

16th September 2020

Professor Graeme Samuel AC, and
EPBC Act Review Secretariat
Department of Agriculture, Water and the Environment (DAWE)
GPO Box 787
CANBERRA ACT 2601



Dear Professor Samuel and the Secretariat,

RE: Submission to the Interim Report of the Independent review of the EPBC Act

Thank you for this opportunity to make a submission to the Interim Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act

I also thank-you for the invitation to participate in the EPBC Act Review Consultative Group in our fortnightly meetings between July and September this year.

Here, I provide a summary of comments I have made as part of this consultative process, and that I believe remain critical for consideration in reforms to the EPBC Act. I also attach tracked changes and comments I have made to the Overarching MNES and Threatened Species and Ecological Communities versions of prototype standards provided to the Consultative Group prior to its final meeting (Meeting 4) by the review Secretariat.

My comments here should be read in conjunction with my original submission to the Review (dat91W 401t

**Summary of key points and recommendations provided to the
EPBC Act Review Consultative Group**

Megan Evans, University of New South Wales, Canberra

I agree

Development of NES has been the major focus of the EPBC Act Review Consultative Group (CG). I have provided commentary and suggestions in the drafting of prototype standards as they were developed over the course of CG meetings, but I provide here my comments on the prototype standards provided to the Consultative Group prior to its final meeting (Meeting 4) by the review Secretariat:

1. The NES should encompass what is needed to ensure the EPBC Act is effective and efficient

The concept of Column A/Prototype 2.0 ±Current settings and Column B/ Prototype - Future State was introduced in CG meetings

- **Column A/Prototype 2.0 was defined as:** μ & XU UHQW VHWLQJV¶ UHIOHFW WK provisions of the EPBC Act and regulations, as well as current guidelines or documents (such as plans, statutory documents or relevant codes), and are considered able to be implementable in the very near term
- **Column B/ Prototype Future State was defined as** μ)XWXUH VWDWH¶ VWDQGD legislative changes to address gaps or constraints in the legislation.
- Prototype 1.0 reflects the Standards as presented in the Interim Report

However, I observed DVSHFWV FRQWDLQH G ZLWKLQ ³ & ROXIF ¶ The version distributed by the EPBC Review Secretariat on 3rd September 2020 **do NOT require legislative or policy change, e.g**

- MDLQWDLQ DQG HQKDQFH´ LQ DEVROXWH WHUPV GRHV QRW UH

2. The NES must apply at all scales from the project level to the regional and national.

the Prototype Standard provides a scope for individual actions assessed and approved under the NES to NOT meet the Standard.

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I note that this problem will remain if a different term is used, e.g overall, cumulatively, altogether.

I recommend that the

3. Vague and ambiguous language should be removed from the NES

Vague and ambiguous language contribute to delays, inefficiencies, poor outcomes and confusion if they are included in the final NES. For example, unsustainable, irreparable, reasonable, meaningful, unacceptable, ecologically feasible

I provide specific comments and tracked changes to the Overarching MNES and Threatened Species and Ecological Communities in an Attachment, using Column B/ Prototype Future State (renamed Prototype Standard) as the basis.

4. their effective operation relies on targeted and effective support and training of federal, state and territory government staff, as well as sustained investment in supportive infrastructure (e.g data and information systems)

My original submission and latest Australian National Audit Office report provides ample evidence of the scarce and declining funding provided to the federal Environment Department. Effective policy implementation requires systems, organisations and people all interpreting and applying the policy correctly.

This means that the introduction of NES will require concerted training, capacity building and organisational leadership, to ensure federal and (if accreditation and devolution occurs) state/territory departmental staff are supported to correctly apply the EPBC Act and the NES.

the Prototype Standard provides a scope for individual actions assessed and approved under the NES to NOT meet the Standard.

5. An effective and credible assurance framework, including an independent regulatory (statutory) body

NES must be thought of as one component of an overall structure or architecture, whereby the operation of different parts of that structure together provides assurance. If the Commonwealth is to be the Standards holder, assurance cannot be provided without some form of independent oversight of those

standards. I agree with the in WHULP UHSRUW¶V UHFRPPHQGDWLRQ IRU WKH HV
FRPSOLDQFH DQG HQIRUFHPHQW ERG\ WKDW LV ³QRW VXEMHFW WR D

Environmental standards, and the processes/systems of governance within which they operate have been highly developed across numerous voluntary and compliance environmental markets over the past 20 years (e.g Forest Stewardship Council, carbon offsetting). Within such schemes, there are a number of core functions, and market participants. Assurance and trust in the system emerges via:

- different market participants undertaking different functions
- functions enabled and overseen by codes of practice or legislation
- infrastructure, e.g a public facing and accessible registry containing sufficient information to enable market activity and provide community assurance

The structure/architecture that the Australian Government adopted to govern the carbon market is a good example of this - and is a key reason why Australian Carbon Credit Units (ACCUs) are considered to be high quality and a worthwhile investment. To me it makes sense to model this existing success story.

I maintain my recommendation that the Clean Energy Regulator is a reasonable model to look towards as an independent statutory authority with clear, independent powers relating to compliance and enforcement, monitoring and audit. A genuinely independent regulator can also provide a market enabling function by providing the market assurance necessary to leverage private investment.

I recommend that staff working within any new Commonwealth unit that carries out compliance, enforcement, performance monitoring or audit functions under the EPBC Act should ultimately report

Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9th September

Megan Evans (UNSW Canberra), comments on as of 16th September 2020

Element	Prototype 1.0: Interim Report	Prototype 2.0: Prototype 2.0 — Interim Standards based on current settings—	Prototype <u>Standard</u>	Evans comments
		<p>impede recovery and appropriate management.</p> <p>Use all reasonable efforts to prevent detrimental cumulative impacts or exacerbation of key threatening processes on MNES.</p> <p>Are based on the best available information, and stored and shared consistent with the Data and Information NES.</p> <p>Meaningful engagement is undertaken with governments, the community, land holders and indigenous peoples.</p> <p>Monitoring, reporting and evaluation demonstrates compliance with this national environmental standard.</p> <p>The standard is relevant to activities at all scales including individual projects, regional plans, and activities under government legislation and policies. The overall outcome could result from the collective achievements of a combination of activities.</p>	<p>Promote their recovery and management, including by addressing cumulative impacts, managing threats and filling information gaps that impede recovery and appropriate management.</p> <p><u>Are based on the best available information, and stored and shared consistent with the Data and Information NES.</u></p> <p>Monitoring, reporting and evaluation <u>demonstrates compliance with conditions</u>, measures the achievement of the environmental outcome, or demonstrates where further action is needed.</p> <p><u>Meaningful engagement is undertaken with governments, the community, land-holders and Indigenous peoples.</u></p> <p>This standard apply to activities at a range of scales including individual projects and regional plans and in state, territory and national legislation and policies implemented or accredited under the EPBC Act.</p>	<p>Monitoring, reporting and evaluation should measure achievement of an environmental outcome AND demonstrate achievement with conditions.</p> <p>Currently, most environmental conditions specify processes, not outcomes. This means that frequently, compliance with environmental conditions does not imply an environmental outcome has been achieved (see Lindenmayer</p>

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Element	Prototype 1.0: Interim Report	Prototype 2.0: Prototype 2.0 — Interim Standards based on current settings	Prototype <u>Standard</u>	Evans comments
		National Environmental Standards should be reviewed and updated as required, including when there are substantive changes to the EPBC Act or relevant administrative arrangements.	National Environmental Standards should be reviewed and updated as required, including when there are substantive changes to the EPBC Act or relevant administrative arrangements.	reporting, natural disasters, major ecological events, statutory reviews of the Act.

This standard should be applied in conjunction with other relevant following National Environmental Standards.

Definitions

Maintain and enhance: A net improvement in environmental values, ecological and c* 334.56595.32 re W* n BT /F2 7.056 Tf 1 0 0 1 28.272 339.89 Tm 0 G [(M)-6(a)8(d)8(a)-i.56 3828.272hd)8(fc /)-4(p)-4(e)-4(2)7(.0)-5aiuJ ET Q 87 59s Q q 4l.

Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9th September

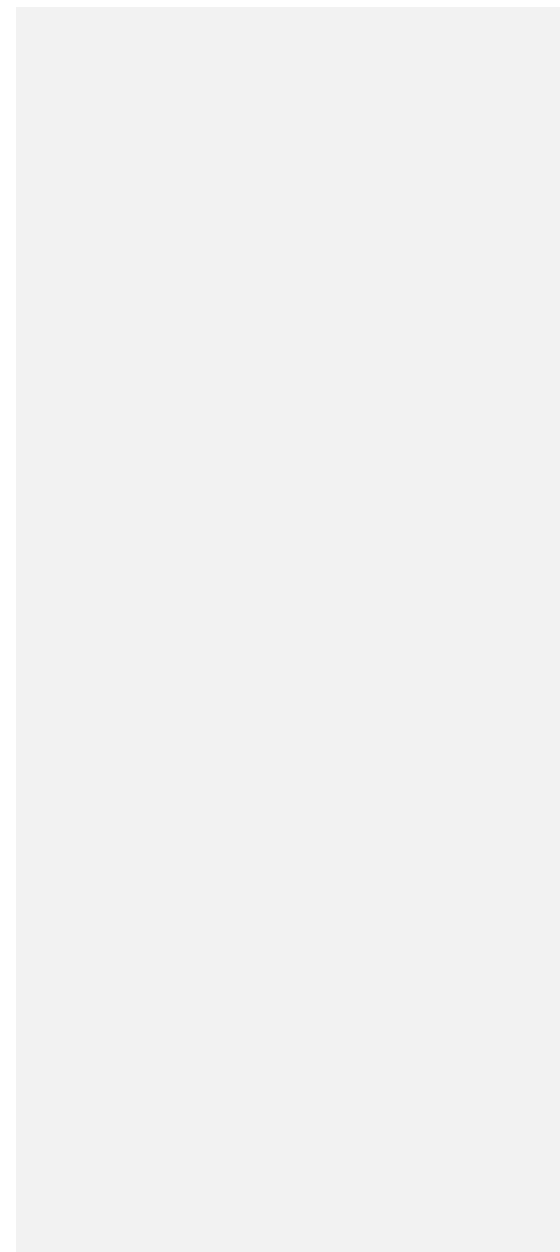
Megan Evans (UNSW Canberra), comments on as of 16th September 2020

Element	Prototype 1.0 Interim Report	Prototype 2.0 Interim Standards based on current settings	Prototype Standard	Evans comments
		<p>For highly restricted and small and declining listed species:</p> <p>1) Result in no loss of habitat or individuals.</p> <p>For highly restricted and sensitive ecological communities:</p> <p>1) Result in no reduction in extent or quality of the community.</p> <p>Additional requirements in Commonwealth areas:</p> <p>1) Actions must not kill, injure or take a listed threatened species or ecological community, except where an EPBC Act permit is issued.</p>	<p>a) the population of a listed threatened species, consistent with the environmental offsets standard.</p> <p>b) quality or quantity of habitat of a listed threatened species, consistent with the environmental offsets standard.</p> <p>c) extent or condition of an Endangered or Critically Endangered ecological community, consistent with the environmental offsets standard.</p> <p>3) <u>Effectively manage</u> cumulative impacts on habitats or populations of species or Ecological communities across their range <u>such that the MNES is protected, improved or maintained</u>, including:</p> <p>a) fragmentation of habitat of a listed threatened species or ecological community</p> <p>b) the introduction, spread, encroachment or growth of invasive species (including disease).</p> <p>For highly restricted and small and declining listed species :</p> <p>1) Result in no loss of habitat or individuals.</p> <p>For highly restricted and sensitive ecological communities :</p>	

Deleted: : Reformed settings

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Prototype standards provided to the EPBC



Prototype standards provided to the EPBC Consultative Group by the review Secretariat on 9th September

Megan Evans (UNSW Canberra), comments on as of 16th September 2020

Habitat : the biophysical medium or media: (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; and (b) once occupied (continuously, periodically or occasionally) by an organism or group of organisms and into which organisms of that kind have the potential to be introduced, and (c) biophysical media projected to become suitable for occupation under future climates if specified in the Conservation Advice.

Habitat critical the survival of a species or ecological community: Refers to areas that are necessary:

for activities such as foraging, breeding, roosting, or dispersal

for the long-term maintenance of the species or ecological community (including the maintenance of species essential to the survival of the species or ecological community, such as pollinators)

to maintain genetic diversity and long-term evolutionary development, or

for the reintroduction of populations or recovery of the species or ecological community.

Such habitat may be, but is not limited to: habitat identified in a recovery plan or conservation advice for the species or ecological community as habitat critical for that species or ecological community; and/or habitat listed on the Register of Critical Habitat maintained by the Minister under the EPBC Act.

Highly restricted and small and declining listed species: Critically endangered or Endangered listed species with distributions, population sizes and decline which is highly precarious to their survival as demonstrated by species that meet Criteria B, C or D of the Common Assessment Method.

Highly restricted and sensitive ecological communities: Ecosystems that meet the criteria for Critically Endangered or Endangered under Criterion 2 of the EPBC Regulation 7.02 because their geographic distribution is very restricted or restricted and the nature of its distribution makes it likely that the action of a threatening process could cause it to be lost in the near or immediate future.

Important population Plans, and/or that are: \$ S R S X O D W L R Q W K D W L V Q H E m s u d a l a n d r e c o v e r y p l a n s i n c l u d e p o p u l a t i o n s i d e n t i f i e d a s s u c h i n C o n s e r v a t i o n A d v i c e s a n d R e c o v e r y P l a n s , a n d / o r t h a t a r e :

key source populations either for breeding or dispersal

populations that are necessary for maintaining genetic diversity, and/or

populations that are near the limit R I W K H V S H F L H V U D Q J H

Maintain and enhance: A net improvement in environmental values, ecological integrity, and resilience over time and in absolute terms (not relative to a counterfactual scenario).

Offsets: measures provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat.

An offset is ecologically feasible where it can be demonstrated that the species or community can be restored in a timeframe commensurate with development impact OR enough space exists to undertake restoration (not ecologically or tenure constrained) OR scientific knowledge exists on how to restore the habitat.

Recovery plan: A document, approved in writing by the Minister that contains a statement that sets out the research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened species or listed threatened ecological community concerned so that its chances of long term survival in nature are maximised. Section 139(1) of the EPBC Act requires that the Minister must not act inconsistently with a recovery plan for the relevant species in deciding whether to approve the taking of an action.

Satisfactory field surveys: Scientifically informed and designed field surveys by suitably qualified people which are undertaken during optimal times for detection, of an appropriate duration, repeated where necessary and include full coverage of the impact site including areas directly and indirectly affected and adequate to produce site wide vegetation and habitat mapping and species records and which can inform detailed design of an action to demonstrate avoidance and mitigation.

Prototype standards p

