



Friday, 29 May 2026

Ms Jennifer Kay
Head of Division,
Environmental Law Reform Taskforce
Department of Climate Change, Energy, the Environment and Water
Ngunnawal Country, John Gorton Building, King Edward Terrace
Parkes ACT 2600

Dear Ms Kay

Re: CEC submission regarding draft MNES Standard

The Clean Energy Council (**CEC**) welcomes the opportunity to provide a submission to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on the exposure draft of the National Environmental Standard for Matters of National Environmental Significance (**MNES Standard**).

The CEC is the peak body for the clean energy industry in Australia. The CEC supports the policy intent underpinning the proposed MNES Standard, including the objective of providing greater clarity and consistency regarding expected environmental outcomes for protected matters under the Environment Protection and Biodiversity Conservation Act 1999 (**EPBC Act**). Greater transparency and certainty in environmental assessment processes are critical to supporting prompt and effective decision-making for projects that contribute to Australia's clean energy transition.

While supportive of the intent of the reforms, the CEC considers that the MNES Standard could more clearly articulate the extent of avoidance, mitigation and repair required to satisfy the relevant obligations, and could be more clearly drafted to apply at the level of individual actions. This submission raises a number of recommendations regarding the drafting, operation and implementation of the proposed MNES Standard, and includes recommended mark-up amendments to the MNES Standard at **Annexure A**.

Recommendation	Further detail
Recommendation 1: Reframe objectives and outcomes at the level of an individual action	The CEC recommends that the objectives and outcomes be reframed so they are capable of being applied and assessed at the scale of an individual action or class of actions. The CEC also notes that certain objectives relating to threatened species, ecological communities and migratory species appear to

Recommendation	Further detail
	<p>duplicate, and potentially conflict with, the unacceptable impact test in the EPBC Act. In particular, the legislation does not contemplate restoration of unacceptable impacts. Further, many individual actions will not be capable of demonstrably supporting the survival and recovery of impacted species or ecological communities where broader decline drivers exist irrespective of the action.</p>
<p>Recommendation 2: Introduce a ‘reasonably practicable’ threshold</p>	<p>The CEC recommends amendments to the MNES Standard to introduce greater flexibility and certainty by incorporating concepts such as ‘reasonably practicable’, rather than the current references to ‘possible’ or ‘extent possible’. The concept of ‘reasonably practicable’ is well understood within Australian regulatory frameworks and has been extensively considered by courts, including in the context of work health and safety legislation and general environmental duty regimes.</p> <p>Incorporating this threshold would provide a more familiar and workable standard for proponents and regulators, while still ensuring environmental impacts are appropriately avoided, mitigated and repaired.</p>
<p>Recommendation 3: Express consideration of economic and social context</p>	<p>The CEC recommends that the MNES Standard expressly permit consideration of relevant social and economic factors when applying the mitigation hierarchy and assessing outcomes under the MNES Standard. At present, the drafting does not expressly recognise the broader policy and public interest context in which decisions are made. In particular, the MNES Standard should allow consideration of matters such as government renewable energy and emissions reduction targets, energy security objectives, and the greenhouse gas reduction benefits associated with clean energy projects.</p>
<p>Recommendation 4: Where possible, include detail in the body of the MNES Standard rather than in notes</p>	<p>To avoid uncertainty regarding the status of notes, the CEC recommends that, where possible, substantive content currently included in notes be incorporated into the body of the MNES Standard itself.</p>
<p>Recommendation 5: Include reference to ‘reversible’ in the</p>	<p>The current definition of ‘repairable impact on a protected matter’ is framed by reference to impacts that are ‘minimal and temporary’. The CEC recommends amending the definition to</p>



Recommendation	Further detail
definition of repairable impact on a protected matter	refer to impacts that are minor or reversible, as not all temporary works or actions can necessarily be repaired.

Amendments to the MNES Standard to address these recommendations are outlined at **Annexure A**.

The CEC welcomes further engagement with DCCEE in relation to the EPBC reforms. If you have any queries or would like to discuss this submission in more detail please contact me on erutherford@cleanenergycouncil.org.au.

Kind regards,

A handwritten signature in black ink, appearing to read 'Elise Rutherford'.

Elise Rutherford

General Manager, Environment and Planning

Annexure A – Recommended amendments to the MNES standard

Black text = original exposure draft
 Green text = recommended additions
 Red strikethrough = recommended deletions
 [Grey] = comments

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
- (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.

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~~ **minor and reversible** in nature.

[Note: we recommend aligning the definition of repairable impact on a protected matter with minor or preparatory works section. Temporary does not necessarily mean the impact is repairable, accordingly we recommend instead referring to ‘reversible’]

Note: An example of a repairable impact may ~~be~~ **include** an impact which occurs only during the construction phase of an action **and/or progressive rehabilitation**.

5 Objectives

- (1) This Standard aims to ensure decisions **regarding an action or class of actions**, under the Act, **contribute to** ~~provide for~~ the protection, conservation and, where appropriate, management, 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) The objectives for protected matters are specified in the following table.

Objectives for protected matters		
Item	Objective in relation to a decision regarding an action or class of actions	Objective in relation to any other decisions made under the Act
1	<p>Listed threatened species</p> <p>Significant impacts to habitat of the listed threatened species (including critical habitat) are managed, contributing to the protection, conservation, restoration and recovery actions that support the viability of threatened species in the wild.</p>	<p>Listed threatened species</p> <p>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 and restored to support survival and recovery of the species.</p> <p>Protection, conservation, restoration and recovery actions support the viability of threatened species in the wild.</p>
2	<p>Listed threatened ecological communities</p> <p>Significant impacts to habitat of the listed threatened ecological community (including critical habitat) are managed, contributing to the protection, conservation, restoration and recovery actions that support the viability of ecological communities.</p>	<p>Listed threatened ecological communities</p> <p>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 and restored to support survival and recovery of the community.</p> <p>Protection, conservation, restoration and recovery actions support the viability of ecological communities.</p>
3	<p>Listed migratory species</p> <p>Significant impacts to habitat of the listed migratory species are managed, contributing to the protection, conservation, restoration and recovery actions that support the viability of migratory species in the wild.</p>	<p>Listed migratory species</p> <p>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 and restored to support survival and recovery of the species.</p> <p>Protection, conservation, restoration and recovery actions support the viability of migratory species in the wild.</p>
4	<p>Wetlands of International Importance</p> <p>Significant impacts are managed such that the ecological character of a declared Ramsar wetland is maintained, protected, conserved and (where it is in decline) restored in a manner</p>	<p>Wetlands of International Importance</p> <p>The ecological character of a declared Ramsar wetland is maintained, protected, conserved and (where it is in decline) restored in a manner</p>

Objectives for protected matters

Item	Objective in relation to a decision regarding an action or class of actions	Objective in relation to any other decisions made under the Act
	consistent with Australia's obligations under the Ramsar Convention.	consistent with Australia's obligations under the Ramsar Convention.
5	<p>National Heritage places</p> <p>Significant impacts to the National Heritage values of the place are managed, contributing to the protection, conservation, management and (where appropriate) restoration. Indigenous heritage values of a National Heritage place are treated in a manner respectful of indigenous traditions and beliefs.</p>	<p>National Heritage places</p> <p>The National Heritage values of the place are protected, conserved, managed and (where appropriate) restored.</p> <p>Indigenous heritage values of a National Heritage place are treated in a manner respectful of indigenous traditions and beliefs.</p>
6	<p>World Heritage properties</p> <p>Significant impacts to the world heritage values of a declared World Heritage property are managed, contributing to the protection, conservation, and (where appropriate) restoration, in a manner consistent with Australia's obligations under the World Heritage Convention.</p>	<p>World Heritage properties</p> <p>The world heritage values of a declared World Heritage property are protected, conserved and (where appropriate) restored in a manner consistent with Australia's obligations under the World Heritage Convention.</p>
7	<p>Great Barrier Reef Marine Park</p> <p>Significant impacts to the biodiversity and heritage values that are part of the environment in the Great Barrier Reef Marine Park, managed, contributing to the protection, conservation, and (where appropriate) restoration and recovery.</p>	<p>Great Barrier Reef Marine Park</p> <p>The biodiversity and heritage values that are part of the environment in the Great Barrier Reef Marine Park, are protected, conserved and (where appropriate) restored and recovered.</p>
8	<p>Commonwealth marine areas</p> <p>Significant impacts to a marine ecosystem (or part of a marine ecosystem) that is part of the environment in a Commonwealth marine area, are managed, contributing to the protection, conservation, and (where appropriate) restoration and recovery.</p>	<p>Commonwealth marine areas</p> <p>A marine ecosystem (or part of a marine ecosystem) that is part of the environment in a Commonwealth marine area, are protected, conserved and (where appropriate) restored and recovered.</p>
9	<p>Protection of water resources from unconventional gas development and large coal mining development</p> <p>Significant impacts to the function and integrity of the water resource are managed, contributing to its protection and conservation, including the ecological components, functions and processes of the water resource necessary to support sites of</p>	<p>Protection of water resources from unconventional gas development and large coal mining development</p> <p>The function and integrity of the water resource are protected and conserved, including the ecological components, functions and processes of the water resource necessary to support sites of local, regional and national ecological significance.</p>

Objectives for protected matters

Item	Objective in relation to a decision regarding an action or class of actions	Objective in relation to any other decisions made under the Act
	local, regional and national ecological significance.	(2) — reliability and supply of water to support critical human water needs; and (2) — provisioning, regulating, cultural and supporting services provided by the water resource.
10	Protection of the environment from radiological exposure actions Significant impacts to the environment affected, or part thereof, are managed, contributing to the protection, conservation, and (where appropriate) restoration and recovery. Significant impacts to the environment, including biological diversity, and the health of natural ecosystems and human health are managed, contributing to the protection of impacts of radiological exposure.	Protection of the environment from radiological exposure actions The environment affected, or part thereof, is protected, conserved and (where appropriate) 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 Significant impacts to the environment affected, or part thereof, are managed, contributing to the protection, conservation, and (where appropriate) restoration and recovery.	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 and (where appropriate) restored and recovered.

6 Outcomes

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

- (a) **in relation to a decision regarding an action or class of actions, contribute to provide** ~~for~~ the protection, conservation, and, where appropriate, restoration and recovery of protected matters;
- (b) **where reasonably practicable**, 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.

[Note: we have recommend reframing the objectives so that they can apply in the context of individual projects, accordingly, on this basis we consider that section 7 can be deleted, which streamlines and removes risks of duplication. We also note that under section 514YD(4) the standard must include an outcome or objective, but including principles is discretionary under section 514YD(4)(b).]

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.~~~~

8 Principle 1—Actions appropriately apply the mitigation hierarchy

1 Requirement to have regard to the mitigation hierarchy

- ~~(1) Actions~~ **An action, or class of actions,** must be designed having regard to the mitigation hierarchy provided for in this section.

2 Step 1—Avoidance

- (2) ~~To the extent possible~~ Take appropriate measures to avoid 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.

3 Step 2—Mitigation

- (3) Where a significant impact on a protected matter cannot be avoided the impact should be mitigated through a demonstrated process of identifying and implementing **reasonably practicable** measures to reduce the impact including, ~~where possible~~, below the level of significance.
- (4) Significant impacts on protected matters can be mitigated by addressing the scale, duration, timing, location and intensity of significant impacts that cannot be sufficiently avoided.

~~Note 1: Significant impacts on protected matters can 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 for an action to reduce, prevent, control and react to adverse impacts through the lifespan of an action and are an active decision to do something to reduce the severity or likelihood of significantly impacting a protected matter.~~

4 Step 3—Repair

- (5) Following the application of any appropriate avoidance and mitigation measures, any repairable impacts on protected matters should be repaired as soon as **is reasonably practicable possible** and as close to its original condition as **is reasonably practicable possible**, having regard to the impacts and nature of the action.
- (6) Repair will generally be a viable option only where:
- repair can be done **promptly in a timely manner**; and
 - repair activities are **reasonably practicable feasible** and sustainable in the long term for the protected matter.
- (7) Repair activities should focus on the significantly impacted protected matter and, **where appropriate**, involve on-site works with specific goals for re-establishment of values to reduce residual significant impacts.

Note 1: Repair activities may include other works that directly contribute to re-establishment of values, such as feral predator control or weed control.

- (8) Progressive rehabilitation activities may be considered repair activities where they demonstrate they can meet agreed baseline conditions (prior to impacts) and be completed promptly to reduce residual significant impacts to affected protected matters.

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

5 Step 4—Offset

- (9) Following the application of ~~any appropriate~~ avoidance, mitigation and repair measures **in accordance with this Standard**, any residual significant impact of the action or class of actions on a protected matter must be compensated for by an offset activity **and/or** a restoration contribution charge.
- (10) **An unacceptable impact on a protected matter cannot be compensated for by an offset activity and/or 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).**

~~Note: — An unacceptable impact on a protected matter cannot be compensated by an offset activity or 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 consider adverse impacts to protected matters

In considering the nature, extent or severity of an adverse **significant** impact on a protected matter, regard should be had to the context in which the impact might occur.

Note 1: The context **may** include, 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/or
- (b) ~~any relevant cumulative impacts affecting the protected matter~~ ~~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;~~ and/or
- (c) **principles of ecologically sustainable development and relevant government policy, including renewable energy targets; and/or**
- (c) **any consequential benefits from the action or class of action in reducing or minimising greenhouse gas emissions.**

[Note: We consider that it is permissible for the Department to take into account social and economic factors in forming its view, given that under s.514YD(2)(a) the Minister must be satisfied that the standard would promote the objects of the Act. Those objects include ecologically sustainable development (ESD), which s.3A defines as including the principle that decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations.]

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/or
- (b) individually minor, but collectively significant, actions taking place over a period of time.

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

- (1) Compensation for a residual significant impact should generally only be considered after **application of the mitigation hierarchy (avoidance, mitigation and repair) pursuant to**

Principle 1. ~~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.~~

11 Principle 4—Appropriate evidence, Indigenous engagement and consultation

Proposals for actions or classes of actions must **have regard to** ~~be supported by:~~

- (a) appropriate, suitable 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) **the outcomes of effective** consultation with ~~the public and~~ **any other relevant stakeholders** in relation to the action **or classes of actions.**