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Environment Law Reform Taskforce  
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To the Taskforce,

**Submission on the National Environmental Standard for  
Matters of National Environmental Significance**

The Tiwi Land Council (TLC) welcomes the opportunity to comment on the new National Environmental Standard (NES) for Matters of National Environmental Significance (MNES).

Like many stakeholders, the TLC's response to the passage of the *Environment Reform Act 2025* was mixed. The TLC joined the other three NT land councils in making a submission on the proposed reforms.<sup>1</sup> We were disappointed by the Australian Government's failure to meaningfully consult with Aboriginal people and their representative organisations in the development of the reforms, the missed opportunity to ensure very strong mechanisms to mitigate climate risks, and the high level of ministerial discretion that remains in the laws.

We are pleased however, to now be able to comment on the first of the proposed NES. These standards were the cornerstone of Professor Graeme Samuel's Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (Samuel Review). Their development is overdue, but very welcome.

This submission provides a brief background to the TLC, the Tiwi Islands, and the role of strong NES in protecting Tiwi natural and cultural values. It then makes recommendations to improve the proposed MNES Standard, focusing on the need to:

- 1) Meaningfully recognise traditional owners' rights, knowledge and cultural values in relation to MNES
- 2) Reduce excessive discretion and require compliance with the standard.

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<sup>1</sup> Joint NT Land Council submission to the Australian Senate Environment and Communications Legislation Committee *Inquiry into Environment Protection Reform Bill 2025 and six related bills*, 19 November 2025 ([weblink](#))



## 1. Background

### 1.1 About the Tiwi Land Council

TLC is a Corporate Commonwealth Entity established in 1978 under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* (ALRA). The Tiwi Islands are entirely Aboriginal land, to which Tiwi hold inalienable freehold title under ALRA. The TLC is responsible for a number of key functions under ALRA, but most relevantly to this submission, to ensure that activities on the Tiwi Islands are undertaken only after proper consultation with the relevant Tiwi clan group(s) and with the consent of the traditional Aboriginal owners of that land.

TLC represents all Tiwi people in the protection of our land, sea and environment, while at the same time supporting sustainable economic development to improve Tiwi lives through employment, income, education and health opportunities. Consistent with our prescribed statutory functions, the TLC works to secure the effective management of Tiwi country and revitalisation of Tiwi culture for the benefit of future generations of Tiwis.

### 1.2 About the Tiwi Islands


The Tiwi Islands are located about 80 km north of Darwin in the Arafura Sea. The Tiwi Islands group consists of two large, inhabited islands including Melville and Bathurst, originally called Ratuwati Yinjara (two islands), and numerous smaller uninhabited islands. Tiwi people are proud saltwater people, with an unbroken history of occupation and ownership of these Islands, and stewardship over land and surrounding waters.

The Tiwi Islands and their surrounding waters are havens for a diverse range of species, including many not recorded anywhere else in the world. This diversity includes 19 threatened plant and 31 threatened animal species listed under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*. In recognition of Tiwi stewardship of the islands and the importance of the islands for biodiversity conservation, the Tiwi Islands have recently been dedicated as an Indigenous Protected Area (IPA), adding 718,626 hectares to the Australian National Reserve System.

The values articulated in the IPA Plan of Management show that, for Tiwi people, natural and cultural values are indivisible. Tiwi people's knowledge and cultural practices are essential to the health of country, and the health of country is essential to the wellbeing of Tiwi people and sustaining Tiwi culture.

### 1.3 The importance of robust National Environmental Standards for the Tiwi Islands

Tiwi people are entrepreneurial people who have pursued and continue to identify economic development opportunities on their islands. Tourism, forestry and port operations are all recent examples of this entrepreneurial endeavour. At the same time, Tiwi people intimately understand that development poses risks to the health of country, and – given the high number of EPBC-listed species on the Tiwi Islands – almost all development on the islands is likely to have some impact on protected matters under the Act (namely threatened species and/or migratory species). Clear, consistent and evidence-based rules are extremely important for supporting environmentally responsible development.



To date, the absence of national environmental standards has left Tiwi natural and cultural values vulnerable to inconsistent and at times poorly informed decisions about actions on the Tiwi Islands. By way of example, consider the variation in the conditions relating to the EPBC-listed endangered Red Goshawk under various project proposals: ranging from a 300 metre buffer with no clearing of nest trees (required under an EPBC approval), to an 80 metre buffer (recommended by NT Government), through to approval for nest trees to be removed (again, recommended by the NT Government). In all cases, had the projects proceeded (which for various reasons they didn't), nest trees of the endangered Red Goshawk would have been removed. The need for strong national standards is well overdue.

## 2. Recommendations to strengthen the MNES Standard

### 2.1 Meaningfully recognise traditional owners' rights, knowledge and cultural values

The Samuel Review highlighted significant shortcomings in the way the views, aspirations, culture, values and knowledge of Indigenous Australians have been supported by the EPBC Act. It also identified that Indigenous knowledge should be considered on equal footing with Western science in decision-making.<sup>2</sup>

While the objects of the act include recognising the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity, and promoting the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge<sup>3</sup>, none of this is reflected in the draft MNES standard – and it is not sufficient to leave this to the First Nations Engagement Standard alone. For clarity, consistency and to reflect the objects of the Act, meaningful recognition of traditional owners' rights, knowledge and cultural values should be embedded throughout. The TLC therefore recommends:

A. Strengthening the overarching **objectives** of the standard to:

- i) Explicitly promote seeking and considering Traditional Owners' views on the impacts to MNES
- ii) Include the protection, conservation and (if available) recovery of cultural and heritage values.

B. Strengthening the **principles** of the standard so that:

- i) the mitigation hierarchy is updated to recognise cultural and heritage values associated with MNES and to prohibit unacceptable impacts on MNES with cultural and heritage values. (**Principle 1 – Actions appropriately consider the mitigation hierarchy**)
- ii) the application of the mitigation hierarchy is determined and implemented in line with advice and knowledge from traditional owners – including whether the impact in question is an “unacceptable impact” as defined by the Act, and whether the impact in question can be “repaired” (pursuant to Step 3). (**Principle 1 – Actions appropriately consider the mitigation hierarchy**)

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<sup>2</sup> Samuel, G. (2020) Independent Review of the EPBC Act – Final Report, Department of Agriculture, Water and the Environment, p.57 ([weblink](#))

<sup>3</sup> Section 3(1) (f) and (g)



- iii) the “context” to be considered when assessing the nature, extent or severity of an impact on a protected matter explicitly includes the cultural and heritage values of the protected matter (**Principle 2 – Actions appropriately consider impacts to protected matters**)
  - iv) it promotes robust and genuine collaboration with traditional owners, and their participation in decision-making – not just “appropriate and suitable ... consultation with Aboriginal and Torres Strait Islander people and contribution of their knowledge”. (**Principle 4 – Appropriate evidence, First Nations engagement and consultation**)
  - v) ‘Appropriate evidence’ and ‘appropriate data and information’ are defined to include Indigenous knowledge and data from the relevant traditional owners. Any MNES-related actions should be required to be supported by such knowledge and data. (**Principle 4 – Appropriate evidence, First Nations engagement and consultation**)
  - vi) Express parameters about access to and use of Indigenous knowledge and data are prescribed that are consistent with Indigenous Cultural and Intellectual Property and Indigenous Data Sovereignty principles and reflected in the (to-be-developed) Data and Information Sharing NES (**Principle 4 – Appropriate evidence, First Nations engagement and consultation**).
- C. Prioritising the development of the **First Nations Engagement Standard**, ensuring it:
- i) is informed by wide-ranging, accessible and culturally appropriate consultation
  - ii) is consistent with and reflects the strengthened principles recommended above.

## 2.2 Reduce excessive discretion and require compliance with the standard

As currently drafted, the MNES Standard doesn’t provide assurance that it will function as the core protection intended in the Samuel Report. Current drafting allows excessive discretion, mostly requiring decision-makers to only “have regard” to the relevant principle.

The TLC therefore recommends:

- D. Strengthening language throughout the document to make obligations clearer and require decision-makers to comply with (rather than merely “have regard to”) its principles.

## 2.3 Further changes to strengthen the standard

In addition to the recommendations above, the TLC recommends:

- E. In relation to **Principle 2 – Actions appropriately consider impacts to protected matters**, requiring a robust assessment of cumulative impacts (including cumulative impacts to cultural and heritage values)
- F. In relation to **Principle 4 – Appropriate evidence, First Nations engagement and consultation**, actions must be supported by the *best available data and information* (not merely “appropriate and suitable” data and information).



### 3. Further comments

#### Bilateral agreements

The TLC would like to reiterate the concern expressed in the joint land council submission (November 2025) about the prospect of a bilateral agreement that would enable the authorisation of actions in the Northern Territory.<sup>4</sup> While ALRA provides Tiwi traditional owners with a greater measure of protection for their country than traditional owners elsewhere where land rights are not recognised or more limited rights have been recognised under native title, it is not a substitute for a robust national environmental assessment and approval process.

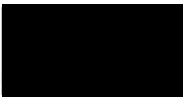
As expressed in the joint submission, the NT's environmental laws are notoriously weak. What limited protection they provide for environmental and cultural values is being further eroded by the current NT Government, including but not limited to the establishment of the Territory Coordinator who has unchecked and expansive power to override 32 NT Acts and a host of regulations.<sup>5</sup>

It is therefore very concerning that the bills have facilitated increased devolution of Commonwealth assessment and approval powers to state and territory governments. Given the current legislative and regulatory framework in the NT, the TLC considers that Commonwealth assessment and approval powers under the reformed Act should not be devolved to the NT Government via a bilateral agreement – and we do not foresee a scenario in which we would have sufficient confidence to allow the NT Government to take on those functions.

The Tiwi Islands remain a haven for biodiversity and home to species of national and international significance – most importantly, they hold cultural significance. The health of Tiwi country is fundamental to the health of Tiwi people and the continuation of their culture. The development of the National Environmental Standards has been long-awaited and the MNES Standard is vital to protect the natural and cultural values of the Tiwi Islands. We urge the Australian Government to take the opportunity to ensure it is strong.

Thank you for considering our submission. Acknowledging the lack of transparency in this reform process to date, we look forward to hearing the outcomes of this consultation, and we look forward to the opportunity to participate in consultations on future standards – in particular, the First Nations Engagement Standard.

Yours sincerely



Brendan Ferguson  
**CEO**  
**Tiwi Land Council**

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<sup>4</sup> Joint NT Land Council submission to the Australian Senate Environment and Communications Legislation Committee *Inquiry into Environment Protection Reform Bill 2025 and six related bills*, 19 November 2025, p.18-19 ([weblink](#))

<sup>5</sup> Joint Media Release: NT Land Councils call on NT Government to bin Territory Coordinator Bill, 12 March 2025 ([weblink](#))