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Dear SABS Standards Division: Compliance and Development Department

**RE: DRAFT SOUTH AFRICAN STANDARDS SANS17298ED1: BIODIVERSITY – CONSIDERING BIODIVERSITY IN THE STRATEGY AND OPERATIONS OF ORGANIZATIONS – REQUIREMENTS AND GUIDELINES**

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## **INTRODUCTION**

1. Thank you for the opportunity to comment on the Draft South African Standards SANS17298ED1: Biodiversity – Considering biodiversity in the strategy and operations of organizations – Requirements and guidelines (“**Draft Standards**”), prepared by the technical committee SABS/TC 207; Environmental Management, and published for comment on [www.sabs.co.za](http://www.sabs.co.za) by the South African Bureau of Standards (“**SABS**”) in terms of the Standards Act 8 of 2008 (“**the Standards Act**”).
2. These comments are submitted by the Biodiversity Law Centre (“**BLC**”), a non-profit law centre that uses the law to protect and restore indigenous species and ecosystems that support sustainable livelihoods in Southern Africa. The BLC is particularly concerned with law and policy that give effect

to section 24 of the Constitution, and the State's obligations to protect the environment for present and future generations, by preventing pollution and ecological degradation, promoting conservation, and securing ecologically sustainable development.

3. The Draft Standards present a timely and valuable opportunity to embed biodiversity considerations into organisational strategy and operations in furtherance of section 24 of the Constitution. However, their voluntary nature limits their effectiveness. To fully realise their potential to support South Africa's constitutional, statutory and international biodiversity commitments, we recommend refinements to address: (i) the non-mandatory nature of the Standards, limiting their enforceability; (ii) the absence of independent oversight and verification mechanisms; (iii) insufficient differentiation between organisations based on scale and biodiversity footprint; and (iv) the need for alignment with existing corporate governance and reporting frameworks.
4. These factors arise in the context of South Africa's global biodiversity significance and its corresponding international and constitutional obligations.

### **South Africa's international and domestic biodiversity governance obligations**

5. The BLC's particular interest in biodiversity arises as South Africa is the third most biodiverse country in the world.<sup>1</sup> Biodiversity is defined as-

*'the variability among living organisms from all sources...,'<sup>2</sup> and is -*

*'foundational to the wellbeing of [South Africa's] people giv[ing] our people food, clean water, medicine and materials; support[ing] agriculture and fisheries; offer[ing] resilience against disasters; and provid[ing] the basis of a vibrant tourism industry while offering natural spaces for recreational and cultural activities.'<sup>3</sup>*

6. Biodiversity is also essential for food security, water security, tourism, job creation, and climate change adaptation and mitigation.<sup>4</sup> Through providing guidance to organizations on biodiversity impact reporting and monitoring, the Draft Standards have the potential to support South Africa in fulfilling its international and domestic biodiversity commitments.
7. Under the Convention on Biological Diversity ("CBD")<sup>5</sup>, Parties, including South Africa, adopted the Kunming-Montreal Global Biodiversity Framework ("GBF")<sup>6</sup> in response to biodiversity deteriorating

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<sup>1</sup> <https://www.biofin.org/south-africa>.

<sup>2</sup> National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA") section 1(1) definition of "biodiversity".

<sup>3</sup> South African National Biodiversity Institute (SANBI). 2025. National Biodiversity Assessment 2025: The status of South Africa's biodiversity. Summary of Findings and Key Messages. Skowno, A.L., Poole, C.J., Besseling, N.A., Currie, J.C., Da Silva, J.M., Dayaram, A., Harris, L.R., Job, N., Monyeki, M.S., Mtshali, H., Raimondo, D.C., Sink, K.J., Van der Bank, M.G., Van der Colff, D., Van Niekerk, L., Von Staden, L. South African National Biodiversity Institute (an entity of the Department of Forestry, Fisheries and the Environment), Pretoria. <https://hdl.handle.net/20.500.12143/9467> ("2025 NBA").

<sup>4</sup> 2025 NBA at page 5.

<sup>5</sup> United Nations. (1992). Convention on Biological Diversity. <https://www.cbd.int/convention/text/>.

<sup>6</sup> Kunming-Montreal Global Biodiversity Framework UN Doc UNEP/CBD/COP/DEC/15/4 (2022).

worldwide at unprecedented rates,<sup>7</sup> with the aim of galvanising urgent and transformative government action to halt and reverse biodiversity loss.<sup>8</sup>

8. The GBF sets targets to be reached by Parties by 2030, including:
  - 8.1. Target 2, restore 30% of all degraded ecosystems;
  - 8.2. Target 4, seeks to halt species extinction, protect genetic diversity, and manage human-wildlife conflicts by 'ensur[ing] urgent management actions to halt human induced extinction of known threatened species and for the recovery and conservation of species, in particular threatened species, to significantly reduce extinction risk';
  - 8.3. Target 7, which seeks to reduce pollution to levels that are not harmful to biodiversity;
  - 8.4. Target 8, which seeks to minimize the impacts of climate change on biodiversity and build resilience;
  - 8.5. Target 14, which seeks to integrate biodiversity in decision-making at every level;
  - 8.6. Target 15, which seeks to take legal, administrative or policy measures to encourage and enable businesses to monitor, assess, and transparently disclose their risks, dependencies and impacts on biodiversity; and
  - 8.7. Target 16, which seeks to ensure that people are encouraged and enabled to make sustainable consumption choices, including by establishing supportive policy, legislative or regulatory frameworks, improving education and access to relevant and accurate information and alternatives.
9. Section 2(b) of the National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA") states that one of its objectives are to give effect to ratified international agreements relating to biodiversity which are binding on the Republic [of South Africa].
10. We therefore welcome the publication of the Draft Standards, as it constitutes a meaningful step toward giving domestic effect to GBF Targets 14 and 15, in particular. The Draft Standards aim to integrate biodiversity into organizational decision-making and offer guidance to businesses on identifying, monitoring, assessing, and disclosing biodiversity considerations.
11. The Draft Standards also support alignment with South Africa's 2nd National Biodiversity Strategy and Action Plan (2015-2025) ("National Biodiversity Strategy and Action Plan"). The Plan identifies six strategic objectives, with strategic objective 3 ("SO 3") being "Biodiversity considerations are mainstreamed into policies, strategies and practices of a range of sectors". SO 3 is divided into further outcomes, with outcome 3.6 stating "Biodiversity considerations are integrated into the development and implementation of policy, legislative and other tools". This affirms the incorporation of biodiversity considerations into policies, strategies, practices, and legislation as a national strategic prerogative.

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<sup>7</sup> GBF at section A 2.

<sup>8</sup> GBF at section B 4. Among the GBF's goals for 2050 are:

Goal A: "Protect and restore", which includes that 'the integrity, connectivity and resilience of all ecosystems are maintained, enhanced, or restored, substantially increasing the area of natural ecosystems by 2050'.

Goal B: "Prosper with nature", being that 'biodiversity is sustainably used and managed and nature's contributions to people, including ecosystem functions and services, are valued, maintained and enhanced, with those currently in decline being restored, supporting the achievement of sustainable development for the benefit of present and future generations by 2050'.

12. In addition to international and national legal and policy instruments, South Africa is also considering adoption, to varying degrees, of internationally recognised sustainability standards, including the International Financial Reporting Standards (“**IFRS**”) Sustainability Disclosure Standards S1 (*General Requirements for Disclosure of Sustainability-related Financial Information*) and S2 (*Climate-related Disclosures*) (“**IFRS S1 and S2**”) issued by the International Sustainability Standards Board (“**ISSB**”).<sup>9</sup> The Companies and Intellectual Property Commission (“**CIPC**”) has updated its XBRL taxonomy (a digital framework for tagging and standardizing disclosures) to include a voluntary sustainability disclosures module aligned with IFRS S1/S2, facilitating structured digital reporting via its eServices portal.<sup>10</sup> Furthermore, the technical guidance developed by the Taskforce on Nature-related Financial Disclosures (“**TNFD**”) are expected to inform the development of nature-related reporting standards by the ISSB, which may in time complement IFRS S1 and S2 and be introduced in South Africa. The adoption of SANS17298ED1 is therefore a welcome step towards creating the framework within which disclosure in terms of these sustainability standards may be affected.
13. To ensure practical uptake, the Draft Standards should be aligned with existing governance frameworks rather than operating in parallel to them. A further framework already widely applied in South Africa, the King V Code (“**King V**”), encourages integrated reporting and sustainability reporting by organisations.<sup>11</sup> King V is intended to have universal application, and its principles are reconcilable with all organisations.<sup>12</sup> Therefore the draft standards have the potential to complement the sustainability and integrated reporting requirements of King V. However, for the Draft Standards to function meaningfully in conjunction with King V, they would likely require contextual guidance aligning their biodiversity governance, risk assessment and metric provisions with King V’s disclosure framework.
14. The Draft Standards therefore have the potential to give effect to South Africa’s international and national biodiversity commitments, whilst also providing a strong foundational basis for the anticipated regulatory changes in the context of sustainability generally, and biodiversity in particular. We submit, however, that, in order to fulfil this potential, the standards stand to be strengthened in certain areas to promote their utility and enforceability.
15. It is in this context that our comments are particularly aimed at addressing several concerns that arise from the Draft Standards. Our comments are structured as follows:
  - 15.1. General comments pertaining to the standards read as a whole, including:
    - 15.1.1. The voluntary nature of the Standards.
    - 15.1.2. The absence of oversight mechanisms.
    - 15.1.3. The legal status of the Standards and possible avenues for them to be integrated into South African law.
  - 15.2. Section-specific comments as outlined in the table below, which aligns to the format of the SABS’s commenting template.

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<sup>9</sup> <https://group.jse.co.za/sustainability/climate-disclosure-guidance>

<sup>10</sup> See [xbrl.org/news/south-africas-esg-reporting-revolution/](http://xbrl.org/news/south-africas-esg-reporting-revolution/); [cipc.co.za/wp-content/uploads/2025/02/Customer-Notice-06-of-2025-Sustainability-Reporting-Survey.pdf](http://cipc.co.za/wp-content/uploads/2025/02/Customer-Notice-06-of-2025-Sustainability-Reporting-Survey.pdf) .

<sup>11</sup> King V Code on Corporate Governance for South Africa (“King V”) 10.

<sup>12</sup> King V 2.

### 15.3. Conclusions and recommendations.

#### GENERAL COMMENTS

16. As they stand, the Draft Standards are voluntary in nature. To meaningfully domestically operationalise strides towards Targets 14 and 15 of the GBF, we submit that the Draft Standards should integrate mandatory mechanisms to promote the incorporation of biodiversity considerations into the strategy and operations of organisations, including through:
  - 16.1. Amendment of the language in the Draft Standards to be peremptory in nature rather than purely voluntary; and
  - 16.2. the introduction of an oversight body to monitor and enforce compliance.
17. For the Standards to have full legal effect once in final form, we further submit they should be integrated into South African law, as provided for in Section 28(1) of the Standards Act.
18. We expand on each of these elements below.

#### Amendment of voluntary language throughout the draft standards

19. For the Standards to fulfil the objective of integrating biodiversity into organisational strategy and operations at scale, clarity and enforceability are essential. Throughout the standards, we recommend the substitution of words emphasising a voluntary interpretation of the draft standards with words that emphasise a mandatory interpretation of the draft standards. Specifically, in various instances it is recommended that the word “should” be substituted with the word “shall”.
20. This stems from the approach adopted by South African courts on the interpretation of words used in documents, including legislation. Although the Draft Standards do not amount to legislation, we submit below that they should be integrated into law to give them binding effect in furtherance of section 24 of the Constitution. Therefore, it would be consistent with general legal principles to align their language with recognised interpretive principles as adopted by our courts, which include that interpretation of legal instruments should account for their ordinary meaning, context, and purpose. Furthermore, where multiple meanings are possible, each meaning must be weighed in light of all relevant factors.<sup>13</sup> The Draft Standards should therefore adopt unambiguous, clear, and mandatory language. This would strengthen the draft standards to avoid confusion and ambiguity regarding organisational compliance with the draft standards, and to enable them to fulfil their purpose.

#### Oversight Mechanisms

21. We submit that the standards would be strengthened through mandating the requirement that an oversight body be established to monitor and enforce compliance. Should the Standards be integrated into national regulations (as expanded upon below), the regulations should also designate an authority responsible for enforcing the requirements set out in the Standards.

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<sup>13</sup> *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 ZASCA 13 18.

## Possible avenues for the Draft Standards to be integrated into South African Law

22. Incorporating biodiversity considerations into policies, strategies, practices, and legislation is a national strategic prerogative. To give the Draft Standards legal effect to support the achievement of this prerogative, we submit that they should be integrated into South African law as provided for in section 28(1) of the Standards Act.
23. Section 28(1) of the Standards Act provides that a South African National Standard affecting environmental protection may be incorporated in any law. We submit that the Draft Standards could be made mandatory once in their final form through two complementary avenues dealing with environmental governance and corporate reporting.
  - 23.1. The first would be through regulations under the National Environmental Management: Biodiversity Act 10 of 2004 (“**NEMBA**”). Section 97(1)(i) of NEMBA allows the relevant Minister to make regulations relating to “any matter that is necessary or expedient to achieve the objectives of the Act”, including giving effect “ratified international agreements relating to biodiversity which are binding on the Republic”, therefore it would be within the Minister’s remit to integrate the Standards into regulations giving effect to Targets 14 and 15 of the GBF. Accordingly, it is recommended that the standards are made mandatory through incorporating them into law through regulations under NEMBA. We submit that this must be done for, at the least, sectors identified as having high impacts and dependencies on biodiversity to help achieve South Africa’s strategic biodiversity objectives.
  - 23.2. The second avenue would be for the final Standards to be integrated into expanded regulations under the Companies Act 71 of 2008 (“**Companies Act**”). Expanded regulations could require companies to report biodiversity impacts and dependencies in accordance with the Standards, leveraging the CIPC’s existing XBRL and sustainability disclosure frameworks<sup>14</sup> to enable future biodiversity disclosures, coupled with enforceability measures, such as penalties for non-compliance.
24. These two avenues are complementary rather than mutually exclusive: the first addresses environmental governance obligations, while the second embeds biodiversity disclosure within corporate reporting frameworks.
25. In the absence of enforceability mechanisms, the voluntary approach provided for in the Standards may have slow and limited utility as organisations will not be legally bound to any consequence for non-compliance. Moreover, considering South Africa’s rich biodiversity characteristics and the various international and national instruments discussed above, mandatory implementation measures for the Draft Standards are necessary to promote the realisation of South Africa’s constitutional environmental obligations as envisaged by Section 24 of the Constitution of the Republic of South Africa.

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<sup>14</sup> See [xbrl.org/news/south-africas-esg-reporting-revolution/](http://xbrl.org/news/south-africas-esg-reporting-revolution/); [cipc.co.za/wp-content/uploads/2025/02/Customer-Notice-06-of-2025-Sustainability-Reporting-Survey.pdf](http://cipc.co.za/wp-content/uploads/2025/02/Customer-Notice-06-of-2025-Sustainability-Reporting-Survey.pdf) .

## SPECIFIC COMMENTS

26. The specific comments in the table below align with the SANS template for comments. They reinforce the broader structural concern outlined above, that the Draft Standards, in their current voluntary form, will lack the enforceability required to achieve their objectives.

### Template for comments and secretariat observations

Date: 18 February 2026	Document: SABS/TC 207	Project: SANS17298ED1
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MBR *1	Line number	Clause/ Sub clause*	Paragraph / Figure/ Table/	Type of comment *2	Comment*	Proposed change	Observations of the secretariat
BLC		ge		ge	<p>The Draft South African Standards: SANS17298ED1 (“Draft Standards” or “the Standard/s”) are intended for organisations to comply with on a voluntary basis. The voluntary nature of the Standards may lead to staggered and slow adoption and implementation of the standards. Furthermore, there are no legal or other consequences stemming from non-compliance with the Standards. The Standards would be significantly strengthened if they were to be incorporated into South African law with legal consequences for non-compliance.</p>	<p>As stated in the introduction of the Standards, they are aimed to help organisations include biodiversity conservation, ecological restoration and sustainable use into business, social and environmental strategies and practices. The Standards are therefore intended to allow a range of sectors to mainstream biodiversity considerations into their operational model.</p> <p>Under the Convention on Biological Diversity (“CBD”), Parties, South Africa, adopted the Kunming-Montreal Global Biodiversity Framework (“GBF”) in response to biodiversity deteriorating worldwide at unprecedented rates, with the aim of galvanising urgent and transformative government action to halt and reverse biodiversity loss. Target 14 of the GBF specifically seeks to integrate biodiversity in decision-making at every level. As this is an</p>	

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					<p>Incorporating biodiversity considerations into policies, strategies, practices, and legislation is a national strategic prerogative. To give the Draft Standards legal effect to support the achievement of this prerogative, we submit that they should be integrated into South African law as provided for in section 28(1) of the Standards Act 8 of 2008 ("Standards Act").</p> <p>We submit that the Draft Standards could be made mandatory once in their final form through two complementary avenues dealing with environmental governance and corporate reporting. The first would be through regulations under the National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA"). Section 97 of NEMBA allows the relevant Minister to make regulations relating to "any matter that is necessary or expedient to achieve the objectives of the Act", including giving effect "ratified international agreements relating to biodiversity which are binding on the Republic", therefore it would be within the Minister's remit to integrate the Standards into regulations giving effect to Targets 14 and 15 of the GBF. Accordingly, it is recommended that the standards are converted to be of mandatory nature through incorporating them into law through regulations under NEMBA. We submit that this must be done for, at the least, sectors identified as having high impacts and dependencies on biodiversity to help achieve South Africa's strategic biodiversity</p>	
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					<p>objectives. The second avenue would be for the final Standards to be integrated into expanded Companies Act 71 of 2008 regulations. Expanded regulations could require companies to report biodiversity impacts and dependencies in accordance with the Standards, leveraging the CIPC's existing XBRL and sustainability disclosure frameworks to enable future biodiversity disclosures, coupled with enforceability measures, such as penalties for non-compliance. These two avenues are complementary rather than mutually exclusive: the first addresses environmental governance obligations, while the second embeds biodiversity disclosure within corporate reporting frameworks.</p>	
BLC	ge		ge	<p>Given its wide application by companies, the Draft Standards would benefit from aligning their metrics with King V so that they can be embedded within existing integrated reporting frameworks.</p>	<p>To align the Draft Standards with King V's disclosure framework, it would be of value to:</p> <ul style="list-style-type: none"> <li>• Link SANS biodiversity metrics (impacts and dependencies) to IFRS S1 and S2 and TNFD formats for ease of inclusion in King V integrated reports (King V Principle 4)</li> <li>• Build in risk assessment protocols linking biodiversity dependencies to solvency/going concern assessments (Principle 14) with sector-specific thresholds</li> <li>• Provide King V-compliant disclosure templates supporting "apply and explain" narratives with recommended assurance levels.</li> </ul>	

					<ul style="list-style-type: none"> <li>• Recommend governing body oversight via biodiversity committees or metrics linkage to remuneration policies (Principle 15)</li> </ul>	
BLC	1		te	<p>Standard 1 states that the document is “applicable to any type of organisation, irrespective of its size or nature (e.g. large groups, public institutions, local authorities, mid-cap companies, associations, micro-structures, single-member companies), sector, level of development and the extent to which it includes biodiversity protection in its activities.”</p> <p>The applicability of ISO17298 to all organisations is to be welcomed, however the absence of differentiated guidance based on the scale of an organisation’s size risks overburdening small scale companies and failing to provide for accountability mechanisms for large scale companies with a significant biodiversity footprint.</p>	<p>The Standard must include guidelines differentiated based on the size and nature of a given organisation.</p>	
BLC	4.1 read with 4.3		te	<p>Standard 4.1 provides for an organisation to self-select the scope of its biodiversity approach and provide for its applicability to “one, several or all of its activities”, among other factors. While the standard provides for elements that the organisation “shall consider” when determining the scope, it does not provide for any independent external verification of an organisation’s scope of its biodiversity approach. Nor does it include whether or how consultation with</p>	<p>It is advised that the Standards mandate the independent external verification of an organisation’s biodiversity approach; make provision for interested parties and external stakeholders to register as interested parties to an organisation’s biodiversity approach as opposed to the organisation determining the interested parties; and that the regulations set out clear and unambiguous procedural steps detailing the consultation process to</p>	

				<p>external stakeholders is to take place in determining the scope of its biodiversity approach. The lack of independent external verification may lead to bias in an organisation determining the scope of its biodiversity approach, with the possible result that an organisation may adopt a scope that is unduly narrow relative to the scale of its operations and their potential impact on biodiversity.</p> <p>Furthermore, Standard 4.3 provides that interested parties and external stakeholders “relevant in the context of the biodiversity approach” are to be determined by the organisation. It does not make provision for parties to register themselves as an interested party in an organisation’s biodiversity approach. Moreover, there are also no clear guidelines on the structure and composition of the consultation procedure with interested parties and external stakeholders.</p> <p>Accordingly, through potential exclusion of interested parties and external stakeholders a significant risk arises causing the exclusion of critical biodiversity-related aspects of the scope of an organisation’s biodiversity approach.</p>	<p>take place between the organisation and its interested parties and external stakeholders.</p> <p>However, the Standards must offer guidance that differentiates between scope of organisations in relation to the aforementioned suggestion based on organisations’ size and impact footprint.</p>	
BLC	4.4		ed	<p>Draft Standard 4.4 states that “The organisation should establish monitoring on the progress of scientific research and state-of-the-art knowledge on the matter”.</p>	<p>The language of this Draft Standard allows for voluntary monitoring of research and knowledge on industry matters. It is advised the “should” be replaced with “shall” to promote mandatory monitoring of scientific research and industry matters. Failure to do</p>	

				<p>This is an essential component in organisations acquainting themselves and applying their decision-making powers in an informed manner. The wording of the Draft Standard in its current form is however problematic as it allows for organisations to hold significant discretion in obligations to monitor progress of scientific research and state-of-the-art knowledge on the matter.</p>	<p>so may cause organisations to rely on outdated knowledge and research to make operational decisions directly and indirectly affecting biodiversity-related matters.</p> <p>To further aid monitoring of scientific research and industry matters an annexure of relevant domestic legal and policy frameworks should be provided to complement the international frameworks set out in Annexure A.</p>	
BLC	5		te	<p>Draft Standard 5 states that “The organisation should determine, justify and facilitate appropriate modes of interested parties’ involvement for the major stages of the biodiversity approach...”. The language of this draft standard could reduce overall compliance as it provides for organisations to justify, determine and facilitate modes of interested parties’ involvement on a voluntary basis. It further can be interpreted by an organisation as a unilateral exercise failing to take into account the most appropriate mode for interested parties with the result being that some parties are excluded.</p>	<p>The word “should” must be replaced with “shall” to ensure organisations are mandated to determine, justify and facilitate appropriate modes of interested parties’ involvement. This Draft Standard must further include explicit recognition that the determination must be done in consultation with interested parties and by giving due regard and consideration to the submissions of interested parties.</p> <p>Significant weight is attached to ensure meaningful external participation in environmental decision-making, and although the draft standards do not seek to establish the same administrative and procedural processes as required by, for example, the National Environmental Management Act, 1998, the applicable principals must be echoed to ensure cohesion with the wider environmental and biodiversity policy, regulatory, and legislative landscape. Specifically, South African courts have emphasised that <i>“Public participation in environmental decision making is rooted in section 24 of the Constitution, which provides for the</i></p>	

						<p><i>right to an environment that is not harmful and a corresponding obligation on the state to protect and fulfil that right...Public participation is pivotal to the fulfilment of the right to an environment that is not harmful to the health and well-being. To be effective, public consultation must be conducted in good faith, through culturally appropriate measures and procedures".<sup>15</sup></i></p> <p>Additionally, global regulatory shifts are demanding increased transparency and accountability from organisations regarding their corporate disclosures on nature-related impacts, risks, dependencies, and opportunities through implementation of the TNFD framework. The TNFD framework is currently in the process of review by the ISSB for possible future incorporation into the IFRS Sustainability Disclosure Standards ("SDS") to complement the current S1 and S2 standards. IFRS S1 and S2 are likely to be introduced locally, as well as any possible future IFRS SDS such as nature-related standards incorporated from TNFD.</p> <p>In conclusion, both the legislative and regulatory position is one that demands increased transparency from organisations in relation to interested parties, and this must be reflected in the draft standards.</p>	
BLC	6.1		te	This Draft Standard emphasises that organisations are not required to produce "flawless" information regarding their	The Draft Standard in question must reflect that organisations are required to improve their information and disclosures on		

<sup>15</sup> *South Durban Community Environmental Alliance v The Minister of Forestry, Fisheries and the Environment and Others* 2025 ZASCA 134 28.

				<p>biodiversity dependencies, impacts, risks, and opportunities. Although it is acknowledged that data and information may be difficult to obtain in the initial phases of implementing the standards for organisations to produce and publish “flawless” information, this may create a norm that organisations can comply with the standards through minimal compliance.</p>	<p>biodiversity dependencies, impacts, risks, and opportunities on an annual basis with the aim of providing complete and transparent information to all stakeholders. A phasing-in and timeline approach may be considered where organisations are given specific timelines and targets from date of adoption of the Standards to ensure promotion of progress towards achieving as near as possible to “flawless” information.</p>	
BLC	6.2		ed	<p>In the identification of material ecosystem services dependencies, the Standard does reference the use of experts, however, the use of an expert is not mandated.</p> <p>Determining material ecosystem services dependencies can require specialist, expert, scientific, and/or technical knowledge which organisations may not have at their disposal leading to significant gaps in determining material ecosystem services dependencies.</p>	<p>The use of an internal or external specialist with the requisite knowledge and expertise should be mandated to determine the material ecosystem services dependencies of an organisation.</p>	
BLC	6.3		ed	<p>Draft Standard 6.3 in various instances references both the words “shall” and “should” relating to various components of the standard. This creates ambiguity in whether certain interrelated aspects of the standard are voluntary or mandatory for alignment with draft standard 6.3.</p> <p>Furthermore, the language used to set out materiality evaluation criteria does not denote a minimum criteria and organisations can therefore in practice opt for any criteria to evaluate materiality of impacts.</p>	<p>The word “should” must be replaced with the word “shall” throughout draft standard 6.3.</p> <p>It is further recommended that the criteria for evaluating the materiality of biodiversity impacts be set as the minimum criteria for organisations to apply.</p> <p>Lastly, biodiversity impacts may not be fully understood by organisations and the extent to which an organisation may impact biodiversity. Therefore, it is recommended that organisations make use of the services of external independent field experts to assist</p>	

				<p>Lastly, the Standard does not incorporate the use of any independent experts to determine biodiversity impacts, which can result in crucial biodiversity impacts being overlooked.</p>	<p>them in determining the materiality of their biodiversity impacts.</p>	
BLC	6.5		ed	<p>Draft standard 6.5 states that “The organisation shall prioritise impacts, dependencies, risks and opportunities considering the available scientific data and state-of-the-art knowledge”, however it does not specify that the scientific data and knowledge relied on must be the most up-to-date iterations of the data. This failure opens the possibility of organisations relying on outdated scientific data and state-of-the-art knowledge.</p> <p>It further states that “An adequate level of transparency and support from interested parties should be ensured”. It does not however define what an “adequate level of transparency and support” is causing ambiguity to interested parties and stakeholders as to what is required of organisations.</p>	<p>The standard must confirm that organisations must use the most up-to-date available scientific data and state-of-the-art knowledge.</p> <p>The standard should further define what is considered adequate levels of transparency and support from interested parties and should include minimum disclosure requirements and engagement levels to promote transparency.</p>	
BLC	7.1, 7.21 and 7.3		te	<p>Draft standard 7.1 states that “The organisation’s ambition shall be adequate with its own capabilities for action (i.e. size, turnover, number of sites, position in the value chain)” although it does not define what an adequate ambition is.</p> <p>Furthermore, the ambition components are included as optional ambition levels, with no standardised mandatory ambition level. The</p>	<p>The draft standard must clearly define “adequate ambition” level and should further establish criteria and thresholds (e.g. size, turnover, number of sites, position in the value chain) that define the minimum components of a biodiversity ambition based on the criteria thresholds met by a specific organisation.</p>	

				<p>foundation and wording used in 7.1 further could affect Draft Standards 7.2 and 7.3 due to the interlinkage between ambition, objective, and biodiversity action plan setting. The current wording and content of draft standard 7.1 therefore pose challenges relating to other aspects of the draft standards as determining the biodiversity ambition of an organisation is a key component of the draft standards.</p>	<p>It is further recommended that the specified ambition levels are presented as a mandatory minimum set of ambition components and not as an optional list.</p>	
BLC	7.4		te	<p>The Draft Standard states that “For each indicator, a target and deadline for achieving it should be defined”. This implies that targets and deadlines are not compulsory due to the use of the word “should”. Furthermore, the Draft Standards are silent on specificity of indicators relating to specific industries and contexts of organisations. The consequences of this can result in organisations having weak biodiversity-related disclosures, which comes with the added risk of “greenwashing”.<sup>16</sup></p>	<p>The word “should” must be replaced with “shall” so that the standard reads “For each indicator, a target and deadline for achieving it shall be defined” and thereby create a compulsory target and deadline for each identified indicator.</p> <p>The Draft Standards must further include specific guidance and/or biodiversity metrics sensitive to industry and context of organisations. Further integration with frameworks such as TNFD are advised.</p>	
BLC	9.3		ed	<p>The Draft Standard confirms that it is within the discretion of the organisation to determine whether an internal or an external third-party verification of analysis and actions approach be implemented.</p> <p>This can have negative implications for transparency of information and will limit the confidence of interested parties and</p>	<p>Organisations meeting certain thresholds (e.g. in terms of size, turnover, number of sites, position in the value chain) must be mandated to conduct external third-party verification of their analysis and actions.</p> <p>It is further recommended that it be specified that organisations conduct an annual review to assess the implementation and effectiveness of their action plan.</p>	

<sup>16</sup> <https://www.exponent.com/article/iso-17298-biodiversity-business>

				<p>stakeholders in the information published by the organisation.</p> <p>Furthermore, the Standard does not specify a timeline by which an organisation shall assess the implementation and effectiveness of their action plan. This can cause organisations to become complacent with the implementation and effectiveness of their action plans, thereby limiting its value.</p>		
BLC	9.4		te	<p>Continual improvement is currently only triggered on an optional basis and does not include effluxion of time as a trigger to update a biodiversity approach and/or revise a biodiversity action plan. This raises the risk that organisations may not update and review their respective biodiversity approaches and action plans and fail to stay up to date with latest scientific data and state-of-the-art knowledge.</p>	<p>Continual improvement would be better promoted in the Standard by including a minimum time period by which an organisation must update their biodiversity approach and/or revise their biodiversity action plan, for example biannually, a 5-year period etc. This would ensure organisations acquaint themselves regularly of their performance in terms of their biodiversity approach and action plan and remains cognisant of the latest scientific data and state-of-the-art knowledge.</p>	

## CONCLUSIONS AND RECOMMENDATIONS

27. The Draft Standards aim to introduce biodiversity-related matters, including impacts, into the decision-making, strategic, and operational efforts of organisations. Their adoption by SANS is to be welcomed, however they would benefit from strengthening in line with our suggestions outlined in this submission.

### The Need for Mandatory Implementation

28. The Draft Standards provide guidance on incorporating biodiversity considerations into organisational decision-making, strategy, and operations. However, without enforceable mechanisms, adoption may be slow and inconsistent. Making the Standards mandatory through regulations under NEMBA and the Companies Act would move beyond existing voluntary frameworks, ensuring organisations consistently identify, monitor, and report biodiversity impacts and dependencies.

### Alignment with Existing Governance Frameworks

29. While the Draft Standards propose a framework for South African organisations to align to on strategic and operational biodiversity-related matters, they do not present unique solutions tailored to South Africa's context or offer context-specific biodiversity requirements and metrics. Mandatory implementation would allow organisations to integrate biodiversity governance and reporting with existing and emerging frameworks, including TNFD, IFRS S1/S2, and King V. This alignment ensures biodiversity considerations are embedded in broader sustainability and corporate governance practices, enhancing transparency and strategic decision-making.

### Differentiation by Organisational Scale

30. The scope and requirements of the Standards should be tailored to organisational size, structure, revenue, and biodiversity footprint. This approach ensures meaningful compliance among larger, high-impact organisations while avoiding unreasonable burdens on smaller entities with limited resources.

### Advancement of Constitutional and International Commitments

31. Lastly, organisations aligning to mandatory biodiversity-related standards, as proposed by our comments, will go further in promoting compliance with the Draft Standards. Additionally, it will greatly assist the South African government in achieving its GBF targets and National Biodiversity Strategy and Action Plan outcomes, thereby contributing to realising South Africa's constitutional environmental mandate in terms of section 24 of the Constitution.

32. We respectfully submit that these comments should be carefully considered in finalising the Draft Standards. Integrating the final Standards into law through NEMBA and Companies Act regulations would provide mandatory status and enforceability, ensuring organisations can meaningfully contribute to South Africa's biodiversity goals while supporting the country's constitutional and international commitments.

33. Please do not hesitate to contact us if you require further information or clarity on these submissions.

Yours faithfully,

**BIODIVERSITY LAW CENTRE NPC**

*Per:*

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