50 Camberwell Road Hawthorn East VIC 3123

29 May 2026

Senator the Hon Murray Watt
Minister for the Environment and Water
Commonwealth Government
Lodged online at: DCCEEW Consultation hub

Dear Minister,

Response to Commonwealth Government's exposure draft on National Environmental Standard for Matters of National Environmental Significance (MNES)

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the Commonwealth Government's exposure draft on the National Environmental Standard for Matters of National Environmental Significance (MNES) published in April 2026.

CEIG represents domestic and global renewable energy developers and investors, with approximately 18GW of renewable energy capacity in the NEM across 139 power stations and a combined portfolio value of more than $41 billion. CEIG members' project pipeline is estimated to be more than 150GW across Australia. CEIG strongly advocates for an efficient transition to a clean energy future on behalf of the investors who will provide the low-cost capital required for this transition.

Key Points

- CEIG's overarching concern is that the MNES Standard lacks clear obligations, processes, timeframes and outcomes necessary to support efficient assessments and positive environmental outcomes. Without these, the drafted Standard risks opening projects up to litigation, and excessive assessment timeframes.
- The key change from the January 2026 draft to the current version is the tightening of the ministerial compliance threshold from 'not inconsistent with' to 'consistent with' the Standard. This is a meaningful legal strengthening which will increase the burden on proponents to prove compliance, as the Minister must

now be positively satisfied that a decision is consistent with each element of the Standard.

- CEIG raises 4 specific concerns in response to the MNES:

1. **Subjective and undefined terms** should be clarified to minimise the risk of litigation that will slow project development, make assessments harder and increase costs for proponents and the Department;
2. The **mitigation hierarchy requires clarification** on several issues specific to renewable energy project design and construction methodology;
3. The drafting of **Principle 4 requires clarity and guidance** around **relevance** of consultation requirements (expected in the two Engagement Standards); and
4. The **positive climate contribution of renewable energy generation**, storage and transmission infrastructure should be explicitly recognised within the assessment framework.

GENERAL COMMENTS

CEIG supports strong environmental protections and is committed to positive outcomes for Australia's natural environment. We also recognise that the rapid deployment of clean energy infrastructure is itself one of the most significant environmental imperatives of our time, as it plays a critical role in minimising climate change, which is one of the biggest risks to Australia's ecosystems. A timely and successful clean energy transition is dependent on a well-functioning EPBC Act assessment framework.

The MNES Standard represents an opportunity to modernise Australia's national environmental assessment framework and CEIG broadly supports its structure and objectives. Our concerns are directed at specific features of the current drafting that, if left unresolved, risk replicating the very problems the reforms are designed to fix: lengthy assessments, inconsistent outcomes and decisions unnecessarily vulnerable to legal challenge. Ambiguity results in delay, cost and litigation, none of which serve the environment or the clean energy transition.

LEGISLATIVE CONTEXT AND OVERARCHING POSITION

The Environment Protection Reform Bills 2025 passed on 28 November 2025, with full implementation required no later than 1 December 2026. The MNES Standard now operates within an enacted legislative framework that includes hard prohibitions on approving unacceptable impacts, codified mitigation hierarchy obligations, a net gain requirement for residual significant impacts, and a new National Environmental Protection Agency (National EPA) with ongoing assurance and audit functions.

A significant change from the January 2026 consultation is the tightening of the ministerial compliance threshold from 'not inconsistent with' to 'consistent with' the Standard. This is a meaningful legal strengthening: the Minister must now be positively satisfied that a decision is consistent with each element of the Standard. For renewable

energy proponents, this means assessment documentation must affirmatively demonstrate compliance with all four Principles.

CEIG's overarching concern is that unless the Standard and its supporting instruments are clear and objective in their requirements, this higher threshold will produce the opposite of its intended effect. Every undefined term is a potential basis for legal challenge.

LITIGATION RISK, DEFINITIONAL CLARITY AND ASSESSMENT CERTAINTY

The clarity imperative

The Delivering Major Clean Energy Projects by CEIG and HSFK[1] (CEIG/HSFK EPBC report hereafter) documented that average gateway processing times for renewable energy referrals grew from 23 days in 2018 to 92 days in 2023. Average time from referral to controlled action determination grew from 88 to 136 days over the same period. For projects that did reach a final decision, average time from referral to approval was 791 days in 2018 and 831 days in 2021. In updated figures presented at the Clean Energy Investor Conference in March 2026 by HSFK[2], the number of controlled actions has risen, peaking at 46 in 2024, while the number of projects receiving final approval has tailed off with 3 in 2023, 1 in 2024 and 0 in 2025. A significant driver of this trajectory was not the complexity of the underlying environmental questions but the unpredictability of the process: undefined information requirements, iterative and late requests for further information, inconsistent officer practice and shifting expectations about what constituted an adequate assessment.

The MNES Standard can address these problems by establishing a clear, publicly accessible framework for what is required. That potential is only realised if the Standard and its guidance are specific enough to support consistent application. Where the framework is subjective, proponents take an overly cautious approach, assessment officers over-question, approvals are delayed and decisions are challenged and unworkable conditions are imposed. The resulting cost falls on both proponents and the Department, and inevitably to consumers through higher power bills.

The same logic applies to litigation risk. Where obligations are uncertain, both approvals and refusals are more susceptible to legal challenge. In an environment of accelerating renewable energy deployment and increasing third-party scrutiny of project approvals, litigation risk becomes a project financing issue with lenders and investors pricing it in. Where litigation risk is elevated, financing costs increase (ultimately flowing through to the cost of electricity) or projects do not proceed. The Department's ability to

[1] CEIG & Herbert Smith Freehills (now HSFK) (Dec-2024) Delivering Major Clean Energy Projects – Review of the EPBC Act for renewable energy projects in Queensland, New South Wales and Victoria https://www.ceig.org.au/wp-content/uploads/2024/12/HSF-x-CEIG-EPBC-Act-Report.pdf

2 Herbert Smith Freehills Kramer (Mar-2026) Clearing the roadblocks – Planning, approvals, grid connection and delivery https://www.cleanenergyinvestorconference.au/s/KP-CEIG-Presentation-EPBC-Data-55jt.pdf

demonstrate that its decisions are legally defensible depends on the clarity of the framework it is applying.

Definition of significant impact

The concept of significant impact is foundational to the EPBC Act framework: it triggers controlled action status and sets the threshold against which the mitigation hierarchy operates. Yet the definition of significant impact as applied to specific protected matters remains inadequately developed in existing policy guidance and has not been resolved by the reforms.

For renewable energy projects, this gap is acutely felt. The CEIG/HSFK EPBC report found high degrees of ambiguity with respect to 'significant impact' for the same species reoccurring across multiple projects. Principally, listed bird and bat species in the context of wind farms re-occur project after project, with the same questions about impact thresholds and survey methodology relitigated each time without resolution. This is inefficient for proponents, burdensome for assessment officers, results in unnecessary court litigation and does not result in improved environmental decision-making. Undefined impact thresholds are among the most significant sources of litigation risk in the current system: where the threshold is unclear, both approvals and refusals are vulnerable to challenge.

CEIG encourages the Department to develop definitive guidance material accompanying the MNES Standard that includes updated significant impact guidelines, to provide clear, species-specific and methodology-specific guidance on what constitutes a significant impact for the most commonly encountered protected matters in renewable energy assessments. This guidance must be in place by the time the Standard commences. Clear guidance, enabling consistent application of standards on high-litigation species would reduce costs and improve the quality and consistency of assessment outcomes.

Avoidance obligations and the redesign stretch risk

Section 8(2) requires that significant impacts 'should be avoided through the design of the action or class of actions.' The Updated Draft Policy Position Paper elaborates that proponents must demonstrate consideration of alternative designs with fewer impacts. CEIG supports avoidance as the highest priority in the mitigation hierarchy. However, without clear guidance on the scope and limits of this obligation, it carries a significant risk of stretching assessments without improving environmental outcomes. This was a pattern the CEIG/HSFK EPBC report identified as a key driver of assessment delay.

It is recommended that in the accompanying guidance material:

- Avoidance obligations apply to confirmed layouts, not preliminary impacts. Wind and solar projects go through multiple design iterations, with final micro-siting often confirmed only after detailed ecological survey. Assessing avoidance against early-stage impacts could prevent adaptive design

improvements that reduce impact, the opposite of the intended outcome. Guidance for the Standard should confirm that avoidance is assessed against the confirmed project layout submitted for approval.

- Redesign expectations must be proportionate and bounded. Without defined parameters for the assessment of alternatives; such as how many alternatives must be considered, at what level of detail, at what stage of the process, and at what point the obligation is satisfied; this obligation becomes a mechanism for extending assessments through iterative information requests.
- Feasibility criteria should be included. The Updated Draft Policy Position Paper confirms feasibility will be assessed against technical, ecological, financial, legal and social criteria, but does not define them. Every disputed feasibility assessment is a potential litigation point, so should be defined clearly in the guidance material.

Progressive rehabilitation and staged construction

The Updated Draft Policy Position Paper clarifies that progressive rehabilitation at the conclusion of an action is not considered 'Repair' unless it demonstrably meets baseline conditions in a timely manner. CEIG understands the rationale in the context of extractive industries, where end-of-project rehabilitation risks being incomplete and retrospective.

Staged renewable energy construction is different in character. Wind and solar projects routinely rehabilitate temporary construction impacts between stages. Where this rehabilitation is timely, on-site and demonstrably returns the area to baseline ecological condition, it achieves precisely the outcome the Repair step is designed to deliver. It is recommended that guidance confirms that this scenario qualifies as Repair and establish a clear pathway for proponents to have progressive rehabilitation plans assessed and confirmed at the time of approval. The confirmation of such a condition at approval impacts the financing of renewable energy projects if the classification of rehabilitation as Repair or Offset remains unresolved at financial close.

Non-compensable protected matters

Principle 3 of the legislative instrument confirms that regulations will prescribe certain protected matters as non-compensable, meaning residual significant impacts on those matters cannot be offset and the action cannot be approved. The specific matters have not been identified.

CEIG considers the designation of non-compensable matters must be consulted on before the Standard commences. Proponents and investors cannot price, plan or finance projects if a fundamental element of the offset framework is undefined at the point of assessment. The threshold for designation should reflect genuine irreplaceability and irreversibility at a population or community scale, consistent with the unacceptable impact thresholds in the primary legislation, and should avoid, where possible, being applied at the level of individual habitat patches in a way that creates de facto exclusion zones for renewable energy without a strategic spatial assessment of where those zones should fall.

Recommendation 1: Prioritise definitional clarity and publish guidance before commencement

- Publish updated significant impact guidelines that provide clear, species-specific and method-specific criteria for assessing significant impacts on the protected matters most commonly encountered in renewable energy assessments.
- Publish guidance on feasibility criteria for mitigation hierarchy measures, developed in consultation with renewable energy proponents and financiers, before the Standard commences.
- Publish guidance confirming that avoidance obligations apply to confirmed project layouts rather than preliminary impacts and establishing clear and proportionate parameters for the consideration of design alternatives.
- Publish guidance confirming that progressive rehabilitation of temporary construction impacts in staged renewable energy projects qualifies as Repair where it is timely, on-site and demonstrably returns the area to baseline condition, with a clear pathway for confirmation at the time of approval.
- Release and consult on draft Regulations prescribing non-compensable protected matters before the Standard commences, with the designation threshold set at genuine irreplaceability and irreversibility at a population or community scale.

PRINCIPLE 4: APPROPRIATE EVIDENCE, INDIGENOUS ENGAGEMENT AND CONSULTATION

Duplication with other Standards

CEIG supports the intent of Principle 4 and notes that the Government will be publishing National Environmental Standards for both First Nations and Community Engagement for consultation soon. Our concern with section 11 as it is written, is that we do not want to see duplication or multiple tests between the wording in Principle 4 and the First Nations and Community Engagement Standards, which would become confusing for proponents and assessment teams.

To avoid this issue, either Principle 4 should explicitly point to the NES for the other two Standards, and/or what is contained in Principle 4 should be made more explicit to not be about the engagement element, but instead about where relevant input from indigenous persons or the public where that is relevant to Matters of National Environmental Significance. This should be a part of how to deal with MNES, not a broader guide or requirement on how to engage First Nations and community groups.

Section 11(b): defining the scope of 'where relevant'

Section 11(b) requires effective and genuine engagement with indigenous persons 'where relevant.' CEIG is concerned that the phrase is undefined in both the legislative instrument and the Updated Draft Policy Position Paper.

When it is released for public comment, the CEIG encourages the First Nations Engagement Standard to include clear and objective criteria for how to apply the 'where relevant' test.

Recommendation 2: Define 'where relevant' in Principle 4

- The First Nations Engagement Standard should include clear and objective criteria for how to apply the 'where relevant' test, ensuring engagement obligations are proportionate and meaningful.
- Principle 4 should explicitly point to the NES for the other two Standards, and/or what is contained in Principle 4 should be made more explicit to not be about the engagement element, but instead about where relevant input from indigenous persons or the public where that is relevant to Matters of National Environmental Significance.

RECOGNITION OF THE CLIMATE BENEFIT OF RENEWABLE ENERGY INFRASTRUCTURE

CEIG welcomes the introduction of a rapid assessment pathway that will be available to renewable energy projects that meet specific criteria under the reformed framework. The recognition that the deployment of renewable energy generation, storage and transmission infrastructure carries a climate benefit that warrants an efficient assessment process reflects what CEIG has consistently advocated and what the evidence on assessment timelines and project delivery strongly supports.

We encourage the Department to build on this recognition and give explicit effect within the assessment framework to the public benefit of clean energy infrastructure. The CEIG/HSFK EPBC report highlighted[3] Article 16(f) of the European Union's Renewable Energy Directive III, which establishes a presumption that renewable energy projects serve the overriding public interest when legal interests are being balanced in individual cases. While Australia has not adopted an equivalent provision, the underlying principle is directly relevant, that regulatory frameworks should be designed with a clear understanding of the climate and therefore environmental benefit at stake in clean energy deployment, and that this benefit should be a legitimate and explicitly recognised consideration in the assessment process.

To clarify, this is not an attempt to exempt renewable energy projects from environmental scrutiny or that environmental protections should be weakened. Maintaining the legal integrity of the assessment process is essential to the long-term security of CEIG members' investments, and our members have a genuine interest in environmental outcomes that support the social licence on which project delivery depends. The point is instead that when a decision-maker is weighing the significance of an impact, the adequacy of mitigation or the appropriateness of compensation, the broader climate benefit of the project should be a visible and acknowledged part of the analysis.

CEIG recommends that the Department consider whether the MNES Standard, accompanying guidance or officer instructions can expressly acknowledge the role of

[3] Pg. 26 of CEIG/HSFK EPBC Report

renewable energy infrastructure in delivering Australia's climate commitments as a relevant consideration in the assessment process. We are happy to engage further on what this could look like in practice, including by reference to our previous joint work with HSFK and to approaches adopted in comparable jurisdictions.

Recommendation 3: Explicitly recognise the climate benefit of renewable energy in the assessment framework

- The Department should consider how the MNES Standard, accompanying policy guidance or guidance to assessment officers can expressly recognise the public benefit of renewable energy generation, storage and transmission infrastructure as a relevant consideration in the assessment process.
- CEIG is available to engage further with the Department on the form this recognition could take.

CEIG thanks the Commonwealth Government for the opportunity to provide feedback on the Matters of National Environmental Significance Standard and looks forward to continued engagement on this and future issues. We would be happy to discuss any elements of this submission.

Yours sincerely,

Dr Nicholas Aberle
Director – Policy & Advocacy
nicholas.aberle@ceig.org.au
Clean Energy Investor Group Ltd
w: www.ceig.org.au