



National Environmental Standard (Matters of National Environmental Significance) 2026 – Exposure Draft

Submission by the
Invasive Species Council

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About the Invasive Species Council

The Invasive Species Council was formed in 2002 to advocate for stronger laws, policies and programs to keep Australian biodiversity safe from weeds, feral animals, exotic pathogens and other invaders. It is a not-for-profit charitable organisation, funded predominantly by donations from supporters and philanthropic organisations.

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Introduction

The Invasive Species Council welcomes the opportunity to comment on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance) 2026 (the Standard). We provided a substantive submission on the January 2025 consultation draft.

While the exposure draft includes genuine improvements, such as strengthening some of the principles' language, many concerns of the Invasive Species Council about the consultation draft have not been addressed, and we believe certain changes adopted in the exposure draft will impede the Standard's ability to deliver on the Australian Government's commitment to stronger nature protections.

This submission builds on our [previous submission](#) – whose recommendations mostly remain unaddressed – and makes 5 recommendations to strengthen the MNES Standard to ensure it effectively addresses key threats like invasive species.

Our recommendations are:

Recommendation 1: Develop a statutory instrument or mechanism to establish active management expectations for spatially defined MNES – including requirements to implement threat abatement plans and address key threatening processes such as invasive species – and commit to consulting on that mechanism before the reforms take full effect.

Recommendation 2: Apply the MNES Standard to all actions, decisions, plans and policies that relate to MNES.

Recommendation 3: Strengthen and clarify the Standard, including by:

- (a) requiring the active avoidance of cumulative impacts and exacerbation of key threatening processes
- (b) requiring plans to monitor and evaluate outcomes against transparent, science-based baselines and track cumulative impacts
- (c) removing or replacing discretionary language like 'should' with 'must'
- (d) including definitions of key terms like 'avoid', 'feasible', 'mitigate', and 'repair' within the Standard
- (e) applying consistent approaches to the objectives for MNES, including by requiring sustainable management of all listed species, communities, values, resources and environments in the MNES objectives.

Recommendation 4: Amend the Standard to provide that consistency with the principles is a necessary but not sufficient condition for consistency with the Standard, and that applicable decisions must also be consistent with, and support, the Standard's outcomes and objectives. The Standard should also specify, with sufficient precision to support meaningful review, how performance against its outcomes and objectives will be assessed.

Recommendation 5: Amend the objectives for threatened species, ecological communities and migratory species to remove the 'irreplaceable and necessary' qualification on habitat protection, or at a minimum clarify that the formulation encompasses habitat currently degraded by threatening processes but restorable to a condition capable of supporting species survival and recovery.

1. Require active management of threats to spatially defined MNES

Our January [submission](#) recommended the Standard include management expectations for spatially defined MNES (e.g. World Heritage properties, National Heritage places and Ramsar wetlands), MNES within bioregional plan areas, and triggers for intervention when those expectations are not being met. That recommendation has not been adopted, and no other instrument in the EPBC Act reform package has filled the gap.

While the existing legislative framework does impose some obligations on managers of spatially defined MNES,¹ they are predominantly process-oriented – requiring managers to plan and review, not to actively intervene against specific threats to achieve measurable conservation outcomes. This means a manager who plans and reviews has complied with the law even if invasive species are in the meantime destroying the values the listing was intended to protect. The Samuel review recognised this problem, for example, finding that National Heritage listings lack practical application and that the ongoing obligations of site managers are ‘often unclear and ill-defined’.²

The consequences of the failure to set out these expectations are real. Feral horses have caused immense damage to Kosciuszko National Park – a National Heritage place with numerous listed threatened species and ecological communities – because no effective mechanism allowed the Commonwealth to compel the NSW Government to remove protections for feral horses and act to effectively curb numbers. Likewise, invasive fallow deer degrade the Tasmanian Wilderness World Heritage Area while the Tasmanian government fails to consistently and effectively contain the invasive species. In each case, the primary threat is a chronic, pervasive process, not a controlled action. In each case the Commonwealth’s power to intervene is constrained by the absence of clear statutory management obligations.

We understand there are questions about whether the standards-making power is the right vehicle for management obligations of this kind. We do not seek to resolve those questions in this submission, but if the Standard is not the right vehicle to address this problem, something else should. We ask the government to acknowledge the gap and commit to filling it.

Recommendation 1: Develop a statutory instrument or mechanism to establish active management expectations for spatially defined MNES – including requirements to implement threat abatement plans and address key threatening processes such as invasive species – and commit to consulting on that mechanism before the reforms take full effect.

2. Apply the Standard to all relevant decisions

The principles in the exposure draft still only apply to an action or class of actions, overlooking the substantial number of other decisions, plans and programs that have implications for whether the objectives of the Standard are achieved. We reiterate our previous [recommendation](#), consistent with the Samuel review, that the Standard apply to all ‘actions, decisions, plans and policies’ that relate to MNES.³

¹ For example, in the form of management principles for World Heritage areas and National Heritage places.

² Samuel, Graeme, [Independent Review of the EPBC Act - Final Report](#) [PDF 5.8MB], 2020, Department of Agriculture, Water and the Environment, Canberra, p 44 (Samuel review).

³ Ibid at p 202.

Recommendation 2: Apply the MNES Standard to all actions, decisions, plans and policies that relate to MNES.

3. Strengthen the drafting of the Standard

There have been some commendable improvements to the drafting of the Standard since the earlier version.

- **Mandatory offsetting.** Principles 1 and 3 now recognise that all residual significant impacts must be compensated (subject to the unacceptable impacts regime). The shift from ‘should’ to ‘must’ is appropriate given the requirements of the Act.
- **Best available data and effective consultation.** Principle 4 now requires proposals for actions and classes of action to be supported by ‘appropriate, suitable and best available data and information’, effective and genuine engagement with ‘indigenous persons’ and effective consultation with the public in relation to the action.
- **Greater consistency in use of the term ‘restore’.** The objectives for protected matters have been updated to more consistently require the relevant MNES to be ‘(where appropriate) restored’.

Despite these improvements, the Standard still:

- fails to require that actions, decisions, plans and policies actively avoid cumulative impacts and exacerbating key threatening processes (including the impacts of invasive species)⁴
- fails to require plans to monitor and evaluate outcomes of actions, decisions, plans and policies, including through the establishment of baseline condition and tracking of cumulative impacts⁵
- uses weak and discretionary language, which continues to undermine the protection the Standard provides to MNES, for example:
 - principles 1, 2 and 3 frequently employ terms like ‘should’ instead of ‘must’ and include qualifications like ‘generally’ which provides administrative discretion that the Samuel review cautioned against
 - despite some changes, principle 1 still does not clearly define the level to which ‘significant impacts on protected matters’ should be avoided or mitigated (e.g. ‘as far as reasonably practicable’) before repairs and offsets will be considered appropriate

⁴ Principle 2 does require ‘regard to be had to the context in which the impact might occur’ when ‘considering the nature, extent or severity on a protected matter’, but it does not explicitly require detrimental cumulative impacts and contributions of actions towards key threatening processes to be addressed by proponents in accordance with the mitigation hierarchy outlined in principle 1. This is to be contrasted with the Samuel review draft MNES Standard (at p 203) which requires proponents to ‘use all reasonable efforts to prevent actions contributing to detrimental cumulative impacts or exacerbation of key threatening processes’

⁵ The Samuel review (at p 204) required that plans be prepared to, inter alia, ‘address impacts for the relevant MNES, and be designed to understand and track all cumulative impacts at the relevant scale (e.g. national, state-wide, regional plan areas or project site)’ and ‘establish the baseline, key indicators and targeted outcomes, monitoring activities, evaluation and reporting processes relevant to the protected matter and the activities being conducted’.

- uses some terms inconsistently or fails to define terms, for example:
 - previous references to the need for the environment to be ‘sustainably managed’ have been removed from the objectives for Commonwealth marine areas, Commonwealth land, Commonwealth heritage places, actions taken by the Commonwealth, and for radiological exposure actions, while the requirement for National Heritage values of a place to be ‘managed’ has been inserted into the objective for National Heritage places⁶
 - the definitions of key terms like ‘avoid’, ‘feasible’, ‘mitigate’, and ‘repair’ remain in the policy paper and not in the Standard (meaning they are of limited effect, and are not subject to the non-regression principle).

Rectifying these matters will strengthen the Standard, reduce the possibility of litigation and ensure the principles provide the mandatory legal basis required for proactive conservation.

Recommendation 3: Strengthen and clarify the Standard, including by:

- (a) requiring the active avoidance of cumulative impacts and exacerbation of key threatening processes
- (b) requiring plans to monitor and evaluate outcomes against transparent, science-based baselines and track cumulative impacts
- (c) removing or replacing discretionary language like ‘should’ with ‘must’
- (d) including definitions of key terms like ‘avoid’, ‘feasible’, ‘mitigate’, and ‘repair’ within the Standard
- (e) applying consistent approaches to the objectives for MNES, including by requiring sustainable management of all listed species, communities, values, resources and environments in the MNES objectives.

4. Link principles to the achievement of outcomes and objectives

A significant change has been made in the exposure draft that effectively uncouples the principles from the achievement of the outcomes and objectives. Section 7 of the Standard now states that an action or class of actions will achieve the outcomes and objectives where it is ‘consistent with the principles in sections 8, 9, 10 and 11 of the Standard’ – regardless of whether the outcomes and objectives of the Standard will, in fact, be achieved. This change converts the Standard from being outcome-focused to a process-based instrument, meaning that compliance with procedure replaces genuine environmental results. This regression is a major concern, as the Samuel review emphasised:⁷

National Environmental Standards should be concise, specific and focused on the requisite outcomes, with compliance focused on attaining the outcomes. Standards should not be highly prescriptive processes where compliance is achieved by ‘ticking the boxes’ to fulfil a process. This is necessary to focus attention on whether environmental outcomes are being achieved and shift from the current mindless adherence to a process.

⁶ The reasons for these changes are unclear – they are not explained in the Policy Paper which asserts that ‘Standard addresses what must be done to protect, conserve, manage, restore and (as appropriate) recover (if necessary) EPBC Act protected matters through the regulatory process’ (emphasis added).

⁷ Samuel Review, p 2.

Reintroducing a process-based approach into the very instruments designed to fix that problem would undermine the EPBC Act reform effort.

If adopted, this process-based approach will have implications for invasive species management. Where the threat to a protected matter is an ongoing, pervasive process rather than a discrete aspect of an action, process compliance will be an inadequate proxy for the achievement of the intended conservation outcome(s). A decision-maker who applies the principles conscientiously but approves an action that accelerates the spread of an established invasive species which then threatens a listed ecological community has complied with the Standard as drafted. The outcome – further degradation of the protected matter – is invisible in assessing whether the Standard has been met because it is measured in process, not result.

Recommendation 4: Amend the Standard to provide that consistency with the principles is a necessary but not sufficient condition for consistency with the Standard, and that applicable decisions must also be consistent with, and support, the Standard's outcomes and objectives. The Standard should also specify, with sufficient precision to support meaningful review, how performance against its outcomes and objectives will be assessed.

5. Expand the approach to habitat protection

The objectives for threatened species, ecological communities and migratory species limit protection to habitat that is 'irreplaceable and necessary to support survival and recovery' of the relevant species. This narrow approach to protection of habitat has consequences that are particularly acute for invasive species management.

Habitat loss, fragmentation and degradation are some of the most frequently listed threats to species listed under the EPBC Act. A large proportion of that degradation is caused or compounded by invasive species: weeds suppressing native understorey, feral animals trampling vegetation, predators depleting fauna populations (e.g. cats preying on native animals important for plant recruitment). Habitat subject to these pressures may not meet the threshold of 'irreplaceable' – precisely because its condition has been compromised. Yet such habitat may be highly restorable. The removal of an invasive predator, the control of a dominant weed, or the exclusion of feral herbivores can, in the right circumstances, allow degraded habitat to recover to a condition capable of supporting threatened species. That restoration may be among the most cost-effective conservation investments available.

The 'irreplaceable and necessary' formulation may create a perverse dynamic: the more extensively invasive species have degraded a habitat, the less statutory protection that habitat may receive under the Standard. A habitat in excellent condition is deemed irreplaceable; a habitat degraded by decades of feral animal pressure may not be – even if restoring it is both feasible and conservation-critical. The Standard should not provide weaker protection to habitat whose condition has been compromised by the very threatening processes the Act seeks to address.

Recommendation 5: Amend the objectives for threatened species, ecological communities and migratory species to remove the 'irreplaceable and necessary' qualification on habitat protection, or at a minimum clarify that the formulation encompasses habitat currently degraded by

threatening processes but restorable to a condition capable of supporting species survival and recovery.