

COMMENT ON EXPOSURE DRAFT



EXPOSURE DRAFT

National Environmental Standard (Matters of National Environmental Significance) 2026

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

Dated

Murray Watt **DRAFT ONLY—NOT FOR SIGNATURE**

Minister for the Environment and Water

COMMENT ON EXPOSURE DRAFT

COMMENT ON EXPOSURE DRAFT

Contents

1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Objectives	2
6 Outcomes	4
7 Principles	<u>54</u>
8 Principle 1—Actions appropriately apply the mitigation hierarchy	<u>55</u>
9 Principle 2—Actions appropriately consider adverse impacts to protected matters.....	<u>76</u>
10 Principle 3—Actions with residual significant impacts to protected matters are compensated	<u>87</u>
11 Principle 4—Appropriate evidence, indigenous engagement and consultation.....	<u>87</u>

COMMENT ON EXPOSURE DRAFT

COMMENT ON EXPOSURE DRAFT

1 Name

This instrument is the *National Environmental Standard (Matters of National Environmental Significance) 2026*.

2 Commencement

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

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

Note: This table relates only to the provisions of this standard as originally made.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

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

3 Authority

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

4 Definitions

Note: A number of expressions used in this standard are defined in the Act, including:

- (a) action
- (b) Commonwealth heritage place
- (c) Commonwealth marine area
- (d) critical habitat
- (e) declared Ramsar wetland
- (f) declared World Heritage property
- (g) ecological character
- (h) environment
- (i) Great Barrier Reef Marine Park
- (j) impact
- (k) indigenous heritage value
- (l) irreplaceable
- (m) National Heritage values
- (n) National Heritage place
- (o) Ramsar Convention
- (p) residual significant impact
- (q) restoration contribution charge

COMMENT ON EXPOSURE DRAFT

- (r) World Heritage Convention
- (s) world heritage values

In this standard:

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

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

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

independent means a person, or firm, who does not have any individual, financial*, employment* or family affiliation or any conflicting interests with the Action, the approval holder or the approval holder's staff, representatives, or associated persons. [* means 'Other than for the purpose of undertaking the role for which the person, or firm, is required'.]

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

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

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

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

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

significant impact guidelines means the *Matters of National Environmental Significance: Significant impact guidelines 1.1*.

5 Objectives

- (1) This Standard ~~aims to ensure~~ requires that decisions made under the Act provide for the protection, conservation ~~and, where appropriate,~~ management ~~and, where they have declined or will decline in condition as a result of the decision,~~ restoration and recovery of protected matters.
- (2) This Standard aims to promote and enhance the diversity, abundance, resilience, and integrity of protected matters across their entire geographic area to support the long term survival and continuation of such matters ~~consistent with the principles of ecologically sustainable development.~~
- (3) ~~This Standard requires regular monitoring and reporting sufficient to confirm the outcomes in section 6 are being achieved.~~

Commented [MW1]: Recommend: 'has the same meaning as the *National Environmental Standard (Environmental Offsets) 2026*'

Commented [MW2]: This definition is taken from a recent approval, i.e., EPBC 2019/8398

Commented [MW3]: Recommend: 'has the same meaning as the *National Environmental Standard (Environmental Offsets) 2026*'

Commented [MW4]: Recommend: 'has the same meaning as the *National Environmental Standard (Environmental Offsets) 2026*'

COMMENT ON EXPOSURE DRAFT

6 Outcomes

(31) The ~~objectives-outcomes to be achieved~~ for protected matters under this Standard are specified in the following table.

Objectives-Outcomes for protected matters

Item	ObjectiveOutcome
-------------	-------------------------

1	Listed threatened species Habitat of the listed threatened species (including-critical-habitat)-where the habitat is irreplaceable and necessary for the species to remain viable in the wild is protected, conserved, <u>managed</u> and where it has declined or will decline in condition as a result of the decision —restored to support survival and recovery of the species. Protection, conservation, <u>management</u> , restoration and recovery actions support the viability of threatened species in the wild.
2	Listed threatened ecological communities Habitat of the listed threatened ecological community (including-critical-habitat)-where the habitat is irreplaceable and necessary for the community to remain viable in the wild is protected, conserved, <u>managed</u> and where it has declined or will decline in condition as a result of the decision —restored to support survival and recovery of the community. Protection, conservation, <u>management</u> , restoration and recovery actions support the viability of ecological communities.
3	Listed migratory species Habitat of the listed migratory species where the habitat is irreplaceable and necessary for the species to remain viable in the wild is protected, conserved, <u>managed</u> and where it has declined or will decline in condition as a result of the decision —restored to support survival and recovery of the species. Protection, conservation, <u>management</u> , restoration and recovery actions support the viability of migratory species in the wild.
4	Wetlands of International Importance The ecological character of a declared Ramsar wetland is maintained <u>managed</u> , protected, conserved and (where it is in decline) restored in a manner consistent with Australia's obligations under the Ramsar Convention.
5	National Heritage places The National Heritage values of the place are protected, conserved, managed and (where the values are in decline <u>appropriate</u>) restored. Indigenous heritage values of a National Heritage place are treated in a manner respectful of indigenous traditions and beliefs.
6	World Heritage properties The world heritage values of a declared World Heritage property are protected, conserved, <u>managed</u> and (where the values are in decline <u>appropriate</u>) restored in a manner consistent with Australia's obligations under the World Heritage Convention.

COMMENT ON EXPOSURE DRAFT

Objectives/Outcomes for protected matters

<u>Item</u>	<u>Objective/Outcome</u>
-------------	--------------------------

7	Great Barrier Reef Marine Park
---	---------------------------------------

The biodiversity and heritage values that are part of the environment in the Great Barrier Reef Marine Park, are protected, conserved, managed and (where the values are in declineappropriate) restored and recovered.

8	Commonwealth marine areas
---	----------------------------------

~~A The Commonwealth marine ecosystem-area (or part thereof a marine ecosystem) that is part of the environment in a Commonwealth marine area, are~~ is protected, conserved, managed and (where it is in declineappropriate) restored and recovered.

9	Protection of water resources from unconventional gas development and large coal mining development
---	--

The function and integrity of the water resource are protected and conserved, including the:

- (1) ecological components, functions and processes of the water resource necessary to support sites of local, regional and national ecological significance;
- (2) reliability and supply of water to support critical human water needs; and
- (3) provisioning, regulating, cultural and supporting services provided by the water resource.

10	Protection of the environment from radiological exposure actions
----	---

The environment affected, or part thereof, is protected, conserved, managed and (where it is in declineappropriate) restored and recovered.

The environment, including biological diversity, and the health of natural ecosystems and human health is protected from impacts of radiological exposure.

11	Actions taken on Commonwealth land or on Commonwealth heritage places overseas and actions taken by the Commonwealth
----	---

The environment affected, or part thereof, is protected, conserved, managed and (where it is in declineappropriate) restored and recovered.

~~6~~ **Outcomes**

~~The following outcomes of the Standard are intended to promote the objectives in section 5:~~

- ~~(a) provide for the protection, conservation, and, where appropriate, restoration and recovery of protected matters;~~
- ~~(b) contribute to the promotion and enhancement of the diversity, abundance, resilience, and integrity of protected matters across their entire geographic area; and~~
- ~~(c) facilitate ecologically sustainable development.~~

COMMENT ON EXPOSURE DRAFT

7 Principles

- (1) For subsection 514YD(4) of the Act, the principles by which the outcomes and objectives in sections 5 and 6 of this Standard are to be achieved are the principles in sections 8, 9, 10 and 11 of this Standard.
- ~~(2) An action or class of actions will achieve the outcomes and objectives in section 5 and 6 of this Standard where that action, or class of actions, is consistent with the principles in sections 8, 9, 10 and 11 of this Standard.~~
- ~~(3) The principles in sections 8, 9 and 10 of this Standard only apply to an action or class of actions to the extent that the impact is on a matter protected by a provision of Part 3 that is a controlling provision for the action or an action in the class of actions.~~
- ~~(4) A decision maker may be satisfied that:
 - ~~(a) a decision to approve the taking of an action or class of actions, taking into account any conditions to be attached to the approval, is consistent with this Standard if the action or class of actions is consistent with the principles in sections 8, 9, 10 and 11 of this Standard;~~
 - ~~(b) a management or authorisation framework or an approval of an action or class of actions in accordance with a management or authorisation framework is consistent with this Standard if the framework requires an action or class of actions to be consistent with the principles in sections 8, 9, 10 and 11 of this Standard;~~
 - ~~(c) a NOPSEMA management or authorisation framework or an approval of an action in accordance with a management or authorisation framework is not inconsistent with this Standard if the framework requires an action to not be inconsistent with the principles in sections 8, 9 and 11 of this Standard;~~
 - ~~(d) a specified manner of assessment will be consistent with this Standard if the manner of assessment requires an action or class of actions to be assessed consistently with the principles in sections 8, 9, 10 and 11 of this Standard;~~
 - ~~(e) the making or varying of a bioregional plan is consistent with this Standard if the actions to be taken under the bioregional plan are consistent with the principles in sections 8, 9, 10 and 11 of this Standard.~~~~

Commented [MW5]: If this deletion is not accepted, principle 4 (s 11) is required here, i.e., 'Decisions must be supported by evidence, Indigenous engagement and effective consultation, monitoring and reporting'

Commented [MW6]: If this deletion is not accepted, this 'may' must be a 'must'

Commented [MW7]: If this deletion is not accepted, the proponents of development regulated by NOPSEMA must also be required to compensate for residual significant impacts

8 Principle 1—Actions ~~appropriately~~ must apply the mitigation hierarchy

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

- (1) Actions must be designed ~~to minimise impacts to protected matters through impact avoidance, mitigation and repair~~ having regard to the mitigation hierarchy provided for in this section.

COMMENT ON EXPOSURE DRAFT

- (2) ~~If, after considering the measures designed to avoid, mitigate and repair impacts, the residual impact to a protected matter is significant, and the action is to be approved anyway (because it is consistent with the objects of ecologically sustainable development), an offset activity or a restoration contribution charge that fully compensates for the residual significant impacts must be provided prior to commencement of the action or class of actions.~~

Step 1—Avoidance

- (3) ~~The decision-maker must be satisfied that, to the extent possible, any significant impacts of an action, or class of actions, on a protected matter should be avoided through the design of the action or class of actions.~~

Step 2—Mitigation

- (4) ~~Where a significant impact on a protected matter cannot be avoided, the decision-maker must be satisfied that all reasonable and practicable measures have been implemented to mitigate the adverse impacts should be mitigated through a demonstrated process of identifying, evaluating the likely effectiveness of, planning to monitor the actual effectiveness of, and implementing measures to reduce the impact including, where possible, below the level of significance.~~

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

Note 2: ~~Mitigation measures generally form the basis of management plans and monitoring must be documented and their effectiveness evaluated and monitored. Approval holders must be required to take for an action to reduce, prevent, control and react to correct adverse impacts through the lifespan of an action. All reasonable and practicable measures and are an active decision must be required to do something to reduce the severity or likelihood of the approval holder significantly impacting a protected matter through the lifespan of an action.~~

Step 3—Repair

- (5) ~~Following the application of any appropriate avoidance and all reasonable and practicable mitigation measures, the decision-maker must be satisfied that all reasonable and practicable repair measures that can be implemented will be implemented immediately following the impact.~~
- (6) ~~any repairable impacts on protected matters should be repaired as soon as possible and as close to its original condition as possible. For the purpose of subsection 8(5), the decision-maker must have a high level of confidence the repair activities. Repair will generally be a viable option only where:~~
- ~~repair can be done in a timely manner; and~~
 - ~~will, over the foreseeable future, repair the protected matter to as close to its original condition as possible; and~~
 - ~~repair activities are feasible and sustainable in the long term for the protected matter once the repair activities are complete.~~

COMMENT ON EXPOSURE DRAFT

- (7) The required high level of confidence referred to in subsection 8(6) must be based on scientifically valid evidence. The decision-maker must be satisfied the evidence includes auditable milestones and criteria for re-establishing the protected matters, and relevant and specific:
- (a) written judgement and opinion from more than one **independent** suitably qualified expert that the milestones and criteria for re-establishing the protected matter are feasible; and
 - (b) existing peer reviewed, currently accepted and published science.
- (8) Repair activities ~~should~~**must** focus on the significantly impacted protected matter and involve on-site works with specific goals for re-establishment of values-to reduce residual significant impacts.

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

Step 4—Offset

- (9) Following the application of any appropriate avoidance, mitigation and repair measures, any residual significant impact of the action or class of actions on a protected matter must be compensated for by an offset activity or a restoration contribution charge.

Note: An unacceptable impact on a protected matter cannot be compensated by an offset activity or payment of a restoration contribution charge, except in limited circumstances where the action is a national interest proposal (see subsections 134(3AA) and (3AB) of the Act).

9 Principle 2—~~Actions appropriately~~ Assessments must consider adverse impacts to protected matters

- (1) In considering the nature, extent or severity of an adverse impact on a protected matter, the decision-maker must have regard ~~regard should be had~~ to the context in which the impact may or will ~~might~~ occur. The context in which an impact must be considered includes:
- (a) a detailed assessment of the quality and values of the proposed action area prior to the taking of the action;
 - (b) the direct, indirect, facilitated and offsite impacts;
 - (c) the intensity, duration, magnitude and geographic extent of the impacts;
 - (d) the sensitivity, value, and quality of the environment which is impacted;
 - (e) scientific uncertainty about the impacts of the action, and application of the precautionary principle;
 - (f) that the habitat is repairable, critical habitat, irreplaceable or necessary for the species or ecological community to remain viable in the wild;
 - (g) cumulative and existing levels of impact from other sources; and
 - (h) consideration of impacts on protected matters under different climate scenarios.

COMMENT ON EXPOSURE DRAFT

- Note 1: The context includes, for example:
- (a) the unique context of a protected matter, including the past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter; and
 - (b) the interaction of different stressors, for example the combined impacts of light, noise, and habitat clearance to breeding success of endangered species as a result of an action or class of actions.
- Note 2: When considering bioregional plans and strategic assessments the context may also include the following:
- (a) the combination of past, present and reasonably foreseeable future events, circumstances and threats affecting the protected matter; and
 - (b) individually minor, but collectively significant, actions taking place over a period of time.

(2) When assessing the nature, extent or severity of an impact on a protected matter, the decision-maker must:

(a) assess the adverse impact consistent with the significant impact guidelines;

(b) be informed by scientifically robust information, and incorporate the precautionary principle in the absence of scientific certainty; and

(c) assess the impact in a consistent and transparent manner.

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

- (1) Compensation for a residual significant impact ~~should generally~~must only be considered after the prior steps in the mitigation hierarchy (avoidance, mitigation and repair) have been exhausted.
- (2) All residual significant impacts to protected matters must be compensated, unless the residual significant impact is an unacceptable impact or is to a protected matter that is prescribed in regulations made for the purpose of subsection 134(3AC) of the Act.
- (3) Where a protected matter is prescribed in regulations made for the purposes of subsection 134(3AC) of the Act, an action or class of actions that has a residual significant impact on the protected matter cannot be approved.

Note : Subsection 134(3AC) of the Act allows the regulations to prescribe protected matters that cannot be the subject of a compensation condition. This means impacts on these protected matters are not able to be offset.

(4) All residual significant impacts to protected matters must be compensated in accordance with the *National Environmental Standard (Environmental Offsets) 2026*.

11 Principle 4—~~Appropriate~~ Decisions must be supported by evidence, Indigenous engagement, and effective consultation, monitoring and reporting

- (1) Proposals for actions or classes of actions must be supported by:

COMMENT ON EXPOSURE DRAFT

- (a) ~~appropriate~~, suitable, comprehensive and best available data and information;
 - (b) where relevant, effective and genuine engagement with, and contribution of knowledge from, indigenous persons, where the engagement and contribution is appropriate and adapted to the nature of the interests of such persons; and
 - (c) effective consultation with the public, relevant **independent** suitably qualified experts and interested community groups and individuals~~in relation to the action.~~
- (2) The decision-maker must ensure suitable, comprehensive and best available data and information in relation to the action has been provided and made available for consultation with indigenous persons, the public, relevant **independent** suitably qualified experts and interested community groups and individuals.
- (3) The decision-maker must assess the data, information and consultation comments from indigenous persons, relevant **independent** suitably qualified experts, the public and interested community groups and individuals in relation to the action in a consistent and transparent manner.
- (4) The decision-maker must require regular monitoring and reporting sufficient to confirm the objectives in section 5 and the outcomes in section 6 are being achieved.