



ASFI Submission on National Environmental Standard for Matters of National Environmental Significance

The Australian Sustainable Finance Institute (ASFI) welcomes the opportunity to make a submission to the consultation on a National Environmental Standard (Standard) for Matters of National Environmental Significance (MNES) as part of the Government's Stage 3 Environmental Protection Reforms.

About ASFI

ASFI is a not-for-profit organisation committed to mobilising capital for climate, nature and social impact, and the peak body for the sustainable finance sector in Australia. ASFI's members are large Australian financial institutions – including major banks, superannuation funds, insurers, asset managers, and financial services firms – that collectively hold over AU\$18.95 trillion in assets. ASFI and its members are committed to allocating capital in ways that create positive social and environmental outcomes to secure future prosperity and sustainable economic growth for Australia.

Introduction

Globally, financial institutions, central banks, regulators and governments increasingly recognise that economies depend on a healthy, functioning environment, and that a failure to mitigate systemic nature loss can cause significant economic loss and threaten financial stability.¹ Robust, transparent and efficient environmental regulation is essential to safeguard nature and support financial institutions and businesses to avoid, mitigate and manage nature-related impacts and invest in ways that have positive outcomes for nature.

ASFI acknowledges the significant work already undertaken by the Department on Stages 1 and 2 of the Environmental Protection Reforms. The development of standards as part of the Stage 3 reforms was the centrepiece of the Samuel review recommendations – aiming to move away from a highly discretionary system towards one with greater protection for the environment, and greater certainty for proponents, businesses and financial institutions.

ASFI's recommendations respond to both the policy position paper and the exposure draft of the Standard for MNES and are largely based on our previous policy positions including ASFI's submission on Australia's new nature positive laws.²

¹ World Economic Forum, *Nature Risk Rising*, 2020 at: <https://www.weforum.org/publications/nature-risk-rising-why-the-crisis-engulfing-nature-matters-for-business-and-the-economy/>

² Available at: https://static1.squarespace.com/static/6182172c8c1fdb1d7425fd0d/t/663d8e0c4ae9c468e12c3145/1750216611715/Nature+law+reform_ASFI+Submission_FINAL.pdf

Recommendations

1. Provide clarity on the timing and development of the full suite of Standards.

To support transparency, and provide certainty to the market, the Government should provide a clear timeline and further information on the development of the full suite of Standards proposed by the Samuel Review, as outlined below.

- 1) Matters of National Environmental Significance
- 2) Indigenous engagement and participation in decision making
- 3) Compliance and enforcement
- 4) Data and information
- 5) Environmental offsets
- 6) Community engagement and consultation
- 7) Monitoring, evaluation and reporting
- 8) Commonwealth actions and actions on Commonwealth land
- 9) Wildlife permits and trade

We note that the Government has indicated through the Parliamentary process that additional Standards will be developed covering First Nations Engagement, Community Consultation and Data and information, yet timing is uncertain and the development of the remaining four Standards is unknown. Without an understanding of the timing for development of the full suite of Standards or how they will relate to the Standard for MNES, it is challenging to provide effective feedback to this consultation.

For example, the Samuel Review recommended that clear no-go zones and regional mapping to protect critical assets and prevent unacceptable impacts. Without knowing further detail and contents of the Standard for Data and information and its relationship with the Bioregional Planning Framework, it is challenging to evaluate the ultimate effectiveness of the Objectives, Outcomes and Principles presented in the Standard for MNES.

2. Principle 4 should be amended to reference the corresponding Standards including a Standard for First Nations Engagement and provide further detail on how proponents should substantiate that actions are supported by evidence.

Principle 4 as currently drafted pre-empts the finalisation of the anticipated Standards for First Nations Engagement, Community engagement and consultation, and Data and information. ASFI recommends that these Standards should be prioritised for development and that Principle 4 should reference the corresponding Standards to avoid risk of creating inconsistencies between the eventual suite of Standards.

The development of a Standard for First Nations Engagement should integrate the principles of FPIC and ensure that proponents transparently disclose project impacts on First Nations communities, including on Country. Integrating FPIC principles and impact disclosures into the First Nations Engagement Standard is consistent with Australia's obligations under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and places Indigenous communities at the heart of decisions affecting their lands and heritage, thereby safeguarding their autonomy in environmental and cultural stewardship.

Lastly, we note that there is no guidance on how proponents should substantiate that actions are supported by evidence. ASFI recommends that this should either be clearly articulated in Principle 4 or included in a corresponding Standard and referenced by Principle 4.

3. Adopt unqualified, binding language.

Despite the Samuel Review's findings that the EPBC Act provided excessive room for ministerial discretion and that Standards must provide clear requirements to constrain it, the proposed Standard contains vague language and qualifiers that will make it difficult to interpret and apply consistently. Current wording such as "have regard to", "appropriately consider", "should" and "to the extent possible", will result in weakened accountability for delivering outcomes and objectives of the Standard.

The Standard should provide certainty to the market by minimising room for discretion through vague, qualifying language. For example, under Principle 1 of the Standard, an action should be planned "in accordance with" the mitigation hierarchy rather than simply "having regard" to the mitigation hierarchy. Furthermore, the word "should" could be replaced with "must" throughout the Standard.

4. Adopt an integrated ecosystems approach with cumulative impact assessments.

The Samuel Review found that decisions under the EPBC Act were made on a project-by-project basis leading to unacceptable cumulative impacts on the environment.

Undertaking an impact assessment on a project-by-project basis does not enable decision-makers to properly consider cumulative damage to interconnected ecosystems that extend beyond individual project, property, and state boundaries. This is significant for financial institutions that invest or finance across the whole economy whereby cumulative impacts can lead to systemic risks across their portfolios.

The current draft references cumulative impacts but does not require a defined methodology or set a baseline against which cumulative effect is measured. Principle 2 requires "regard" to be had to the context in which an impact might occur when considering the impact of an action on a protected matter, therefore it is unclear from this language whether cumulative impacts are intended to be considered.

Cumulative impact assessments should be outlined as part of the requirements of the Standard. The methodology should be developed by the National Environmental Protection Agency in collaboration with Environment Information Australia, integrated with national datasets and spatial tools maintained by Environment Information Australia, and applied consistently across jurisdictions including under bilateral agreements.

5. Clearly define measurable outcomes for each MNES.

The Samuel Review found that the EPBC Act's failure to focus on environmental outcomes was a fundamental shortcoming. It recommended that Standards be quantitative, with

defined targets and time frames that set outcomes to be achieved and support recovery. The outcomes specified by the draft Standard are generic and fail to consider the specificity of outcomes relevant to each of the diverse MNES covered under the Act.

ASFI strongly supports the development of clear and measurable outcomes for each MNES covered under the Act to ensure that objectives of the Standard can be monitored and achieved.

6. Include monitoring and evaluation requirements to support improved transparency.

The Samuel Review recommended that the Standard for MNES should include monitoring and evaluation requirements, which should be underpinned by the Standard for Environmental monitoring, evaluation and reporting. This would ensure that the effectiveness of the Act and the Standard can be measured against the defined outcomes rather than simply adherence with the Act and the Standard.

ASFI recommends that the Standard include clear monitoring and evaluation requirements to ensure that the intended outcomes of actions, decisions, plans and policies for each MNES are achieved.

7. Embed transparency provisions in regulation for the accreditation arrangements and ongoing compliance with the Standards.

The 2025 EPBC Act reform maintained the devolution of federal government assessments and approvals to state and territory governments via bilateral agreements under sections 46 to 49 of the Act. Under the bilateral agreements, state and territory assessment and approval processes can be accredited if they satisfy the Commonwealth requirements including the Standard for MNES.

For financial institutions operating across jurisdictions, visibility of which states and territories operate under Commonwealth accreditation, and of their ongoing compliance with the Standards, is material to assessing regulatory and transition risks at a portfolio level.

While ASFI welcomes the transparency provisions outlined in the Updated Draft Policy Position Paper, including the requirement for accredited processes under bilateral agreements to be reviewed within 3 years of commencement and every 5 years thereafter, the publication of review outcomes on the Department's website, and the ongoing monitoring and audit functions of the National EPA, the Policy Position Paper is not a legislative requirement. These provisions should be embedded in regulations made under the EPBC Act, rather than left solely to the policy paper, to ensure they are durable and enforceable across changes in government and departmental policy.

Furthermore, to improve confidence in the accreditation process and reduce regulatory risks for financial institutions, ASFI recommends that a publicly accessible register identifying which states and territories operate under Commonwealth accreditation and evidence of their ongoing compliance should be made available.

Concluding remarks

Australia has ambitions of becoming a net zero and nature positive economy, guided by international commitments such as the Paris Agreement, the Kunming-Montreal Global Biodiversity Framework and the Glasgow Declaration on Forests and Land Use.

These ambitions and commitments require transformative action across the economy, including participation from the finance sector. Establishing a robust environmental protection regime for Australia that creates strong baseline protection, management, and improvement of Australia's natural environment and biodiversity is key to helping achieve these ambitions and commitments and enabling finance sector participation in the transition to nature positive.