



## **What are National Environmental Standards and why do we need them? July 2023**

### **A quick definition of National Environmental Standards**

National Environmental Standards are standards that will be created under our national environmental laws. Standards are intended to set clear expectations on how any activities that are approved under those laws will contribute to improved environmental outcomes. Different National Environmental Standards will describe how this is to be achieved for different matters, for example there will be different Standards for threatened species and for the Great Barrier Reef. **Standards must:**

- Apply at all scales, including individual actions, decisions, plans and policies;
- Set clear boundaries for decision-makers, be legally binding and enforceable;
- Be consistent rules that apply to all.

### **Why do we need National Environmental Standards, and how do they relate to the EPBC Act?**

To understand why new Standards are important, you need to understand a little about the current national environmental law - specifically the *Environment Protection and Biodiversity Conservation 1999* (EPBC Act). When it was introduced over 20 years ago, the EPBC Act was groundbreaking. It set a new benchmark for Australian Government engagement in environmental issues and it helped to drive some significant improvements in environmental management.

But what we've seen over the last 20+ years is that the EPBC Act still allows for destruction of our biodiversity. It is far too focussed on decision making processes and not focussed enough on the environmental outcomes that decision making delivers. Some stark examples of this include the Federal Environment Minister's recent approval of a new coal mine, and a new development in the Northern Territory that will facilitate the massive expansion of the gas industry. Under the EPBC Act these types of approvals, that will lead to large increases in greenhouse gas emissions, continue to be issued despite the fact that climate change is one of the biggest threats to our native wildlife.

Part of the reason these approvals continue is because the EPBC Act doesn't require specific environmental outcomes to be achieved as a result of decisions made under the Act. While the EPBC Act has objectives around protecting the environment and conserving biodiversity it doesn't, for example, require that Ministers:

- Prevent extinctions;
- Protect habitat that is critical to the survival of threatened species;
- Prevent further clearing of critically endangered vegetation; or
- Prevent projects that will drive climate change.

And to top it all off, the EPBC Act doesn't set the environmental outcomes that must be achieved if a new development is to be approved.

And that's where National Environmental Standards come in. They help to protect biodiversity by requiring more accountability on environmental outcomes from our governments.

### **What do good National Environmental Standards look like?**

The Federal Government has committed to reforming our national environment laws, and we say the new laws must include clear statements of what the laws are designed to achieve and what actions are simply not acceptable. This includes the clearing of critical habitat or actions that significantly exacerbate climate change. The laws must also require that any actions that are approved under the laws meet the National Environmental Standards.

Each National Environmental Standard must set the environmental outcome it is intended to achieve and be clear on how decision making will meet the Standard. These outcomes should include:

- Driving the recovery of our unique plants, animals and vegetation communities;
- Protecting our internationally important places like the Great Barrier Reef, Ramsar wetlands and World Heritage areas;
- Protecting important biodiversity areas, as well as forests, bushland, and marine habitats that are of high conservation value;
- Protecting Australia's wildlife from commercial exploitation, including illegal wildlife trade and unsustainable fishing;
- Minimising climate change impacts and ensuring our plants and animals species are resilient and able to adapt to a changing climate; and
- Preventing the introduction of new - and reducing the impact of existing - invasive species that are threatening biodiversity.

Standards should be designed in a way that ensures all decisions contribute to achieving the objectives of our reformed nature laws. In a nutshell, they must require decision making based on the best available science and drive environmental improvement and best practice management. It's important they meet the following criteria:

- They must be able to be updated in response to new information - but in saying this, the laws must specify that any future changes to the Standards can't lead to worse environmental outcomes.
- There must be no exceptions to the application of the Standards across industries, sectors or jurisdictions. For example, exemptions currently enjoyed by native forestry must end.
- The nature laws must require the Environment Minister to make Standards and the Standards themselves must be enshrined in the law to ensure they are legally enforceable.
- They must be actively enforced by the proposed new national Environmental Protection Australia (EPA) and have third-party enforcement provisions, which means that where Standards are not being applied and the EPA hasn't taken action, the community can.

### **What has the Australian Government done so far to create National Environmental Standards?**

As part of the Australian Government's *Nature Positive Plan* released in December 2022, the Government committed to five initial Standards, those for:

1. Matters of National Environmental Significance (including threatened species and vegetation communities);
2. Regional planning;
3. Environmental offsets;
4. Community engagement and consultation; and
5. First Nations engagement and participation in decision making.

Now, we're waiting on the Federal Government to develop these five Standards – and to make them available for public consultation later this year as part of their broader consultation on our new national environmental laws.

We're also waiting to know how they will implement other important Standards – including Standards for collection and publication of data, ecological restoration, compliance and enforcement, and wildlife trade. These Standards must also be developed as soon as possible.

Strong, legally enforceable National Environmental Standards must be at the centre of new national environmental laws that will halt and reverse our extinction crisis. We need our laws to be clear on the environmental outcomes they are seeking to achieve so that collectively we can hold Governments and decision makers to account and enforce our hard fought for environmental protections. That's what we'll be looking to see as part of the upcoming national environmental law reform.