Law Council
OF AUSTRALIA

7 July 2026

Mr Mike Kaiser
Secretary
Department of Climate Change, Energy, the Environment and Water
GPO Box 3090
CANBERRA ACT 2601

Dear Mr Kaiser

Draft National Environmental Standard for Community Engagement

The Law Council of Australia welcomes the opportunity to provide this submission to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on the Exposure Draft National Environmental Standard (**NES**) for Community Engagement (**ED Community Engagement Standard**) and accompanying draft Policy Position Paper. This submission is informed by contributions from the Australian Environment and Planning Law Group of the Law Council's Legal Practice Section, and from the Law Institute of Victoria.

The Law Council supports the development of clear, legally enforceable NESs as a central component of the reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) identified in the Second Review of that Act, undertaken by Professor Graeme Samuel in 2020 (**Samuel Review**).[1] The Samuel Review identified deficiencies in community participation in decision-making under the EPBC Act, including limited opportunities to raise concerns about the potential social and economic implications of proposals.[2] It also observed that "[e]ffective, outcomes-based decision-making, where the community can engage with the process and understand the reasons for decisions, is the primary way to improve trust".[3]

The Law Council supports the objective under section 5 of the ED Community Engagement Standard to ensure decisions under the EPBC Act are supported by meaningful engagement and co-operation between governments, the community, landholders and First Nations people, and to assist the cooperative implementation of Australia's international obligations.[4] However, the ED Community Engagement Standard

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1 Professor Graeme Samuel AC, *Independent Review of the EPBC Act – Final Report* (Report, October 2020) ii.
2 Ibid 82.
3 Ibid.
4 Department of Climate Change, Energy, the Environment and Water, Australian Government, Exposure draft of the National Environmental Standard for Community Engagement (June 2026) section 5; Department of Climate Change, Energy, the Environment and Water, Australian Government, Draft Policy Position Paper: National Environmental Standard for Community Engagement (Policy Statement, 2026), 3.

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should be drafted with greater precision to promote legal certainty, meaningful participation and consistent application by proponents and decision-makers.

The Law Council's primary concern is that several aspects of the ED Community Engagement Standard remain uncertain or underdeveloped, including key definitions, minimum and reasonable consultation timeframes, the interaction with the forthcoming First Nations Engagement Standard, and the evidence required to demonstrate consistency.[5] The Law Council recommends that these matters be clarified in the ED Community Engagement Standard or accompanying guidance to promote legal certainty, meaningful participation and consistent implementation by proponents and decision-makers.

Terminology

The Law Council recommends that the ED Community Engagement Standard and Draft Policy Position Paper use consistent terminology throughout. The interchangeable use of "community", "Australian public" and "public" may create uncertainty, particularly because "Australian public" is defined in the Policy Position Paper but not in the ED Community Engagement Standard. A single term used consistently, or a clear explanation of the intended relationship between these terms, should be employed.

Section 5 should define, or otherwise clarify, the persons and entities referred to in the objective. In particular, "government", "community", "landholders" and "Indigenous persons" so that proponents and decision-makers can identify who must be engaged and how relevant persons are to be identified.[6]

The Law Council also recommends that the ED Community Engagement Standard clarify the relationship between engagement with the "community" and engagement with more specific groups, including landholders, affected persons and First Nations people. The Policy Position Paper should explain how the ED Community Engagement Standard will operate alongside the forthcoming First Nations Engagement Standard, including whether both standards will apply concurrently, how duplication will be avoided, and how proponents should proceed pending finalisation of the latter.

Outcomes

The outcomes for the NES (particularly section (b)) should pay attention to substantive evidence provided through community engagement which reveals the need for further action to protect, for example, habitat, ecology, threatened species, or First Nations cultural heritage, to ensure that information provided through community engagement is taken into account.

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5 Department of Climate Change, Energy, the Environment and Water, Australian Government, Draft Policy Position Paper: National Environmental Standard for Community Engagement (Policy Statement, 2026), 3.

6 Department of Climate Change, Energy, the Environment and Water, Australian Government, Exposure draft of the National Environmental Standard for Community Engagement (June 2026) 2.

Relationship between the Objective, Outcomes and Principles

The Law Council recommends that section 7 clarify that consistency with the ED Community Engagement Standard requires compliance with the objective, outcomes and principles, rather than the principles alone. This would better reflect the structure of the ED Community Engagement Standard and reduce the risk of engagement being treated as a procedural checklist rather than as a means of achieving substantive objectives.

Principles

The Law Council supports the objectives underpinning Principles 1–4. The following comments are directed to improving clarity regarding their interpretation and practical application.

Principle 1

Further guidance on Principle 1 would assist proponents in planning engagement processes consistently. For example, section 8 should clarify what is meant by the "level of influence the public can have on the proposal".[7] While the Draft Policy Position Paper suggest this concept relates to the extent to which a proposal may be modified in response to public feedback, this is not apparent from the drafting of the ED Community Engagement Standard itself. Greater clarity would assist proponents and affected persons to understand the purpose and potential outcomes of engagement, and to maintain trust and confidence in a genuine and meaningful engagement process.

The Law Council also suggests that a "reasonable period" for public consultation should be clarified beyond the minimum public comment period of 10 business days. This should have regard to the complexity of the proposal, the volume of supporting material, potential impacts on protected matters and likely public interest with a longer minimum period should to be considered for major or complex proposals.

The ED Community Engagement Standard should also clarify whether DCCEEW, the National Environmental Protection Agency or Environment Information Australia will assess the adequacy or effectiveness of engagement, or recommend further engagement where initial engagement is insufficient. This would assist proponents to understand expectations and support consistent application by decision-makers.

Principle 2

Principle 2 would benefit from additional guidance regarding transparency, responsiveness and meaningful participation, particularly where proposals involve complex technical, scientific or environmental matters. The ED Community Engagement Standard should clearly articulate expectations in this regard, including to support the preparation of engagement materials and clarify how proponents may demonstrate that information has been communicated in a manner that facilitates informed participation. For example, while subsection 9(3) provides that engagement on a proposal should support a "two-way dialogue", it is unclear whether proponents must provide reasonable opportunities for dialogue, or maintain open dialogue with all affected persons throughout the consultation

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[7] Department of Climate Change, Energy, the Environment and Water, Australian Government, Exposure draft of the National Environmental Standard for Community Engagement (June 2026) 4 (4)(a)(i)(D).

period. The latter may be impractical for large or highly contested projects unless appropriately confined.

The ED Community Engagement Standard should also clarify when it may be "inappropriate"[8] to disclose information sources, methodologies, assumptions, environmental performance, compliance outcomes or monitoring results. This may include legally privileged, commercially sensitive, market-sensitive, confidential or culturally sensitive information. Clear criteria would reduce uncertainty and support consistent application.

The Law Council further recommends that the requirement to respond "promptly"[9] to affected persons' queries be supported by a benchmark timeframe, such as 10 business days, subject to reasonable extensions for complex matters.

Principle 3

Greater clarity is required regarding the operation of Principle 3 in practice, particularly as it appears to be directed primarily to personal information. Related (or additional) issues may arise where engagement involves culturally sensitive information, including information concerning First Nations people, places or knowledge. The ED Community Engagement Standard should therefore provide greater clarity on how such information will be handled in practice, including the application of Indigenous Data Sovereignty and Indigenous Data Governance principles. This will also be relevant to the development of the First Nations Engagement Standard.

Principle 4

The Law Council considers that Principle 4 would benefit from additional guidance regarding accessibility requirements and proportionality. This is particularly important for communities with culturally and linguistically diverse members, varied literacy levels or limited internet connectivity. Such guidance would also help clarify expectations of proponents, including whether they must assess relevant demographic information (for example, census language data and local access needs) when determining appropriate accessibility measures, so that they can plan proportionate engagement and reasonable participation opportunities.

The relationship between Principle 4 and the forthcoming First Nations Engagement Standard should be clarified. Until that Standard is finalised, proponents and decision-makers may treat the ED Community Engagement Standard as the primary guidance on engagement with First Nations people specifically. DCCEEW should prioritise development of that Standard to reduce uncertainty regarding requirements for appropriate engagement with First Nations communities.

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8 Department of Climate Change, Energy, the Environment and Water, Australian Government, Exposure draft of the National Environmental Standard for Community Engagement (June 2026) 5.

9 Department of Climate Change, Energy, the Environment and Water, Australian Government, Exposure draft of the National Environmental Standard for Community Engagement (June 2026) 5.

If the Law Council can be of further assistance in this consultation, please contact Xenia Taunt-Rivers, Research Officer [redacted]

Yours sincerely



Tania Wolff
President

Law Council
OF AUSTRALIA

7 July 2026

Mr Mike Kaiser
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CANBERRA ACT 2061

Dear Mr Kaiser

Draft National Environmental Standard for Data and Information

The Law Council of Australia welcomes the opportunity to make a submission to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on the Exposure Draft National Environmental Standard (**NES**) for Data and Information (**ED Data and Information Standard**) and accompanying draft Policy Position Paper. This submission is informed by input from the Australian Environment Planning Law Group of the Law Council's Legal Practice Section, and from the Law Institute of Victoria.

The Law Council supports the development of NESs under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), as recommended by Professor Graeme Samuel in 2020 (the **Samuel Review**). The effectiveness of that framework depends on each NES being clear, legally certain and capable of consistent application.

The Samuel Review identified the absence of a national strategy for environmental information under the EPBC Act framework and recommended a NES for data and information to support the use of best available evidence and to facilitate an efficient "environmental information supply chain".[1]

The ED Data and Information Standard seeks to address fragmented, inconsistent and incomplete environmental information by establishing requirements for representative, transparent, comparable, reusable and ethical data. The Law Council supports these aims but considers that elaboration in relation to its scope, data stewardship, reuse, retention and ethical data governance would be beneficial. This would support timely, evidence-based decision-making, improve data exchange and strengthen trust in a transparent and accountable system, which is particularly important given the intended breadth of the ED Data and Information Standard.[2]

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1 Professor Graeme Samuel AC, *Independent Review of the EPBC Act – Final Report* (Report, October 2020) 164.

2 Department of Climate Change, Energy, the Environment and Water, Parliament of Australia, Draft Policy Position Paper: National Environmental Standard for Data and Information (Policy Statement, 9 June 2026) 3.

For example, the ED Data and Information Standard would benefit from greater detail regarding data stewardship, including responsibility for holding, retaining, managing and providing access to data and information. This is necessary to support the Draft Policy Position Paper's emphasis on trusted data, data exchange and reuse. It would also help ensure that project-level information appropriately supports broader environmental information functions, including State of the Environment reporting, environmental economic accounts and national environmental information assets.

In relation to Principle 4, the Law Council supports making reliable environmental information accessible and reusable. Reuse may reduce duplication, improve cumulative analysis and strengthen public confidence in environmental decision-making. The ED Data and Information Standard should clarify the relationship between reusability and confidentiality, including for commercially competitive, confidential or sensitive information, and any applicable safeguards.

The Law Council also supports the inclusion of ethical data requirements in the NES, particularly for data concerning First Nations peoples and knowledge, culturally significant places and sensitive ecological information. The Draft Policy Position Paper states that the ED Data and Information Standard aligns with the Framework for Governance of Indigenous Data.[3] Alignment between the two is crucial, and both instruments should work together to clarify the collection, storage, use and reuse of Indigenous data and culturally sensitive information in the EPBC Act framework in practice. The ED Data and Information Standard should recognise the important role that information and knowledge play within First Nations knowledge economies, particularly in relation to environmental stewardship, management of Country and decision-making. This requires respect for Indigenous Data Sovereignty, which must be adequately provided for in the NES.

Relatedly, the Law Council notes that the First Nations Engagement Standard has not yet been released for consultation. DCCEEW should prioritise the development and release of that NES. We reserve our position on First Nations aspects of the NES reforms until the relevant exposure draft instrument is publicly available.

Finally, the ED Data and Information Standard (and other NESs) will apply to decisions as prescribed by the EPBC Regulations. These are still not prescribed in the current regulations. At the present time, it is unclear whether the NESs currently identified in the exposure draft regulations are intended to be final list(s) or whether additional NESs may be prescribed (or others may be deleted).[4] The intended scope of the final regulations should be clarified as soon as possible.

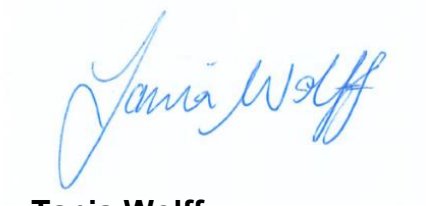
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[3] Department of Climate Change, Energy, the Environment and Water, Parliament of Australia, Draft Policy Position Paper: National Environmental Standard for Data and Information (Policy Statement, 9 June 2026) 2.

[4] Department of Climate Change, Energy, the Environment and Water, Parliament of Australia, Exposure Draft Environment Protection and Biodiversity Conservation Amendment (2026 Measures No. 1) Regulations 2026 (8 May 2026) 5 [cl 2B.03].

If the Law Council can be of further assistance in this consultation, please contact Xenia Taunt-Rivers, Research Officer [redacted]

Yours sincerely



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