the jurisdiction you're dealing with. Is there a template bilateral agreement in place so that the committee would be able to see the scope of coverage of that sort of agreement, such that, for example, it made reference to minimum FOI standards or minimum transparency standards or requirements to refer things to Commonwealth ministers if it might involve the Murray-Darling Basin. Is there a template that exists?

Mr Manning:

That's something we are working on. Yes, the idea of producing a template to go on as a starting point for our negotiations is absolutely an approach we are adopting. We pulled together a draft of that at the current point in time, but we haven't settled it as a final model just yet. We'll consult with—

Senator PATRICK:

To assist us in deciding whether you're on the right path, can I ask that that draft be tabled?

Mr Manning: I can take that on notice.

**Answer:**

1. A public interest immunity claim has been made by the Minister for the Environment in relation to this question.

## **PUBLIC INTEREST IMMUNITY CLAIM - REQUEST FOR TEMPLATE APPROVAL BILATERAL AGREEMENT**

On 23 November 2020 officials from my Department appeared before the Environment and Communications Legislation Committee during the hearing into the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020.

A question was taken on notice relating to the tabling of the Department's draft template approval bilateral agreement. The following statement to the Committee presents a public interest immunity claim with respect to the draft template approval bilateral agreement.

The premature release of this document will generate potentially significant commentary around policy positions that have not yet been finalised or adopted by the Government. It may also create an unrealistic expectation that all the draft provisions will be reflected in the final template bilateral agreement. I consider the release of this document is contrary to the public interest and would or could reasonably be expected to damage relations between the Commonwealth and the States. I consider that real harm may flow from the premature release of the document which has the potential to prejudice negotiations with the states and territories, and may lead to delays in the process beyond what would otherwise be the case. It is also reasonable to infer that this could result in delays to the realisation of the benefits of the agreements.

In these circumstances, the Government considers that the harm that may occur in relation to the ability of the Commonwealth to negotiate approval bilateral agreements with the states and territories outweighs the public interest in tabling this document to this Committee. I intend to make the template approval bilateral agreement public once the draft is finalised.

The Hon. Sussan Ley MP  
Minister for the Environment

25 November 2020

**Environment and Communications Legislation**  
Answers to questions on notice  
**Agriculture, Water and the Environment Portfolio**

**Committee:** Environment and Communications Legislation

**Inquiry:** Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020

**Question No:** 4

**Hearing Date:** 23 November 2020

**Division/Agency:** Environment Protection Reform Division (EPRD) G5

**Topic:** Draft of the accreditation guidelines

**Hansard Page:** 65-66

**Question Type:** Spoken

**Senator Patrick asked:**

Senator PATRICK: Thank you. The next step is: you can enter into a bilateral agreement, but then there is an accreditation process. Is that correct?

Mr Manning: That's right. The things kind of work in conjunction. You have a bilateral agreement on one hand, and then we need to have the state processes accredited through the Commonwealth parliament. That's right.

Senator PATRICK: I'm just trying to understand that accreditation process, or whether indeed this might fit in the bilateral agreement. I imagine you would seek to accredit things such as the resources that a state government has to conduct the responsibilities for which it has been given under this devolution bill. Perhaps requirements around the expertise that might be required within the department. We heard today some discussion about—and this might be in the bilateral agreement—whether there would be a merit review and what sort of transparency processes are in place. I'm presuming there is a set of things the Commonwealth will do in relation to accreditation. Again, to assist, if we had the bilateral template we would understand exactly what might go into an agreement, and if we had the accreditation process it might inform us as to what sort of things the department would do in its accreditation process. I think that would be helpful. Have you advanced that accreditation process? Is it documented somewhere?

Mr Manning: Yes. Just to clarify, the actual process that's accredited in the Commonwealth parliament is the legislation and any subordinate documents that the state would put forward. I think the other process you're referring to is what processes we as a department would go through in order to run our ruler, if you will, over those state processes to satisfy the minister. We are also in the process of developing what we call an accreditation guidelines document which would basically be the things that we would put in place and the questions we ask ourselves of a state's legislative processes to make sure that it can satisfy the minister of the things she needs to be satisfied of. That's another piece of work we are progressing.

Senator PATRICK: Part of the reason I ask these questions is that they would seem sensible things to do. I presume you'll take this on notice: could you table the draft of the accreditation guidelines as they are developed? I accept that they are not final, but it would help the committee see the thinking of government in how it's going to handle that. I think that's an important step, certainly in my consideration, before handing a power or devolving a responsibility. I don't want to do that in a manner that is blind.

Mr Manning: Understood. We will take that on notice, noting that there's a lot of intellectual work going into those and they're not complete at this stage. They are draft documents.

Senator PATRICK: You can caveat them. It helps us understand your way of thinking. Thank you.



**Answer:**

1. A public interest immunity claim has been made by the Minister for the Environment in relation to this question.

## **PUBLIC INTEREST IMMUNITY CLAIM - REQUEST FOR DRAFT ACCREDITATION GUIDELINES**

On 23 November 2020 officials from my Department appeared before the Environment and Communications Legislation Committee during the hearing into the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020.

A question was taken on notice relating to the tabling of the draft accreditation guidelines for approval bilateral agreements. The following statement to the Committee presents a public interest immunity claim with respect to the draft accreditation guidelines for approval bilateral agreements.

The premature release of this document will generate potentially significant commentary around policy positions that have not yet been finalised or adopted by the Government. I consider the release of this document is contrary to the public interest and would or could reasonably be expected to damage relations between the Commonwealth and the States. I consider that real harm may flow from the premature release of the document as it may lead to concern from jurisdictions and other stakeholders that is not warranted, and may lead to delays in the process beyond what would otherwise be the case. It is also reasonable to infer that this could result in delays to the realisation of the benefits of the agreements.

In these circumstances, the Government considers that the harm that may occur in relation to the ability of the Commonwealth to negotiate approval bilateral agreements with the states and territories outweighs the public interest in tabling this document to this Committee. I intend to make the accreditation guidelines public once the draft is finalised.

The Hon. Sussan Ley MP  
Minister for the Environment

25 November 2020

**Environment and Communications Legislation**  
Answers to questions on notice  
**Agriculture, Water and the Environment Portfolio**

**Committee:** Environment and Communications Legislation

**Inquiry:** Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020

**Question No:** 5

**Hearing Date:** 23 November 2020

**Division/Agency:** Environment Protection Reform Division

**Topic:** Timing of the draft bill

**Hansard Page:** 61

**Question Type:** Spoken

**Senator Green asked:**

Senator GREEN: I have a few more. I'll just double back to something that was asked before. I know you can't make a comment about a cabinet decision, but can I just be clear: can you just confirm that when the national cabinet signed off on the single-touch process—we've referenced that national cabinet decision quite a few times today—the final version of this bill wasn't yet available? The final version of the national standards is not available yet, and we also don't know, as you're telling me now, whether there'll be additional funding required for states. We're still going to have to work that out as we go through the process. Was none of this information available to the national cabinet?

Mr Knudson: What I have, and what Mr Tregurtha said earlier on, is that the second round, the last round, of drafting instructions to the Office of Parliamentary Counsel, was requested on 6 July and the Prime Minister made his announcements with respect to single-touch approvals on 24 July. What I don't recall, and what we'd have to take on notice, is whether we had the draft legislation back by then.

Mr Edwards: I don't think we would have. I just want to add some extra context to that. It might help you, Senator, in terms of what first ministers were discussing at the national cabinet. They did have Professor Samuel's report at that point, and they were talking through that. They'd been given a briefing about the overall recommendations or reform directions. Really, what that was was in-principle agreement to progress that single touch on the basis of having national environmental standards underpinning that. We've talked about options. You could put it in a head of power or in a bilat; you could do it in a range of ways. That certainly wasn't on the table at that point, but what was on the table was a commitment to work together to progress that single-touch approach.

Senator GREEN: If you could take on notice when the draft bill came back and whether it was before 24 July, that would be helpful—just noting that, as Mr Edwards just mentioned, that national cabinet decision made reference to the Samuel interim report. We have a copy of that as well, and the concern we have is that this piece of legislation doesn't actually implement all those recommendations. I would just like to understand what information was available to the national cabinet when they made that decision. That would be helpful. Thank you.

**Answer:**

1. The first draft of the Environment Protection and Biodiversity Conservation (Streamlining Environmental Approvals) Bill 2020 was provided to the Department by the Office of Parliamentary Counsel on 24 June 2020.
2. The Interim Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* was publicly released on 20 July 2020 and therefore available to all members of the National Cabinet.