



# Consultation on National Environmental Laws Canberra, 30-31 October 2023

The documents outlined below are included in this pack. These documents must not be copied, photographed or removed from the room.

## Papers

- Assessment and approval pathways (not including post approval elements or compliance and enforcement).
- Features of recovery strategies (including key content and definitions, such as critical protection area).
- Ministerial call-in power.
- National interest exemption.
- Legislative framework for National Environmental Standards (including making, varying and revoking standards; applying standards and review of standards).

## Draft National Environmental Standards

- Matters of National Environmental Significance
- Restoration Actions and Contributions
- Data and Information
- Community Engagement and Consultation.

If you have any questions, please contact the Nature Positive Taskforce via [environmentlawEPATaskforce@dcceew.gov.au](mailto:environmentlawEPATaskforce@dcceew.gov.au)



# Documents included in this consultation pack

Draft for discussion only - Not government policy

## National Environment Law

### Matters of National Environmental Significance

#### National Environmental Standards

- Matters of NES
- Regional Planning
- Restoration actions and contributions
- First Nations Engagement and Participation in Decision-making
- Community Consultation
- Data and Information

#### Conservation Planning

- Listing reforms
- Recovery strategies
- Protected areas
- Management Plans

<h4>Environmental approvals</h4> <ul style="list-style-type: none"> <li>Environment Protection Australia</li> <li>Approval of single actions</li> <li>Ministerial call-in</li> </ul>	<h4>Approval of groups of actions (strategic assessments)</h4>	<h4>Proceed with conditions</h4> <ul style="list-style-type: none"> <li>Regional plans</li> </ul>	<h4>Accreditation</h4> <ul style="list-style-type: none"> <li>States and Territories</li> <li>Commonwealth agencies</li> </ul>
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- National Interest Exemption

Data and information (Environment Information Australia)

Better compliance and enforcement

Governance (including statutory committees)



## **ASSESSMENT AND APPROVAL PATHWAYS**

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#### Power

Actions that may have significant impacts on nationally protected matters must be approved by the CEO of EPA or an accredited decision-maker prior to commencing or receive confirmation that approval is not required.

#### Provisions

##### 1. Application

###### Effect

This section covers application for approval to take an action, publication of an application for a proposed action, and particulars related to the application for approval to take an action.

Proponents who believe their proposed action will, or is likely to, have a significant impact on a protected matter must apply to EPA for approval to take an action via the standard pathway. This is an “application for approval to take an action”.

Proponents who are relatively certain that their action is not likely to have a significant impact on a protected matter may choose to apply to EPA for an approval not required decision via the low impact pathway. This is an “application for an approval not required decision”. The low impact pathway is optional and enables proponents to request legal confirmation from EPA on whether approval is required for their action. It is not a prerequisite for an application for approval.

###### 1.1. Applying for approval to take an action (standard pathway)

- A person proposing to take an action must apply to the CEO of EPA for approval to take an action if the person considers their action will, or is likely to, have a significant impact on a nationally protected matter.
- An application for approval to take an action must be made in the approved form and include any information or documents required by the approved form or prescribed in the rules.
- The application must demonstrate how the person proposing to take an action has not acted inconsistently with any National Environmental Standard(s) prescribed in the rules.
- An application for approval to take an action must include an estimate of scope 1 and scope 2 greenhouse gas emissions<sup>1</sup> likely to be generated by the action, as well as proposed management of those emissions including any measures required to meet relevant Government requirements.
- Provision of false or misleading information constitutes a fault-based offence, a strict liability offence, and a civil penalty may apply.
- An application for approval to take an action must be accompanied by the prescribed fee (if any).
- An application for approval to take an action is not considered to have been accepted unless and until all required information prescribed in the rules (and the prescribed fee) has been submitted.

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<sup>1</sup> Scope 1 and scope 2 greenhouse gas emissions as defined in the *National Greenhouse and Energy Reporting Act 2007*.

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#### 1.2. Applying for an approval not required decision (low impact pathway)

- A person proposing to take an action may apply to the CEO of EPA for an approval not required decision if they consider the proposed action will not, or is not likely to, have a significant impact on a protected matter.
- An application for an approval not required decision must be made in the approved form and include any information or documents required by the approved form or prescribed in the rules.
- An application for an approval not required decision must demonstrate how the proponent has not acted inconsistently with any National Environmental Standards.
- An application for an approval not required decision must include an estimate of scope 1 and scope 2 greenhouse gas emissions likely to be generated by the action, as well as proposed management of those emissions including any measures required to meet relevant Government requirements.<sup>1</sup>
- An application for an approval not required decision must be accompanied by the prescribed fee (if any).

#### 1.3. EPA may request application for approval to take an action

- The CEO of EPA may require a proposed action be submitted to the EPA for assessment and approval where the CEO is satisfied that:
  - the proposed action will, or is likely to, have a significant impact on one or more protected matters; and
  - no application for approval to take an action has been made.
- Where the CEO of EPA requires a proposed action to be submitted to the EPA, the CEO must notify, in writing, the person proposing to take the action of the requirement to submit. The notification must:
  - require the person to apply for approval of the action within a timeframe specified in the notice (the timeframe must not be less than 20 business days); and
  - include any additional information prescribed by the rules.
- Failure to comply with a requirement to apply for approval constitutes a fault-based offence, a strict liability offence, and a civil penalty provision.
- A person taking an action that has not complied with the requirement to apply for approval constitutes a fault-based offence, a strict liability offence, and a civil penalty provision.

#### 1.4. Minister or a State, Territory or Commonwealth agency may refer proposal to EPA

- The Minister, or a State, Territory or Commonwealth agency that is aware of a proposal to take an action that will, or is likely to, have a significant impact on a protected matter, and has administrative responsibilities relating to the action, may notify the CEO of EPA of the proposal.
- If the Minister or a State, Territory or Commonwealth agency notifies the CEO of EPA of a proposed action, the CEO of EPA must consider whether to exercise their power to require the proposal to be submitted to the EPA for assessment and approval (refer [section 1.3.](#))

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#### 1.5. Prohibition against taking an action that is the subject of an application for approval to take an action or an application for an approval not required decision

- Where an application for “approval to take an action” has been made and accepted by the CEO of EPA, a person is prohibited from taking that action until a decision on approval has been made.
- Where an application for an “approval not required” decision has been made and accepted by the CEO of EPA, a person is prohibited from taking that action until either:
  - an approval not required decision is granted by the CEO of EPA; or
  - a decision is made by the CEO of EPA to approve the taking of the action (refer [section 2.2](#)).
- Where an action has been required to be submitted to the EPA for assessment and approval (refer [section 1.3](#)) or a person has not yet applied for approval of an action that is likely to have significant impact on nationally protected matters, a person is prohibited from taking the action.
- Contravention of these prohibitions constitutes a fault-based offence, a strict liability offence, and contravention of a civil penalty provision.

#### 1.6. Withdrawal of application for approval to take an action or application for an approval not required decision

- A person who has applied for approval to take an action, or a person who is proposing to take an action that is the subject of an application for approval, may, by written notice to the CEO of EPA, withdraw the application. Withdrawal can only occur prior to the final decision.
- A person who has applied for an approval not required decision, or a person who is proposing to take an action that is the subject of an application for an approval not required decision, may, by written notice to the CEO of EPA, withdraw the application. Withdrawal can only occur prior to decision.
- Where an application for approval is made as a result of the CEO of EPA requiring the action to be submitted to the EPA, the agreement of the CEO is required before the application for approval can be withdrawn.
- Withdrawal notices must be published by the EPA as soon as practicable.

#### 1.7. Variation of application for approval to take an action

- A proponent may apply to the CEO of EPA to vary an application for approval to take an action in certain circumstances.
- The CEO of EPA may only accept a variation if satisfied that:
  - the character of the varied proposal is substantially the same as the character of the original proposal; and
  - the likely impacts of the varied action on relevant protected matters are not likely to be greater than the likely impacts of original action; and
  - accepting the variation of the proposed action would not be inconsistent with any National Environmental Standard(s) prescribed in the rules.
- When considering whether the character of the varied proposal is substantially the same as the character of the original proposal, the CEO must have regard to:

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- the nature of the activities to be carried out in taking the action;
- the nature and extent of the impacts the action will have, or is likely to have, on a protected matter(s);
- any further assessment that would be required if the variation were to be accepted.
- In deciding whether to accept a proposed variation to an application for approval to take an action, the CEO of EPA may also consider any other matters they consider relevant.
- The CEO of EPA may request any additional information from the proponent considered necessary to decide whether to accept a proposed variation to an application for approval to take an action.
- Accepted applications to vary an application for approval to take an action, and a copy of the decision to accept, must be published on EPA's website as soon as practicable after the CEO of EPA makes their decision.
- An application to vary an action covered by an application for approval to take an action must not be accepted, if:
  - the CEO of EPA has made a decision not to accept the application for approval of an action on the basis it was part of a larger action;
  - a decision has been made whether to approve the taking of the action;
  - the application for approval has been withdrawn;
  - the application for approval has been lapsed.

#### *1.8. Lapsing of application for approval to take an action or application for an approval not required decision*

- The CEO of EPA may lapse an application where:
  - the CEO has requested the proponent to do a particular thing (such as provide additional information); and
  - the proponent has not done the thing within the time specified in the request; and
  - both:
    - the CEO has contacted the proponent and invited them to satisfy the CEO as to why the application should not be lapsed; and
    - the proponent has not responded to the invitation within a reasonable time, or the proponent's response has not satisfied the CEO that the application should not be lapsed.
- The CEO of EPA may lapse an application when satisfied that the proponent is not contactable.
- As soon as practicable after making the decision to lapse an application, the CEO of EPA must give a copy of the notice to the proponent where possible and publish a copy of the notice.



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## 2. Assessment

### Effect

This section provides for EPA assessment of applications and associated particulars under both the standard and low impact pathways.

It is intended that a proponent will conduct self-assessment in accordance with the Act and National Environmental Standards prior to submitting an application to EPA.

### 2.1 Application eligibility gateway

- Applications for an approval to take an action and applications for an approval not required decision must be lodged with EPA in the manner prescribed in the rules.
- Prior to commencing an assessment of an application EPA must ensure that the application has been made in the correct form, contains required information, and is accompanied by the prescribed fee (if any).
- If the CEO of EPA determines that an application does not meet the requirements for submission, the application will not be accepted.
- If an application is not accepted the CEO of EPA must notify the applicant as soon as practicable after the decision is made.
- The CEO of EPA must publish an application for approval to take an action or application for an approval not required decision, including any supporting documentation that accompanied the application, when the application is accepted.

### 2.2 Standard pathway

- A proponent must apply for an approval to take an action if:
  - they consider the action is likely to, or may, have a significant impact on a protected matter; or
  - the CEO of EPA has made a decision that the action requires approval.
- The CEO of EPA must, within 60 business days of accepting an application for approval of a proposed action, decide whether:
  - to approve the proposed action; or
  - to refuse the proposed action on the basis that the impacts to nationally protected matters are not acceptable.
- If the CEO of EPA approves the proposed action, they may attach any conditions to the approval the CEO of EPA considers necessary to ensure the protection of any matters significantly impacted by the proposed action.

### 2.3 Low impact pathway

- A proponent may apply to the CEO of EPA for an approval not required decision where they consider an action is not likely to have a significant impact on a protected matter.
- The CEO of EPA must, within 20 business days of accepting an application for an approval not required decision, determine that:
  - approval is not required for the proposed action or

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- the action described in the application requires approval.

#### 2.4 *Timeframe for EPA decision*

- Where the CEO of EPA accepts an application for approval to take an action, an approval decision must be made within 60 business days.
- Where the CEO of EPA accepts an application for an approval not required decision, a decision must be made within 20 business days.
- The time for making a decision may be stopped when the CEO of EPA requires additional information and both the CEO and proponent have agreed to stop the clock.
- The time for making a decision must be stopped when the CEO of EPA requests advice from the Independent Expert Scientific Committee (IESC). The time restarts when IESC advice is received.
- The time for making a decision may be extended by the CEO of the EPA only with the agreement of the proponent.
- To avoid doubt, failure of EPA to comply with this timeframe does not result in a deemed decision, nor does it invalidate any decision-making relating to the application.

#### 2.5 *Requests for additional information*

- The CEO of EPA may request additional information from a person, including, but not limited to, the proponent.
- The CEO of EPA may request additional information if the CEO reasonably considers that the additional information is necessary:
  - to allow the relevant impacts of the proposed action to be assessed under the Act; or
  - for the CEO to make a decision whether or not to approve the proposed action; or
  - for the CEO to make a decision on conditions attached to an approval.
- The CEO of EPA may make multiple requests for additional information.

#### 2.6 *IESC advice for approval to take an action*

- The CEO of EPA may request advice from IESC where:
  - the proposed action involves unconventional gas development or coal mining development; and
  - the CEO reasonably believes that the taking of the action is likely to have a significant impact on a water resource, including any impacts of associated salt production, salinity or both.

### 3. EPA decision-making criteria

#### Effect

This section sets out the decision-making criteria for the decision whether to grant approval to take an action (standard pathway), and the decision on whether approval is required (low impact pathway).

#### 3.1 *Decision on whether approval is required (low impact pathway)*

- When deciding upon an application for an approval not required decision, the CEO of EPA must consider:
  - any adverse impacts the taking of the action by the person will have, or is likely to have, on any protected matters;
  - whether the person has taken, or will take, all reasonable steps to avoid or mitigate any significant adverse impacts the taking of the action by the person will have, or is likely to have, on any protected matters;
  - any relevant information provided by the applicant;
  - any relevant recovery strategy;
  - any relevant threat abatement strategy;
  - any relevant regional plan;
  - if the CEO has sought IESC advice on the action;
  - any relevant information provided by a third party at the request of the CEO of EPA; and
  - any other matter the CEO considers relevant.
- The CEO must not consider any beneficial impacts the action has, will have or is likely to have on a protected matter.
- The CEO cannot make an approval not required decision unless the CEO is satisfied that the decision would not be inconsistent with any National Environmental Standard(s).

#### 3.2 *Content of decision of whether approval is required (low impact pathway)*

- As soon as practicable after making a decision whether approval is required, the CEO of EPA must notify the applicant of the decision. The notification must specify:
  - the action;
  - the decision (whether approval is required);
  - if the decision is that approval is not required, the person to whom the decision applies; and
  - the reasons for the decision.
- The CEO is required, as soon as practicable after making the decision, to publish a copy of the decision.

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#### 3.3 Prohibitions on approval to take an action

- The CEO of EPA must not approve the taking of an action if:
  - the CEO of EPA is satisfied that taking the action would have, or is likely to have, an unacceptable impact on a protected matter, as follows.

##### *Threatened species, ecological communities and migratory species*

- reduce the viability of a listed threatened species or ecological community or migratory species in the wild, or
- adversely impacts habitat for a listed threatened species or ecological community or migratory species in a Critical Protection Area, as described in a Protection Statement or that meets the definition in the Act.

##### *World heritage*

- irreversible damage to one or more values or attributes of the World Heritage property, as set out in the statement of Outstanding Universal Value, or
- inconsistent with the operational guidelines for implementation of the world heritage convention.

##### *National heritage*

- irreversible damage to one or more of the national heritage values as set out in the gazettal notice.

##### *Ramsar wetlands*

- irreversible damage to the ecological character of a Ramsar wetland, or
- undermines a site's ability to continue to meet the Ramsar Criteria for which it was listed under the Convention.

##### *Commonwealth marine*

- leads to a known or potential pest species being introduced, becoming established, or expanding
- loss of marine ecosystem functioning or integrity of a marine ecosystem
- reduce the viability of a listed species or ecological community in the wild (threatened, migratory or marine)
- results in the accumulation of persistent organic chemicals, heavy metals, mainland run-off, pollution or other potentially harmful substances such that there are irreversible adverse effects on biodiversity, ecological integrity, social amenity or human health may be adversely affected
- irreversible damage to heritage values, including cultural heritage, or the values as set out in the marine park management plan, or
- inconsistent with the marine park management plans zoning and values, or marine bioregional plans.

Note regarding the original document - this line should have been drafted to include the word "significantly" before the word "reduce". Similar drafting should have been included in the third dot point under the heading "Commonwealth marine" below.

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#### *Great Barrier Reef*

- irreversible damage on the environment, biodiversity and heritage values of the Great Barrier Reef Marine Park, or
- inconsistent with policies, zoning plans and plans of management made under section 7(4), section 32A or section 39W of the *Great Barrier Reef Marine Park Act 1975*.
- the action consists of, or involves the construction or operation of, a nuclear installation that is: a nuclear fuel fabrication plant, nuclear power plant, enrichment plant or reprocessing facility.
  - This prohibition does not extend to a nuclear power plant that is a naval propulsion plant related to use in a conventionally armed nuclear powered submarine.
- approving the action would have the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State – but only where the proposed action is a nuclear action:
  - by a person for the purposes of trade or commerce between Australia and another country or between 2 states; or
  - by a constitutional corporation.

#### *3.4 Requirements that must be satisfied to approve the taking of an action*

- The CEO of EPA may only approve the taking of an action if they are satisfied that:
  - approving the taking of the action is not inconsistent with any National Environmental Standard(s) prescribed in the rules for the purpose of this provision; and
  - the proponent is a fit and proper person to be granted an approval;
  - the proponent has taken all reasonable steps to avoid and mitigate the proposed action's likely significant impacts on protected matters;
  - approving the taking of the action would not be inconsistent with Australia's obligations under any of the following international agreements:
    - the World Heritage Convention;
    - the Ramsar Convention;
    - the Biodiversity Convention;
    - the Apia Convention;
    - Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES);
    - the Bonn Convention;
    - China-Australia Migratory Bird Agreement (CAMBA);
    - Japan-Australia Migratory Bird Agreement (JAMBA);
    - Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA);
    - an international agreement prescribed by the rules.

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- approving the taking of the action would not be inconsistent with the Protection Statement within a recovery strategy;
- approving the taking of the action would not be inconsistent with the Abatement Statement in a threat abatement strategy;
- approving the taking of the action would not be inconsistent with any of the following:
  - the Australian World Heritage Management Principles;
  - a plan that has been prepared for the management of a declared World Heritage property under (or as described in) the Act;
  - the National Heritage management principles;
  - an agreement to which the Commonwealth is a party in relation to a National Heritage place;
  - a plan that has been prepared for the management of a National Heritage place under (or as described in) the Act.

#### 3.5 *Mandatory considerations in deciding whether to approve the taking of an action*

- In deciding whether to approve the taking of an action, the CEO of EPA must have regard to:
  - matters relevant to any protected matter that will be, or is likely to be, impacted by the proposed action, including:
    - the nature and extent of the likely impacts of the proposed action on protected matters, including actions taken as part of the project to reduce or mitigate any likely significant impacts on protected matters;
    - any conditions proposed to be attached to the approval and the extent to which those conditions would further reduce or mitigate for any likely significant impacts on protected matters;
    - any restoration actions or restoration contributions proposed to be attached to the approval and the extent to which these could offset any likely significant impacts on protected matters.
  - relevant information provided by the proponent including (but not limited to) information provided in:
    - the application;
    - any response to a request for further information; and
    - the request to comment on the proposed decision;
  - the principles of ecologically sustainable development;
  - any relevant recovery strategy;
  - any relevant threat abatement strategy;
  - any relevant regional plan;
  - if the proposed action has been assessed by a State, Territory or accredited decision-maker under an accredited process – the assessment report provided by the relevant State, Territory or accredited decision-maker;

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- any other information the CEO has on the relevant impacts of the proposed action on protected matters;
- any relevant comments given to the CEO by a Minister (Commonwealth, State or Territory) in response to an invitation to comment on the proposed decision (as described below), including in relation to any relevant environmental, social, cultural, economic or other matters;
- any relevant advice received from the IESC;
- any relevant notice from a State or Territory about impacts on things other than protected matters (described above);
- any other information, as described in the Rules, the CEO considers relevant.

#### *3.6 Attaching conditions to an approval to take an action*

- The CEO of EPA may attach a condition to an approval to take an action where the CEO is satisfied that:
  - the proposed action would, or is likely to, have a significant impact on a protected matter; and
  - the condition is necessary to:
    - protect the protected matter (whether or not the protection is protection from the action); or
    - avoid, mitigate or repair damage to a protected matter, or compensate for damage to a protected matter (whether or not the damage may, will be, or has been, caused by the action).

#### *3.7 Requirements that must be satisfied to attach a condition to an approval to take an action*

- The CEO of EPA may only attach a condition to an approval where it is not inconsistent with:
  - any National Environmental Standard prescribed in the rules for the purpose of this provision.
  - Australia's obligations under any of the following international agreements:
    - the World Heritage Convention;
    - the Ramsar Convention;
    - the Biodiversity Convention;
    - the Apia Convention;
    - CITES;
    - the Bonn Convention;
    - CAMBA;
    - JAMBA;
    - ROKAMBA;
    - an international agreement prescribed by the rules.
  - the Protection Statement within a recovery strategy;

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- the Abatement Statement in a threat abatement strategy;
- any of the following:
  - the Australian World Heritage management principles;
  - a plan that has been prepared for the management of a declared World Heritage property under (or as described in) the Act;
  - the National Heritage management principles;
  - an agreement to which the Commonwealth is a party in relation to a National Heritage place;
  - a plan that has been prepared for the management of a National Heritage place under (or as described in) the Act.

#### *3.8 Mandatory considerations to attach a condition to an approval to take an action*

- The CEO of EPA, in deciding whether to attach a condition to an approval to take an action, must have regard to the same matters as for the decision whether to approve the action.
- In addition, the CEO of EPA, in deciding whether to attach a condition to an approval to take an action, must have regard to:
  - any relevant conditions that have been imposed, under a law of a State, Territory or another law of the Commonwealth, on the taking of the action; and
  - information provided by the proponent; and
  - the desirability of ensuring, as far as practicable, that the condition is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition.

#### *3.9 Other requirements relating to attaching conditions to an approval to take an action*

- The following requirements apply to attaching a condition to an approval to take an action:
  - where:
    - the condition requires specified activities to be undertaken; and
    - the specified activities are not reasonably related to the action,the condition can only be attached to the approval with the consent of the approval holder.
  - where a condition requires a specified financial contribution to be made to a person for the purpose of supporting specified activities to be undertaken, the condition can only be attached to the approval with the consent of the approval holder.
  - if the holder of an approval has consented to attaching a condition to the approval, the holder cannot withdraw that consent after the condition has been attached to the approval.
  - a condition attached to an approval should not be able to have the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State – but only where the proposed action is a nuclear action:



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- by a person for the purposes of trade or commerce between Australia and another country or between 2 states; or
- by a constitutional corporation.
- A condition attached to an approval may require a person taking the action to comply with conditions specified in an instrument (including any kind of authorisation) made or granted under a law of a State or self-governing Territory or another law of the Commonwealth:
  - as in force at a particular time; or
  - as in force or existing from time to time;even if the instrument does not yet exist at the time the approval takes effect.

However, the condition should only be taken to require the person to comply with any conditions specified in the instrument that are within the scope of the condition-setting power.

#### *3.10 Restoration contributions*

- A condition can require or allow the payment of a restoration contribution of a specified amount.

#### *3.11 Mandatory condition applying to all approvals to take an action*

- Where a person holds an approval to take an action, if that person (the first person) authorises, permits or requests another person to undertake any part of the action, the first person must take all reasonable steps to ensure:
  - that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and
  - that the other person complies with any such condition.

#### *3.12 Proposed decision whether to approve the taking of an action*

- The CEO of EPA will make a 'proposed decision' about whether to approve the taking of an action and any conditions proposed to be attached to the approval.
- The CEO of EPA must:
  - inform any Commonwealth Minister (other than the Environment Minister) whom the CEO believes has administrative responsibilities relating to the action of the proposed decision (including the proposed conditions); and
  - inform the proponent of the proposed decision (including the proposed conditions);
  - invite the proponent and any other Minister (if any) to give the CEO comments on the proposed decision within 10 business days.
- If the CEO of EPA proposes to rely on information or documents other than information provided by the proponent, the CEO must provide a copy of that information to the proponent, along with the proposed decision.
- This provision should be considered an exhaustive statement of natural justice in relation to the CEO's decision whether to approve the taking of an action and the conditions to attach to an approval.

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#### 3.13 Content of approval to take an action

- Where the CEO of EPA decides to approve the taking of an action, the approval must:
  - be in writing; and
  - specify the following information:
    - the action covered by the approval;
    - the person to whom the approval is granted (the approval holder);
    - the period of effect of the approval;
    - the conditions (if any) attached to the approval.
- The CEO is required, as soon as practicable after making the decision to approve the taking of the action, to:
  - give a copy of the approval to the holder of the approval;
  - publish a copy of the approval;
  - publish the reasons for the decision.
- An approval granted is an approval to take the action specified in the approval by any of the following persons:
  - the approval holder; and
  - a person who is authorised, permitted or requested by the holder of the approval, or by another person with the consent or agreement of the holder of the approval, to take the action.
- Where the CEO of EPA refuses to approve the taking of an action, the CEO must give the proponent notice of the decision to refuse the taking of the action and the reasons for the decision.

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#### Definitions

**Accredited process:** a process of a State, Territory or Commonwealth agency that provides for the assessment and/or approval of actions, and which has been accredited for a specific purpose under the new Act by the CEO of EPA or the Minister.

**Critical Protection Area:** An area of habitat that it is both irreplaceable and necessary for a listed threatened species, a listed threatened ecological community, or a listed migratory species to persist in the wild.

***Irreplaceable*** means that it is biologically, physically and/or technically very difficult, and/or impossible in an ecologically relevant time-frame, to restore, recreate or replace.

***Persist*** means the continued existence of a species or ecological community in its wild habitat, including any recovery required to enable the entity to become self-sustaining in the wild (but not necessarily to an abundance at which it would no longer be considered to be a threatened species/ecological community)

**Proponent:** equivalent to 'person proposing to take the action' and 'designated proponent' in the EPBC Act.

**Protected matter:** matters protected under the equivalent of Part 3 of the EPBC Act in the new legislation.

**Publish:** information that must be published should be made available to the public. Generally, this means publishing on the internet (including through EPA's online system) but may also include other mediums

**Recovery strategy:** a statutory document that will replace the existing suite of conservation planning documents, including conservation advices and recovery plans.

**Significant impact:** will be defined in policy and includes unacceptable impacts. Current EPBC Act significant impact policy is available at [Significant Impact Guidelines 1.1 – Matters of National Environmental Significance](#).

**Threat abatement strategy:** will replace existing threat abatement plans, covering threats to natural and cultural heritage values of matters of national environmental significance, including relating to species and ecological communities.

**Unacceptable impact:** a significant adverse impact that is prohibited under the new legislation.

**Viability:** the ability of a listed threatened species, a listed threatened ecological community, or a listed migratory species to persist in the wild. Viable species or ecological communities are sufficiently abundant and diverse to sustain the full range of biological and ecological functions necessary for their long-term persistence and adaptability, including the ability to respond or adapt to fluctuations or perturbations in the environment.

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#### Particulars

- If the CEO receives an application in relation to a proposal that is a component of a larger action, the CEO does not need to accept the application.
- As soon as practicable after receiving an application for approval to take an action, the CEO of EPA may inform the Australian Heritage Council where the CEO believes the proposed action may impact on the National Heritage values of a National Heritage place, and invite the Australian Heritage Council to provide comments that relate to the likely impacts of the proposed action on the National Heritage values of a National Heritage place.
- Where the CEO of EPA believes that a proposed action is proposed to be taken in, or may impact on, a Commonwealth marine area, the Great Barrier Reef Marine Park, Commonwealth land, a Commonwealth Heritage place overseas, or the action is proposed to be taken by a Commonwealth agency and the proposed action may impact the heritage values of one or more places, then the CEO may invite the Australian Heritage Council to provide comments that relate to the likely impacts of the proposed action on the heritage values of one or more places.
- The CEO of EPA must inform the Great Barrier Reef Marine Park Authority of any application for a proposed action, or a component of an action that is to be taken in the Great Barrier Reef Marine Park.
- At any time prior to a decision whether to approve an action or make an approval not required decision, a proponent may write to the CEO of EPA to propose that the taking of the action will be undertaken by a different proponent.
- 'Business day' will be defined and refer to business days in all places the action is to be taken.
- Failure to comply with a time limit will not affect the validity of the relevant decision.
- Provisions that apply to actions taken, or to be taken, in a State will also apply in the same way to actions taken, or to be taken, on, under, or over the seabed vested in the State by section 4 of *the Coastal Waters (State Title) Act 1980* (CWST Act).
- Provisions that apply to actions taken, or to be taken, in a self-governing Territory relate to the Northern Territory. Such provisions will also apply in the same way to actions taken, or to be taken, on, under or over the seabed vested in the Northern Territory by section 4 of the CWST Act.

## RECOVERY STRATEGIES FOR LISTED SPECIES AND ECOLOGICAL COMMUNITIES

### Power

The Minister may approve Recovery Strategies for listed species and ecological communities, to:

- provide information to support their protection and recovery; and
- to inform regulatory decisions.

### Provisions

- The Minister must ensure there is an approved Recovery Strategy in place for all threatened species and ecological communities in the critically endangered, endangered, vulnerable or extinct in the wild categories.
- The Minister may approve a Recovery Strategy for threatened species in the conservation dependent category, migratory species, marine species or cetaceans.

### Definitions

- **Critical Protection Area** - An area of habitat that it is both *irreplaceable* and necessary for a listed threatened species, a listed threatened ecological community, or a listed migratory species to *persist* in the wild.

*Irreplaceable* means that it is biologically, physically and/or technically very difficult, and/or impossible in an ecologically relevant time-frame, to restore, recreate or replace.

*Persist* means the continued existence of a species or ecological community in its wild habitat, including any recovery required to enable the entity to become self-sustaining in the wild (but not necessarily to an abundance at which it would no longer be considered to be a threatened species/ecological community).

- **Viability** - the ability of a listed threatened species, a listed threatened ecological community, or a listed migratory species to persist in the wild. Viable species or ecological communities are sufficiently abundant and diverse to sustain the full range of biological and ecological functions necessary for their long-term persistence and adaptability, including the ability to respond or adapt to fluctuations or perturbations in the environment.

### Particulars

- An approved Recovery Strategy must be published within 10 days of approval.
- An approved Recovery Strategy must include:
  - a **description** of the listed entity, its biological and ecological characteristics and requirements, including habitat and key habitat;
  - a **listing rationale**, outlining its eligibility for inclusion on the relevant list or lists;
    - A recovery strategy for a cetacean is not required to include a **listing rationale**.
  - a **threat statement**, identifying the relevant threats and key threatening processes impacting the listed species or ecological community;
  - a **conservation objective**, outlining what needs to be achieved to protect or recover the listed species or ecological community to allow it to be removed from the list;

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- one or more of the following action statements:
  - a **recovery action statement** – outlining the priority proactive activities needed to recover the listed species or ecological community;
  - a **management advice statement** – providing guidance on appropriate management of the listed species or ecological community or its habitat;
  - a **protection statement** – providing information to support regulatory decision making. This will include a description of areas and their habitat characteristics that have been identified as critical protection areas, and a description of the changes to an entity that would constitute a reduction in its **viability**. The spatial distribution of critical protection areas will also be provided as a map where relevant and possible.
- any other information the Minister considers appropriate.
- Before approving or making a substantial variation to a Recovery Strategy, the Minister must seek and consider comments from:
  - the Threatened Species Scientific Committee;
  - any State or Territory government where the listed species or ecological community occurs;
  - the public.
- Once approved, Recovery Strategy modules will be considered for review as part of a regular review cycle.
- A person may nominate an approved Recovery Strategy, or any module of an approved Recovery Strategy, for review where:
  - there is substantial new information; or
  - a triggering threshold has been met in accordance with the nomination and prioritisation process set out within the Rules.
- The Minister can approve a variation to Recovery Strategies, or to individual modules within Recovery Strategies, at any time.
- Where substantial, relevant new information is accepted by Environment Information Australia, **action statements** contained within a Recovery Strategy will be subject to review by the Minister.
  - A review of any **Protection Statement** may be undertaken discretely or as part of a regular review cycle.
- Recovery Strategies will replace existing conservation planning documents, including Conservation Advices and Recovery Plans. Transition arrangements will allow for these existing documents to remain in effect until they are replaced by new Recovery Strategies.
- **Complementary conservation planning provisions** - Threat abatement provisions will provide for the Minister to approve the listing of Key Threatening Processes (KTP) and make Threat Abatement Strategies to guide the management, research and other actions needed to abate a KTP.

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### MINISTERIAL CALL IN POWER

#### Power

The Minister may elect to make an environmental approval decision that would otherwise be made by the CEO of EPA or an accredited decision-maker.

#### Provisions

- The Minister may elect to make a specified approval decision at any point up until the business day immediately prior to the final decision due date in force.
- In making this decision, the Minister must:
  - not act inconsistently with Australia's international obligations; and
  - must have regard to:
    - national environmental standards
    - recovery strategies
    - threat abatement plans
    - recommendation report provided by the CEO of EPA or accredited decision-maker
    - social and economic matters, and
    - other matters the Minister considers relevant.
- The Minister must publish the reasons for electing to make an approval decision and the reasons for the final decision on approval as soon as practicable.

#### Particulars

- If the Minister elects to make a decision on approval that was to be made under an accredited process, the approval decision will be made under the Act.
  - The Minister's decision must only be in regard to aspects of the action that are regulated by the Act.
  - To avoid doubt, EPA will be responsible for any compliance and enforcement matters relating to decisions made by the Minister.
- If the Minister refuses to approve an action following an election to make an approval decision, the person proposing to take the action will not be able to reapply to EPA or accredited decision-maker for approval of the same action.
- To avoid doubt, the Minister cannot remake a decision that has already been made by the CEO of EPA or an accredited decision-maker.
- The Minister may attach conditions to an approval if satisfied that the condition is consistent with Australia's obligations under any relevant international agreements and any plan, agreement or principles relevant to National Heritage.
- The Minister must not approve an action in the following circumstances:

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- Where the action consists of or involves the construction or operation of a nuclear installation that is a nuclear fuel fabrication plant, a nuclear power plant, an enrichment plant or a reprocessing facility.
- This prohibition does not extend to a nuclear power plant that is a naval nuclear propulsion plant related to use in a conventionally armed, nuclear-powered submarine.
- Where approving the action would have the effect of giving preference to one State over another, within the meaning of section 99 of the Constitution, but only where the proposed action is a nuclear action:
  - by a person for the purposes of trade or commerce between Australia and another country or between 2 states; or
  - by a constitutional corporation.

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### NATIONAL INTEREST EXEMPTION

#### Power

The Minister may exempt a specified action by a specified person from the statutory requirement to obtain an environmental approval for a proposed action(s) that has, or is likely to have, a significant impact on a nationally protected matter.

#### Provisions

- An application for a National Interest Exemption may be made to the Minister in writing.
- The Minister may initiate a National Interest Exemption.
- The Minister may only consider a proposed action for the National Interest Exemption if:
  - The proposed action is reasonably necessary to address an emergency or threat that affects, has affected, or is likely to affect, the national interest, and
  - The proposed action is time-critical, and there is likely to be insufficient time to assess the proposed action under the usual processes.

#### Definitions

- In the context of this National Interest Exemption, national interest is defined as:
  - an emergency or threat related to Australia's defence or national security; or
  - an emergency or threat which has caused, is causing, or is likely to cause nationally significant harm in or to Australia, or in or to an Australian offshore area (including Australian waters); or
  - an emergency or threat which is the subject of an emergency declaration that is in force under the laws of that state or territory; or
  - an emergency or threat to one or more nationally protected matters; or
  - other circumstances as prescribed in the rules.

#### Particulars

- The Minister may impose conditions on the National Interest Exemption if the Minister is satisfied that the condition is necessary or convenient for the operation of the exemption.
- The Department would brief the Minister on relevant considerations.
- A National Interest Exemption must include a time period for which the Exemption has effect.
- The Minister may revoke or vary an exemption.
- The Minister must publish the details and reasons for granting a National Interest Exemption within 10 business days of making the decision.
- A National Interest Exemption cannot be applied in retrospect.

## **NATIONAL ENVIRONMENTAL STANDARDS**

### **Power**

The Minister may make national environmental standards for the purposes of the Act.

### **Provisions**

- Standards must not be inconsistent with the objects of the Act or Australia's international environmental obligations.
- A decision maker must consider a national environmental standard when making a decision to which that standard is relevant.
  - A provision may specify that a standard is to be applied:
    - to a decision [required] by that provision
    - by a person being satisfied that the decision is not inconsistent with the standard,
    - by the Minister having regard to the standard, or
    - in any other way.
  - Rules may specify how a decision maker must apply a national environmental standard.
  - Decision makers may consider and apply a national environmental standard despite this not being required by the Act.
- The Minister must not vary or revoke a national environmental standard in a manner that would reduce environmental protections.
- A review of a national environmental standard must be conducted every 5 years or within 5 years of a variation.

### **Particulars**

- A standard must specify one or more outcomes or objectives and the parameters or means by which each outcome or objective is to be achieved.
- A standard may refer to other legislative instruments and documents as they exist at particular times<sup>1</sup>.
  - The Minister must ensure documents referenced in standards are publicly available.
- Before making, varying or revoking a standard, the Minister:
  - must give written notice of the proposed changes to any Commonwealth agency, state or territory government, or strategic assessment holder whose agreements or accredited arrangements are affected by the proposed changes.
  - must publish a draft of the proposed, varied or revoked standard and invite comments on the draft for a minimum period of [30] business days.
  - may request advice from an advisory committee operating under the Act.

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<sup>1</sup> For the avoidance of doubt, this may include conservation planning documents that will be defined elsewhere in the Act: i.e. a statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of an MNES, that is made under Act, or endorsed or accredited by the [EPA/Minister].

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- The Minister is not required to give notice or consult on a variation of a standard if satisfied that the amendment is minor or machinery in nature.

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# National Environmental Standard for Matters of National Environmental Significance

## National objective

Matters of national environmental significance represent the elements of the environment and heritage that the Australian, State and Territory Governments have all agreed are in the national interest to protect, conserve and restore. The protection of these matters is guided by the Objects of [this Act].

## National Standard

Relevant decisions should:

1. Maintain and improve conservation, management and, where relevant, recovery of MNES, consistent with the principles of ecologically sustainable development, including:
  - a. Minimising harm to MNES, including employing all reasonably practicable measures to avoid and then mitigate impacts through project design, and then lastly to address impacts through appropriate use of restoration actions or contribution;
  - b. Addressing detrimental cumulative impacts and threatening processes.
2. Provide early opportunities for First Nations to identify and protect their cultural heritage, as it relates to MNES.
3. Enable and, where relevant, provide for monitoring, evaluation and reporting of outcomes for MNES.
4. Be based on suitable and appropriate data and information.

## Requirements for Threatened Species and Ecological Communities

Relevant decisions must:

1. Protect, conserve and support the restoration and recovery of **habitat**, including **critical protection areas**, for **threatened species and ecological communities**;
2. Support the **viability** of **threatened species and ecological communities** in the wild, through protection and recovery actions;
3. Not be inconsistent with a relevant protection statement in a **conservation planning document**, and have regard to other relevant information in **conservation planning documents**, except;
  - a. where the Minister is the decision-maker they [must] have regard to both the relevant protection statement and other relevant information in **conservation planning documents**;
4. Deliver a **net positive outcome** for affected **threatened species and ecological communities**.

## Requirements for Migratory species

Relevant decisions must:

1. Protect, conserve and support the recovery and restoration of **habitat**, including **critical protection areas**, for the **migratory species**;
2. Support the **viability** of **migratory species** in the wild;
3. Not be inconsistent with a relevant protection statement in a **conservation planning document**, and have regard to other relevant information in **conservation planning documents**, except;
  - a. where the Minister is the decision-maker they [must] have regard to both the relevant protection statement and other relevant information in **conservation planning documents**;
4. Deliver a **net positive outcome** for affected **migratory species**.

## Requirements for World Heritage

Relevant decisions must:

1. Protect, conserve and rehabilitate (where necessary) the **Outstanding Universal Value** of the **World Heritage property**, consistent with Australia's obligations under the **World Heritage Convention**;
2. Not be inconsistent with the **Australian World Heritage Management Principles** and relevant **conservation planning documents** for the **World Heritage property**; and
3. Deliver a **net positive outcome** for the **Outstanding Universal Value** of the property.

## Requirements for National Heritage

Relevant decisions concerning a **National Heritage place** [must]:

1. Protect, conserve and rehabilitate (where necessary) the **National Heritage values** of the place.
2. Not be inconsistent with the **National Heritage Management Principles** and relevant **conservation planning documents** for the place; and
3. Deliver a **net positive outcome** for the **National Heritage values** of the place.

## Requirements for Wetlands of International Importance (Ramsar wetlands)

Relevant decisions must:

1. Protect, conserve and restore (where it is in decline) the **ecological character** of the **Ramsar wetland**;
2. Not be inconsistent with the **Ramsar Management Principles** and relevant **conservation planning documents** for the **Ramsar wetland**; and
3. Deliver a **net positive outcome** for the **ecological character** of the **Ramsar wetland**.

## Requirements for Commonwealth Marine Environment

Relevant decisions must:

1. Protect, restore and sustainably manage **Commonwealth marine areas**;
2. Not be inconsistent with relevant marine park management plans, marine bioregional plans, and **conservation planning documents**; and
3. Deliver a **net positive outcome** for the environment of the Commonwealth marine area.

## Requirements for Great Barrier Reef Marine Park

Relevant decisions must:

1. Protect and conserve the environment, biodiversity and heritage values of the **Great Barrier Reef Marine Park**, and its individual components;
2. Not be inconsistent with zoning plans, plans of management and policies made under section 32A, section 39W or section 7(4) of the *Great Barrier Reef Marine Park Act 1975*; and
4. Deliver a **net positive outcome** for the environment, biodiversity and heritage values of the **Great Barrier Reef Marine Park**, and its individual components.

## Requirements for Protection of the Environment from Nuclear Actions

Relevant decisions must:

1. Not be inconsistent with the **ARPANSA national codes** for protection from radiation, including in relation to:
  - a. human health and environmental risks and outcomes; and
  - b. radiological impacts on biological diversity, the conservation of species and the natural health of ecosystems.

## Requirements for Protection of Water Resources from [Unconventional Gas] and Coal Mining Development

Relevant decisions must:

1. Protect the values of the **water resource** including the:
  - a. ecological and cultural components of the **water resource**;
  - b. integrity of the hydrological and/or hydrogeological connections of the **water resource**;
  - c. reliability and supply of water to **associated users** of the **water resource**; and
  - d. water quality of the **water resource**.
2. Not be inconsistent with relevant advice developed by the [Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development] under [section xx of legislation].

## Definitions

[Drafting note: where definitions are provided in primary legislation, they will not be included in final Standards]

**ARPANSA national codes:** the regulatory codes and standards as set and updated by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

**Associated Users:** individuals who use an impacted **water resource** as a provisioning service (including agriculture or drinking water), cultural service (including recreation, tourism, science, or education) or for traditional uses.

**Australian World Heritage Management Principles:** as defined in [Schedule 5 of the EPBC Regulations].

**Baseline:** an evidence-based estimate of the likely condition of an MNES in the absence of the action requiring approval under this [Act].

**Commonwealth marine area:** as defined in [section 24 of the EPBC Act].

**Conservation planning documents:** a statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of an MNES, that is made under [legislation], or endorsed or accredited by the [EPA/Minister].

**Critical protection area:** as defined in [Section, Act].

**Ecological character (Ramsar wetlands):** 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.

**Ecologically sustainable development:** as defined in [section 3A of the EPBC Act].

**Environment:** as defined in [section 528 of the EPBC Act].

**Great Barrier Reef Marine Park:** as defined in Section 3B of the *Great Barrier Reef Marine Park Act 1975*.

**Great Barrier Reef Marine Park values:** the environment, biodiversity and heritage values of the Great Barrier Reef Marine Park as defined in the *Great Barrier Reef Marine Park Act 1975*.

**Habitat:** areas that provide the environmental characteristics required for a species or ecological community to survive or recover. This includes areas that are occupied, were occupied, or may be reasonably be expected to become occupied in the future via natural processes, environmental change, habitat restoration or conservation translocation.

**Like for like:** 'Like for like' means residual impacts to a specific protected matter are compensated by a restoration action that delivers a projected gain for that same specific protected matter.

For listed threatened species and ecological communities and listed migratory species, restoration actions should prioritise the greatest need for the protected matter that is being impacted, as set out in conservation planning documents or in a regional plan (e.g. the highest priority for grey headed flying foxes is increasing winter feeding habitat). Where the greatest need for a specific protected matter is not known, the restoration action should focus on the attribute of that matter that is being impacted (e.g. breeding habitat).

For other protected matters, a restoration action must benefit the same specific attribute that is impacted (e.g. the same Outstanding Universal Value of a World Heritage Property).



**Marine listed species:** as defined in [legislation]

**Marine park management plans:** refer section [366 and 367 of the EPBC Act].

**Matters of national environmental significance (MNES):** refer [EPBC Act Part 3 Division 1]

**Migratory Species:** a species that is listed in the List of Migratory Species in [Section 209 of the EPBC Act].

**National Heritage place:** a place included on the National Heritage List, as defined in [section 324C of the EPBC Act].

**National Heritage Management Principles:** as defined in [Schedule 5B of the EPBC Regulations].

**National Heritage values:** as defined in [section 324D of the EPBC Act].

**Net positive outcomes:** an outcome where the projected gain from measures to mitigate and (where permitted) compensate for impacts is greater than a **baseline** that reflects what would have happened in the absence of the relevant action.

Net positive outcomes can be achieved through:

- sensitive design or where applicable, biodiversity inclusive design;
- improving and restoring ecological or heritage values;
- improved and ongoing management of key threats; and/or
- implementing management or recovery actions identified within conservation planning documents.

For impacts on some protected matters, net positive outcomes can also be achieved through action in accordance with the National Environmental Standard for Restoration Actions and Restoration Contributions.

**Nuclear actions:** as defined in [section 22 of the EPBC Act].

**Outstanding Universal Value:** defined in accordance with paragraphs 49-53 and 77-78 of the Operational Guidelines for the Implementation of the World Heritage Convention (as updated from time to time). This includes the criteria under which the World Heritage property is inscribed on the World Heritage List, the statements of authenticity and/or integrity, and the statement of protection and management.

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

**Ramsar wetland(s):** as defined in [section 17 of the EPBC Act].

**Threatened species or ecological community:** those species or communities listed under section [178 and 181 of the EPBC Act], following a scientific assessment of their threat status against a set of criteria in the [EPBC Act] and assigned to a conservation category: vulnerable, endangered, critically endangered, extinct, extinct in the wild or conservation dependent.

**[Unconventional] gas or coal mining developments:** as defined in [section 528 of the EPBC Act].

**Viability:** the ability of a species, ecological community or migratory species, to persist and recover in the wild. Viable species, ecological communities or migratory species, or populations of species, ecological communities or migratory, are sufficiently abundant and diverse to sustain the full range of biological and ecological functions necessary for their long-term persistence and adaptability, including the ability to respond or adapt to fluctuations or perturbations in the environment.

**Water resource(s):** as defined by the *Water Act 2007* and [section XX] of the [legislation].

**World Heritage Management principles:** defined in [regulation 10.01] of the [regulations].

**World Heritage property:** a property included in the World Heritage list or specified in a declaration [see section 13 and 14 of the EPBC Act].

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# National Environmental Standard for Restoration Actions and Restoration Contributions

## National Objective

Restoration actions and restoration contributions support the achievement of net positive outcomes by delivering a projected gain for significantly impacted Matters of National Environmental Significance (see MNES Standard).

In accordance with the mitigation hierarchy, restoration actions and contributions may only be used where a project is not unacceptable and a proponent has taken all reasonable steps to avoid and mitigate impacts on protected matters.

## National Standard

### Requirement to compensate for all residual significant impacts

1. The proponent must compensate for all **residual significant impacts** by:
  - a. delivering a **restoration action**, and/or
  - b. where the impacted protected matters are threatened species, ecological communities, migratory species and/or the Commonwealth marine environment, by making a **restoration contribution**. For impacts on these protected matters, a proponent may choose which is their preferred option, and may also use a combination of **restoration actions** and **restoration contributions**.

### Requirements for restoration actions

2. A **restoration action** must:
  - a. be feasible and based on suitable and appropriate data and information or expert assessment that it can contribute to the long term viability of the impacted protected matter with **high certainty**;
  - b. deliver '**like for like**' benefits consistent with the priorities for the impacted protected matter identified in **conservation planning documents** and any relevant Regional Plan;
  - c. deliver a **projected gain** for the protected matter [of at least X%] relative to a **baseline** that reflects what would have happened in the absence of the proposed action;
  - d. be situated in an area relevant to the impacted protected matters,
    - i. for threatened species and ecological communities, migratory species and the Commonwealth Marine Environment, the restoration action must be located

- within the same Bioregion as the impact, or be located within an alternative, ecologically relevant Bioregion for the protected matter;
- i. for World Heritage properties, National Heritage places and Ramsar wetlands, the restoration action must target the same value that is impacted;
  - e. include activities that restore or manage the protected matter unless an area is at **clear and imminent risk of impact**, in which case protection of a site may be accepted as part of the **restoration action** (limiting what are known as ‘averted loss’ actions);
  - f. provide a **direct restoration action** unless **conservation planning documents** identify an indirect action (i.e. research project or public education) as a higher priority for the protected matter (e.g. Research for Tasmanian Devil Facial Tumour Disease);
  - g. be identified and have **commenced** prior to the impact from the approved action;
  - h. be additional to existing actions and regulatory obligations, except where the **restoration action** is an **endorsed advanced restoration action**, or is an approved State or Territory **restoration action** for the same action that meets the requirements of this Standard;
  - i. be **securely protected** in perpetuity from activities that may degrade the protected matter, or be securely protected for the duration of the impact where impacts are temporary or are fully remediated;
  - j. be based on suitable and appropriate data and information; and
  - k. be detailed in a **restoration action** management plan that:
    - ii. details the method for projecting the gain as a result of the action, including the baseline projections or assumptions,
    - iii. details the actions and the projected outcomes for the impacted protected matter, and the time frame over which the outcomes will be achieved,
    - iv. outlines the monitoring, evaluation, reporting, and adaptive management actions to ensure the projected outcomes for the impacted protected matters will be achieved within the timeframe, including consideration of likely climate change scenarios,
    - v. is subject to expert review (if directed by the decision-maker) to confirm the integrity of the **restoration action** activity and method for projecting the gain from the project, monitoring and reporting, and
    - vi. is published, alongside any expert review, prior to commencement of the action.
3. A **restoration action** may be delivered by the proponent or by another party on behalf of the proponent.

## Requirements for restoration contributions

4. A **restoration contribution** must:
  - a. compensate (with a **projected gain** [of at least X%] relative to a **baseline** that reflects what would have happened in the absence of the proposed action) for the residual significant impact in line with the relevant costs set out in [Regulations];

- b. be included in the conditions of approval;
    - i. A project proponent may not direct the expenditure of a **restoration contribution**.
    - ii. Conditions of approval may not direct the expenditure of a **restoration contribution**.
  - c. be made to an **independent [Conservation Trust]** prior to the commencement of the action.
5. **Restoration contributions** must:
- a. be invested in:
    - i. restoration actions that meet the requirements in this standard (above); or
    - ii. in circumstances where the independent [Conservation Trust], having sought advice from its expert advisory committee, determines that this is not feasible, other direct restoration actions that the expert advisory committee advises will deliver the best overall environmental outcome for impacted protected matters within the same bioregion, such that:
      - i. actions must benefit the same protected matter that was impacted (for example a restoration contribution relating to a threatened species or ecological community must be spent on threatened species and ecological communities),
      - ii. preference is given to actions that include a benefit for the specific threatened species, ecological community or migratory species that was impacted,
      - iii. actions are expected to deliver a **projected gain** for the protected matter(s)
  - b. deliver actions that commence [within three years] of payment having been received; and
  - c. be reported publicly.

## Definitions

**Baseline:** an evidence-based estimate of the likely condition of an MNES in the absence of the action requiring approval under this [Act].

**Bioregion:** as described in the Interim Biogeographic Regionalisation for Australia (IBRA).

**Clear and imminent risk of impact:** Where there is a known [activity/action] that will directly result in an impact to a protected matter and there are no further regulatory mechanisms to prevent or manage the potential impact(s). This may include circumstances where there is an exemption from further regulation under the [EPBC Act] and the impact would not be regulated by other State or Territory laws. If the impact would itself be the subject of regulation under the [EPBC Act], this is not clear and imminent threat.

**Commenced: restoration actions** and secure protection mechanisms are demonstrably underway. For **direct restoration actions**, this requires the commencement of on-ground activities. For secure protection, this means a legal mechanism is in place to provide the security (e.g. a nature repair market certificate has been purchased or a covenant is in place over purchased land).

**Conservation planning documents:** a statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of a MNES, that is made under [legislation], or endorsed or accredited by the [EPA/Minister].

**Direct restoration action:** Provide quantifiable and tangible conservation benefits to the impacted protected matter by undertaking actions specifically designed to improve environmental or heritage outcomes in the immediate future. Actions may include: planting, land restoration, removal of pressures, active threat management, ongoing management to sustain improved environmental or heritage outcomes and captive breeding or propagation programs.

**Endorsed advanced restoration action:** A **restoration action** that is consistent with the Standard for Restoration Actions and Restoration Contributions and has commenced prior to the approval of an action to reduce the time lag from the impact to delivering the benefit. [An advanced restoration action must be endorsed by the EPA].

**High certainty:** A high level of confidence that a **projected gain** will be achieved and that the outcome of this gain will contribute to the long-term viability of the protected matter. For **restoration actions** this can be demonstrated by providing evidence that the action proposed will deliver the proposed outcomes for the impacted protected matter, including:

- i. existing peer reviewed science on how the **restoration action** will restore the habitat with a high confidence of success, taking into consideration the future adverse impacts of climate change (including recommended actions in **conservation planning documents**); and/or
- ii. independent verification of prior success for an analogous activity; and/or
- iii. independent expert review and endorsement of the proposed **restoration action** and associated outcomes for the protected matter, as well as comprehensive adaptive management plans. This will be necessary for innovative **restoration actions**.

**Independent [Conservation Trust]:** an independent Trust established by the Australian Government for the purposes of receiving and investing **restoration contributions**, or any other Trust that is accredited by the Minister for the Environment to receive and invest **restoration contributions** in certain circumstances where the requirements of the Standard for Restoration Actions and Restoration Contributions are met.

**Like for like:** 'Like for like' means residual impacts to a specific protected matter are compensated by a **restoration action** that delivers a **projected gain** for that same specific protected matter.

For listed threatened species and ecological communities and listed migratory species, **restoration actions** should prioritise the greatest need for the protected matter that is being impacted, as set out in **conservation planning documents** or in a regional plan (e.g. the highest priority for grey headed flying foxes is increasing winter feeding habitat). Where the greatest need for a specific protected matter is not known, the **restoration action** should focus on the attribute of that matter that is being impacted (e.g. breeding habitat).

For other protected matters, a **restoration action** must benefit the same specific attribute that is impacted (e.g. the same Outstanding Universal Value of a World Heritage Property).

**Projected gain:** A projected gain for a **restoration action** is achieved when the projected gain delivered by the **restoration action** is estimated to be greater [(at least X%)] than the projected loss as a result of the proposed action.

**Residual significant impacts:** a **significant impact** on a protected matter that remains after measures are taken to avoid and/or mitigate the impacts of an action. An impact which is unacceptable cannot be made acceptable through the delivery of a **restoration action** and/or making of a **restoration contribution**.

**Restoration action:** measures taken to compensate for the residual significant impacts of an action to a protected matter.

**Restoration contribution:** A payment made to an **independent [Conservation Trust]** that compensates for a **residual significant impact**, in accordance with [reference to legislation]. This payment acquits a proponent's liability for those impacts.

The price of a restoration contribution is set in the [Regulations], and includes the following:

- Cost of equivalent restoration to deliver a **projected gain** [(at least X%)] in the **Bioregion** where the impact occurs (including, where relevant, land lease or purchase),
- Cost of managing and monitoring the restoration activity,
- Administration levy to cover the operation of the [Conservation Trust], and
- Risk component to manage uncertainty and adaptive management to ensure an overall environmental benefit from the restoration contribution. This risk component will be reduced where a restoration contribution is delivered in accordance with the conservation outcomes set out in a regional plan, and increased where an impact is outside a Development Priority Area specified in a regional plan.

**Securely protected:** Gains are appropriately secured for the duration of the impact for conservation purposes, including protecting the gains from future development. Suitable mechanisms could include covenants on the land that the restoration activities are taking place on, including land acquired by the proponent or land owned by another third party, land purchased for addition to a protected area estate, the use of state-based offset schemes, contracts with management action providers, or certain types of certificates under statutory-based markets.

**Significant impact:** as defined by the [legislation][Standard for MNES].

# National Environmental Standard for Data and Information

## National objective

This standard is a key component of the Nature Positive legislative package to promote transparency, defensibility, and public trust in decision-making processes relating to Australia's environment and heritage. It sets out requirements to ensure environmental decision making and planning is transparent, defensible and informed by appropriate data and information, and that there is a clear framework for collecting, assessing the validity and determining the appropriate use of environmental data and information.

## National standard

The principles in the Standard must be read together with the detail provided in Technical Guidance issued by the Head of Environment Information Australia (HEIA).

In providing environment data and information to the decision maker to support a decision, or influence understanding of key issues, parties must demonstrate how it is:

1. **Findable, Accessible, Interoperable and Reusable** (or “[F.A.I.R.](#)”) in accordance with technical guidance issued by the Head of Environment Information Australia [technical guidance has not yet been developed]. In brief this means:
  - a. **findable** – ideally by being published as soon as possible after collection and enduring to allow re-use to inform future decisions with historical context;
  - b. **accessible** – by excluding, as reasonable and appropriate, any limitations on access and assigning, where possible, a [Creative Commons No Rights Reserved](#) license;
  - c. **interoperable** – including by being consistent with science-based, published national protocols for data collection and sharing [for example: [EMSA Protocols Manual EMSA Protocols Manual](#)];
  - d. **reusable** – including by being persistent and having metadata clearly describing provenance and intended use.
2. **Ethical** – by having been developed, created and managed through best-practice processes for: compliance with relevant legislation; protecting privacy and sensitive data; transparency of governance; and appropriate inclusion of stakeholders by informed consent.

First Nations data, knowledge and/or information provided to support decision making under the Nature Positive regulatory framework must satisfy C.A.R.E. principles, in accordance with technical guidance issued by the Head of Environment Information Australia:

- a. **collective benefit**: Data ecosystems shall be designed and function in a way that enables First Nations people to derive benefit from the data;
- b. **authority to control**: First Nations peoples' rights and interests in First Nations data, knowledge and information must be recognised and their authority to control such data, knowledge and information be empowered;



- c. **responsibility:** All parties working with First Nations data, knowledge and/or information must demonstrate how it is used to support First Nations people's self-determination and collective benefit;
- d. **ethics:** First Nations people's rights and wellbeing with respect to their data, knowledge and/or information must be considered at all stage of the data life cycle and across the data ecosystem.<sup>1</sup>

***[Consultation is ongoing in relation to the text on CARE principles under ethical requirements, including with the First Nations Standard working group, First Nations Branch and others]***

- 3. **Reliable and fit for purpose** – by ensuring suitability for intended use, achieving highest levels of F.A.I.R. and ethics and originating from a trustable source. The following three-tiered hierarchy should be used to designate reliability and fitness for purpose for environment data and information provided to influence decisions and protected matters under the Nature Positive regulatory framework.

**Tier 1 – Highest reliability and fitness for purpose:** environment data and information which is highly suited to the intended use and meets all F.A.I.R. and ethics principles and which originates from a highly trustworthy source, collected/created and shared ethically and using methods which can be easily gauged for its high degree of accordance with EIA technical guidance. Methods are either published and described in a respected peer-reviewed scientific or data journal; established in a recognised and enduring process for traditional knowledge management; or produced or approved by a persistent, statutory or otherwise independent/impartial, body; and (in the case of contemporary knowledge) accessible via a persistent unique identifier.

Examples of Tier 1 environment data and information include:

- time-stamped, accurately-geolocated species observation data, maintained and publicly accessible via a state agency digital data repository;
- historical ocean wave statistics available from Australian Ocean Data Network;
- a species distribution model, or mapped critical protection areas, for a listed threatened species, informed by expert advice including from the Threatened Species Scientific Committee, and published by Environment Information Australia; or
- biological survey data which is consistent with EIA technical guidance having been collected by experienced consultant ecologist using a downloaded app for a published protocol and which results in the relevant environment data and information being shared via the Australian Biodiversity Information Standard.

**Tier 2 – High reliability and fitness for purpose:** environment data and information which is suited to the intended use and meets most F.A.I.R. and all ethics principles and which originates from a trustworthy source, collected/created and shared ethically by an independent, person/entity respected by their peers in relation to the type of data and information concerned, but using an unpublished or uncertain method which requires review and analysis prior to being recommended for use in decision making under the Act.

Examples of Tier 2 environment data and information include:

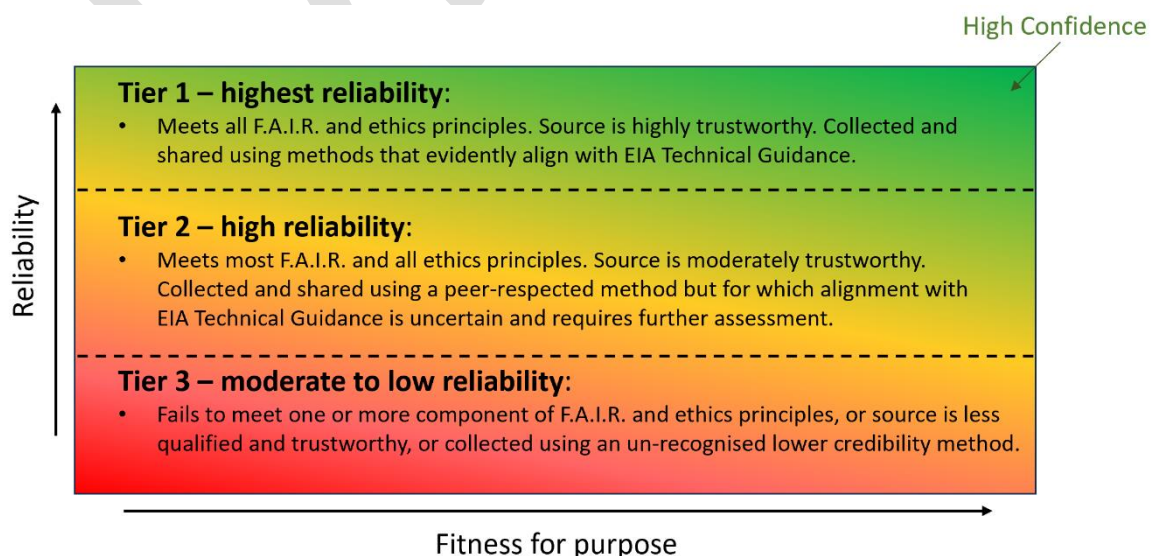
- recently collected survey data from a consultant ecologist with peer-recognised expertise using a method built on, but not entirely following, a published protocol, and including species data which are yet to be lodged with, and vouchered by, an authorised statutory body at state/territory level;
- raw biological survey data, owned by a development proponent, which has been used and cited in a synthesised published report, but is itself unpublished. The raw data and methods are accessible to the decision maker and/or EIA on request but are not readily available and accessible for members of the public;
- biological survey information collected by a respected ecological researcher who elects not to publicly share their raw data or survey methods. The data and methods are accessible to the decision maker and/or EIA on request but are not readily available and accessible for members of the public.

**Tier 3: – Low reliability and fitness for purpose:** environment data and information for which the suitability for intended use is moderate, and fails to meet one or more of the F.A.I.R. and Ethical principles, as gauged with reference to EIA Technical Guidance, or is from a less qualified and trustworthy source, or has been collected using a method not recognised by peers as credible and reliable.

Examples of Tier 3 environment data and information include:

- a digital photograph of a single specimen captured and stored locally by a non-expert individual, shared by posting to social media and subsequently endorsed as likely to be true by a recognised expert;
- data gathered by a recognised expert using an approach which breaches ethical standards, for example by not having the necessary permissions for site access or inadequate provision for protection of data sensitivity; or
- data purporting to be survey-gathered and published by a non-expert without specimen vouchering to state/territory statutory collections and accessible only via a repository maintained by an organisation not recognised for its scientific veracity and credibility.

The following chart shows how reliability and fitness-for-purpose combine to provide the highest confidence in environment data and information.



To influence regulatory decision-making, and/or EIA knowledge holdings, environment data and information must meet certain reliability and fitness for purpose thresholds. The following provides a summary of how the reliability/fitness for purpose tiers will apply to decisions and protected matters under the Nature Positive regulatory framework:

- **Tier 1 environment data and information** – Automatically accepted to influence relevant regulatory decision-making, accreditation of third-party processes and for inclusion in EIA’s knowledge holdings.
- **Tier 2 environment data and information** – accepted to influence relevant regulatory decision-making, accreditation processes and inclusion in EIA’s knowledge holdings following assessment process. In general, will not be given the same weight in decision-making as Tier 1.
- **Tier 3 environment data and information** – not sufficient to influence regulatory decisions or accreditation processes. May be accepted for inclusion in EIA knowledge holdings if evidence corroborated by more reliable data and information.

Further details on the application of reliability tiers to specific decisions/processes is detailed in the table below.

<b>Practical application of reliability/fitness for purpose tiers to decision making</b>			
<b>Decision</b>	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>
<b>Influencing Environment Protection Australia (EPA) decisions including development approvals</b>	Accepted	Accepted but with additional EPA assessment required	Not accepted
<b>Decisions to accredit third party processes</b>	Accepted	Accepted with additional decision maker assessment required	Not accepted
<b>Influencing the creation or review of critical protection areas</b>	Accepted	Likely to be accepted for consideration following additional assessment	Not accepted
<b>Influencing Presence / absence of listed species and ecological communities</b>	Findings regarding presence / absence of species accepted in EIA knowledge holdings and in EPA decisions	Likely to be accepted for consideration following additional assessment	May be accepted if evidence corroborated by more reliable data and information
<b>Influencing Regional planning zones</b>	Accepted	Likely to be accepted for consideration following additional assessment	May be accepted if evidence corroborated by more reliable data and information

## Definitions

### Environment data and information

Data and information related to understanding patterns and dynamics of nature and the environment, as required to meet decision making needs under the Act. This includes, but is not limited to, any of the following:

- site or point-based observations, made either by humans or sensors (including ground-based, airborne, boat based, acoustic, and satellite sensors), of matters protected by the Act and/or attributes relevant to their protection (including attributes of the landscapes, ecosystems, freshwater systems and seascapes which contain them) including those which indicate magnitude of pressures, threats, and state changes to populations ecosystems, heritage and other protected places;
- locations and nature of interventions administered by the Commonwealth for protection and recovery via regulatory or investment activities;
- models, maps, metrics, data assets and reports made through processing, integrating and interpreting environment data, including through integration with non-environment datasets;
- published classifications, taxonomies, protocols, frameworks, documents identifying heritage or conservation significance of heritage and other protected places as well as of species and ecosystems, conservation planning documentation and management plans relevant to the design of processes to collect, manage and share environment data;
- Unpublished or published information, relating to the environment, that is shared by knowledge holders, authors or place managers for the purpose of decision-making or reporting and other purposes of the legislation or to meet Australia's international environment and sustainability obligations.

### Findable, Accessible, Interoperable, Reusable (F.A.I.R.)

For supporting all decision making under the Act, HEIA Technical Guidance will include requirements, including for to ensure data are Findable, Accessible, Interoperable and Reusable F.A.I.R. This framework has international standing for application in data management for researchers and government.

The following definitions for F.A.I.R. are brief forms of what will be provided in HEIA technical guidance and which will be continuously improved:

- **Findable** – The data has a unique, persistent identifier and rich metadata. The unique, persistent identifier could be a digital object identifier or Handle. Metadata should be rich enough to ensure it is findable through disciplinary local or international discovery portals, and to allow any potential user to understand its lineage and assign confidence.
- **Accessible** – The data is retrievable by humans and machines through a standardised communication protocol, with authentication and authorisation where necessary. The data should be open by default; however, there may be instances when the data is sensitive due to concerns over privacy, cultural reasons, commercial interests or for ecological reasons. When data and information is not able to be open, the justification for this must be clearly explained including clarity and transparency around the conditions governing access and reuse and timing of review of access constraints.

- **Interoperable** – The associated data and metadata uses a formal, accessible, shared, and broadly applicable language for knowledge representation. This involves using community accepted languages, formats and vocabularies in the data and metadata. Metadata should reference and describe relationships to other data, metadata, and information through identifiers.
- **Reusable** – The associated metadata provides rich and accurate information, and the data comes with a clear usage licence and detailed provenance information. Reusable data should maintain its initial richness. For example, it should not be diminished for the purpose of explaining the findings in one publication. It needs a clear machine-readable licence and provenance information on how the data was formed. It should also use discipline-specific data and metadata standards to give it rich contextual information that will allow reuse.

**First Nations data** – Refers to information or knowledge, in any format or medium, which is about and may affect indigenous peoples both collectively and individually.

#### **Technical guidance**

The HEIA will develop, publish technical guidance on procedures that may be followed, and/or protocols and information technology applications that can be used to support, and give effect to, the application of this standard. Technical Guidance will be revised periodically to maintain currency with best practice.

The HEIA issued technical guidance will include the following:

- overall guidance on how to approach reporting to demonstrate compliance with all components of this standard, including the F.A.I.R. and Ethical components.
- reliable links to HEIA-endorsed, enduring guidance developed by third party organisations, including protocols for field surveys and data sharing, and frameworks for describing data quality and reliability, or prescribing vocabularies to support consistency and aggregability.
- descriptions of HEIA-issued datasets, including National Environmental Information Assets, and guidance on their application and intended use;
- guidance on data management and data governance to ensure enduring access to high quality datasets.

**Fit for purpose** – environment data and information must be suited to the intended use. Fitness-for-purpose will be assessed with reference to HEIA-issued technical guidance covering:

- **Relevance:** how meaningful the data and information are to a given decision.
- **Accuracy:** the degree to which data accurately represent the intended phenomenon to the degree necessary to inform a given decision.
- **Interpretability:** how easily the data and information can be understood, communicated to others and applied to inform a given decision.
- **Timeliness:** how any gap between the date of observation and that of a given decision is understood and explained for how it could be addressed in using the data and information to inform a given decision.

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<sup>1</sup> Wording adapted from the Global Indigenous Data Alliance '[CARE Principles](#)'. For supporting material, see Carroll et al, [The CARE Principles for Indigenous Data Governance](#), p 6.

# National Environmental Standard for Community Engagement and Consultation

## National objective

To allow for greater community, business, organisation, and individual contribution to, and to help improve, environmental decision-making and planning processes by ensuring they have access to meaningful information about project impacts and an opportunity to provide feedback early in the project development process.

## National Standard

### Requirement to engage with the community

1. The **proponent** must **publish** on the internet:
  - a. **relevant information** about the proposal and its likely impacts on protected matters; and
  - b. an invitation for any persons to give the **proponent** comments within:
    - i. 15 **business days** from the date of **publishing** the **relevant information**, where the proposal is to take an action under the [low impact pathway of the environmental approval process]; or
    - ii. 30 **business days** from the date of **publishing** the **relevant information** for any other proposal;
2. The **proponent** must not apply a direct financial charge for any person to submit comments or access the **relevant information**.
3. Specific requirements for environmental approvals: A **proponent** submitting a proposal under [either the low impact pathway or standard pathway of the environmental approval process], must complete the EPA registration process for the proposal, prior to commencement of the formal public comment period at [1(b)].
4. The **proponent** should consider:
  - a. inviting comment from the impacted **community**;
  - b. conducting multiple engagement processes with the **community**, including early engagement that allows for input to consider options for avoidance or mitigation of impacts to protected matters;
  - c. providing additional time for public consultation when:
    - i. there are **circumstances that could reasonably be expected to limit participation** and/or;
    - ii. the proposal contains **complex information** and/or;

- iii. there are significant **community** concerns raised prior to, or during the engagement process.

## Information about the engagement process

- 5. The **proponent** must include with the invitation to comment:
  - a. instructions that explain how a person can provide comment;
  - b. an explanation of how any **confidential information** will be stored and shared;
  - c. an option for respondents to remain anonymous.
- 6. The **proponent** should consider including with the invitation to comment:
  - a. an explanation of how the comments received will be considered by the proponent and decision maker;
  - b. information about which parts of the proposal can be amended and which parts of the proposal cannot change<sup>1</sup>;
  - c. information about whether any parts of the proposal have changed due to information provided by the same person/s.

## Relevant information about the proposal and its impacts

- 7. **Relevant information** must include:
  - a. what is proposed;
  - b. the location and timing of the proposal;
  - c. a description of the impacted area and surrounding environment;
  - d. the nature and extent of likely impacts on any matter protected under [the relevant part of the Nature Positive (Environment) Act];
  - e. information on social and economic impacts of the proposal;
  - f. measures to avoid and mitigate impacts on matters protected under [the relevant part of the Nature Positive (Environment) Act] and justification for why the chosen measures were selected over other viable alternatives;
  - g. how the proposal is consistent with applicable requirements of relevant national environmental standards;
  - h. a description of how environmental performance will be monitored and recorded;
  - i. information sources used in the proposal;
  - j. any other environmental approvals that may be required for the proposal under State, Territory or Commonwealth legislation, and expected timeframes for these approval processes.

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<sup>1</sup> For example, technical reasons relating to the proximity of a relevant resource.

8. Specific requirements for strategic assessments and regional plans: When proposing a strategic assessment or making a regional plan, the **relevant information** must also include:
  - a. an assessment of the extent to which the strategic plan considers climate change, including environmental adaptation and resilience measures.
  - b. information on ecosystem services associated with the impacted environment, where relevant.
9. The proponent should consider including in the **relevant information**:
  - a. the full package of information being put to the decision maker - except for the **Summary of Community Engagement and Consultation** [item 12] as this can only be prepared following the engagement process.

## Accessibility of the engagement process

10. The **proponent** must:
  - a. consider the **accessibility** of their chosen engagement methods, including **circumstances that could reasonably limit participation**; and
  - b. detail this consideration in the **Summary of Community Engagement and Consultation** [item 12].
11. The **proponent** should consider:
  - a. whether their chosen **community** engagement methods and timing provide persons with adequate opportunity to be aware of and understand the information provided, including any **circumstances that could reasonably limit participation**;
  - b. providing opportunities for persons to seek clarification of the **relevant information** where necessary to provide appropriate and informed feedback;
  - c. the accessibility of their chosen engagement process and **relevant information** and whether it complies with the *Disability Discrimination Act 1992* (Cth).

## Reporting on community engagement and consultation

12. The **proponent** must prepare a written **Summary of Community Engagement and Consultation** and provide this to the decision maker with the proposal.
13. The **Summary of Community Engagement and Consultation** must include:
  - a. a statement of claims outlining how engagement on the proposal meets the requirements of the Community Engagement and Consultation standard;
  - b. the key themes and issues raised in response to the invitation to comment on the proposal and how the **proponent** has considered and responded to each one;
  - c. all written comments on the proposal;
  - d. any **confidential information**, as an appendix, so that it can be excluded from publication. This should also outline the reason for determining confidential information.



14. The **proponent** should consider including the best practice elements of this standard within the statement of claims [at item 13(a)]:
- a. justification of timing [item 4];
  - b. how persons were informed about the engagement process [item 6];
  - c. how the consultation was publicised to ensure maximum visibility;
  - d. the **relevant information** [item 9];
  - e. consideration of **accessibility** [item 11];
  - f. how the **community** was identified for consultation.

## Definitions

**Accessibility:** Consideration should be applied to the characteristics and needs of persons being consulted and services available. Considering accessibility aims to provide that all persons can participate in the consultation process. Accessibility includes **circumstances that could reasonably be expected to limit participation**.

**Business days:** means Monday to Friday excluding public holidays in the location of the proposal (all relevant public holidays should be excluded where proposals are cross-jurisdictional), and the period between Christmas Day and New Years Day, inclusive.

**Circumstances that could reasonably be expected to limit participation:** are known factors that are likely to impact participation in engagement processes. This includes, but is not limited to: location of engagement activities, level of education, language, cultural considerations, availability of services (e.g. internet or access to transportation), severe weather conditions, public holidays.

**Confidential information:** includes material that is commercial in confidence, personal identification, culturally sensitive, confidential for reasons of national security, or information that may endanger a protected matter if disclosed. A definition of confidential information is expected to be included in the Nature Positive (Environment) Bill and would take precedence over this policy description.

**Community:** includes all groups and individuals that the [proponent/decision-maker] considers to be impacted by, have relevant knowledge or expertise pertaining to, or have an interest in, the proposal. Community includes First Nations persons.

**Complex information:** means information about a proposal that would require reading ability more advanced than the lower secondary education level or that uses words or phrases in an unusual or restricted way, including idioms and jargon. Guidance will be developed to assist interpretation of this requirement.

**Proponent:** a person who advocates for a proposal. This may be the person proposing to take an action, the applicant, the relevant party, or a designated proponent acting on behalf of such a person. [This includes a Commonwealth Minister where they are proposing the action].

**Publish:** information that must be published should be made available to the public. Generally this means publishing on the internet (including through EPA's online system) but preferably would include the same methods as used to publish relevant information about the proposal.

**Relevant information:** is key information about a proposal that will inform environmental decision-making, comprising the elements listed at [item 7].

**Summary of Community Engagement and Consultation:** is a summary report that addresses the requirements of this standard, as listed at [item 14]. This would be published under the respective decision-making process.

DRAFT