



Environmental
Defenders Office

Submission on the draft National Environmental Standard (Environmental Offsets) 2025

30 January 2026

About EDO

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Successful environmental outcomes using the law. With over 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

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Submitted to:

[Survey on draft Environmental Offsets Standard Policy Paper and legislative instrument](#)

Department of Climate Change, Energy, the Environment and Water

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

A note on language

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherent and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

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Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on draft National Environmental Standards developed under new provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

This submission provides feedback on the National Environmental Standard (Environmental Offsets) 2025 (**draft Offsets Standard**) and Draft Policy Position: National Environmental Standard for Environmental Offsets (**Offsets Policy Position**).

The lynchpin of recommendations made by the Independent Review of the EPBC Act by Professor Graeme Samuel in 2020 (**Samuel Review**) was the introduction of National Environmental Standards containing clear, enforceable environmental outcomes that must be met through all decisions made under the EPBC Act. The Samuel Review recommended a suite of nine Standards, including one pertaining to environmental offsets.

The draft Offsets Standard has a critical role to play in addressing longstanding and well-documented failings in the regulation and delivery of environmental offsets in Australia. Environmental offsets have too often been relied upon as a mechanism to justify approval of damaging developments, despite persistent evidence that existing offset frameworks - at both Commonwealth and state and territory levels - fail to deliver genuine, timely, and ecologically equivalent outcomes. Weak requirements, excessive discretion for decision-makers and proponents alike, poor transparency, and limited compliance and enforcement contribute to ongoing environmental decline and has undermined public confidence in the effectiveness of offset frameworks.

We are concerned that, as drafted, the draft Offsets Standard does not establish clear, enforceable national requirements that ensure offsets are a measure of last resort and that, where permitted, they deliver real, additional and lasting environmental gains rather than entrenching further loss.

Our submission provides feedback on the draft Offsets Standard and Standards more generally, as well as the Commonwealth environmental offsets framework more broadly. We make recommendations for strengthening the draft Offsets Standard before it is finalised. Our separate submission on the draft National Environmental Standard (Matters of National Environmental Significance) Standard 2025 (**draft MNES Standard**) provides general feedback on the legal framework for making and implementing Standards in the EPBC Act, which should also be considered.

Summary of Recommendations

Overarching comments on draft National Environmental Standards

Recommendation 1: Amend the draft Standards to clearly specify environmental outcomes and set out clear, legally enforceable measures, including as follows:

- (a) Standards must use clear, unqualified language, to ensure they are understood and are enforceable.
- (b) Objectives, outcomes and principles must be coherently and consistently framed to ensure ambition is achieved through clear criteria that aligns with that ambition, and are outcomes focused, not process focused.
- (c) Standards must set SMART requirements: specific, measurable, actionable, realistic, and time-bound.
- (d) All necessary considerations must be included in the Standards themselves rather than creating further guidelines. Where policies and guidance are still required, these should be provided for public consultation alongside draft Standards so they can be considered as a whole.
- (e) Standards should ensure, for example through requiring mandatory conditions on approvals, that approval holders have mandatory, enforceable, ongoing obligations for environmental outcomes.

Recommendation 2: Include parameters, processes, and actions in Standards that specify precise, quantitative, requirements in order to ensure environmental outcomes for MNES are achieved.

Recommendation 3: Implement the full suite of Standards recommended by Professor Samuel as a matter of priority and prior to any decisions being made under the reformed EPBC Act, including with respect to accreditation or the changed management of Regional Forest Agreement operations.

Draft Offsets Standard Objects

Recommendation 4: Amend the Objects of the draft Offsets Standard to provide clear outcomes and lift ambition, for example:

The object of this Standard is to ~~provide a framework in which~~ ensure offsets (where permitted ~~adequately compensate~~ are effectively achieved and managed to ensure ecologically appropriate compensation for residual significant impacts to deliver a net gain and contribute to the protection and enhancement of protected matters.

Recommendation 5: Replace the term 'Objects' with term 'Objectives', to be consistent with the terminology in section 514YD of the EPBC Act.

Draft Offsets Standard Outcomes

Recommendation 6: Amend the draft Offsets Standard Outcomes to better align with the Principles of the Standard (e.g. by referring to like for like, additional and feasible etc.), to ensure consistency and clarity in language.

Recommendation 7: Adopt a baseline that will ensure absolute net gain, to ensure that the provision of ‘net gain’ leads to absolute net gain, not net gain based on an ever-declining baseline.

Draft Offsets Standard Principles

Principle 1

Recommendation 8: Require evidence relied upon to justify and plan offsets to be included as part of the application and assessment process. This would ensure relevant information is available for consideration by the decision-maker, community and expert scientists during the assessment process.

Recommendation 9: Amend Principle 1: Feasibility, subsection (2)(b), to require the offset activity to demonstrate that it will contribute to the recovery or conservation of the protected matter, by removing the current term ‘will likely contribute’ to the recovery or conservation of the affected protected matter in subsection (2)(b), which is vague and weakens the criteria provided in the principles.

Recommendation 10: Amend Principle 1: Feasibility, subsection (2)(b), to specify that ‘alternative methods’ includes options to avoid and mitigate the impact, and to also reference subsections (2) and (3) in determining whether the offset should be allowed to be pursued. This would make clear that feasibility must be demonstrated before an offset can be approved in accordance with the Standard.

Recommendation 11: Provide greater granularity in the Standard by incorporating the factors from page 18 of the Offsets Policy Position into the Standard as criteria to help assess feasibility when considering a proposed offset. These factors should also include consideration of a proponent’s reputation and past history of delivering offsets.

Recommendation 12: Clarify circumstances where offsets are not appropriate or permitted, including by cross-referencing relevant mechanisms of the Act and providing an initial tranche of protection statements and declarations alongside the final Offsets Standard identifying matters of national environmental significance that cannot be offset.

Principle 2

Recommendation 13: Amend Principle 2: Security, subsection (1) to refer to ‘offset sites’ not ‘offset activities’ as needing security, and that protection must be legally enforceable. For indirect offsets not tied to a site, this should be addressed in a separate subsection, so it is clear what kind of security is required for each.

Recommendations 14: Amend Principle 2: Security, subsection (2) to specify that:

- (a) security is provided via legally enforceable protection for site-specific offsets;
- (b) suitable mechanisms to ensure that the offset activity will be delivered should specify a suitable plan, including an adaptive management plan should unexpected matters arise that may impact the viability of the offset;
- (c) the security must be maintained in perpetuity, not just for the duration of the impact. An example or note may assist to clarify that the security must be provided in perpetuity for impacts that are permanent e.g. clearing of habitat.

Recommendations 15: Amend Principle 2: Security, subsections (3) and (4) to require ‘Management of offset site for maintenance period’, the ‘activity period’ and ‘maintenance period’ and whether the impact is considered to be temporary or not temporary to be specified in the application materials for assessment as well as the conditions to an approval, to provide transparency as to how these concepts are determined.

Recommendations 16: Strengthen the language in Principle 2: Security, subsection (3) by replacing ‘is managed to prevent’ to just be ‘prevent’, because ‘managed to’ is process and not outcomes focused. Also replace the term ‘should’ with ‘must’.

Recommendations 17: Amend Principle 2: Security, subsection (3) to require that any loss or degradation of the protected matter that does occur must be remediated.

Principle 3

Recommendation 18: Amend Principle 3: Direct and Tangible, subsection (1) to refer to ‘~~overall~~ localised recovery and conservation, to provide more certainty of how recovery and conservation must be undertaken and ensure localised offsets that are more directly related to an impacted area are prioritised over easier to achieve recovery efforts elsewhere.

Recommendation 19: Amend Principle 3: Direct and Tangible to put clear constraints on the use of indirect offsets, consistent with the current EPBC Act environmental offsets policy.

Recommendation 20: Incorporate the Notes in Principle 3 directly in the instrument itself, (rather than as notes), to provide granularity and ensure effective and consistent application of the Principle.

Principle 4

Recommendation 21: Clarify how the terms ‘net gain’ and ‘measurable improvement’ interact in the draft Offsets Standard.

Principle 5

Recommendation 22: Amend Principle 5 to provide more specificity to ensure that any ‘approved state or territory offset or an advanced restoration action’ are additional and do not allow for double counting (for example, by incorporating some of the granular information in the Offsets Policy Position directly into Principle 5).

Principle 6

Recommendation 23: Apply the ‘like-for-like’ principle to all offset activities, including those provided via Restoration Contributions.

Principle 7

Recommendation 24: Retain a Principle requiring that offsets be provided in an ecologically relevant area.

Principle 8

Recommendation 25:

- (a) Amend Principle 8 to require offsets to be secured (rather than 'commenced') before impacts occur.
- (b) Specify that Principle 8 could be applied by setting conditions of approval that require offsets to be secured before commencement of a project and environmental outcomes are achieved (e.g. via implementation of an approved offsets management plan). These conditions may also specify what the proponent is required to demonstrate to fulfil this condition (e.g. evidence that demonstrates the offset is secured and monitoring and reporting under a management plan).

Introduction

In 2020 the Samuel Review found that the arrangements and decision-making requirements under the EPBC Act are not focused on outcomes for matters of national environmental significance, and that opaque rules and unfettered discretion in decision-making often results in the trading away of environmental outcomes¹. It found that without fundamental reform, the EPBC Act cannot deliver the level of environmental protection the community expects.

The centrepiece recommendation to address this was for the creation of clear, binding National Environmental Standards that:

- set clear, measurable limits on environmental harm;
- provide transparent rules that guide decisions under the EPBC Act;
- lift environmental outcomes, not merely manage decline; and
- ensure governments, proponents and regulators operate with consistency, clarity and accountability.

It was recommended that the suite of National Environmental Standards be developed without delay, to ensure that Standards can be immediately implemented and applied together to support broader reforms. However, the matters for which Standards will be made, and how they will be applied to decision making is not specified in the Act.

Recent reforms to the EPBC Act, introduced by the *Environment Protection Reform Act 2025* (Cth) (**EPR Act**) have created new powers for the Environment Minister to make National Environmental Standards.

To date, the Government has released a draft MNES Standard and a draft Offsets Standard for public comment. The Government has also flagged its intention to develop a First Nations Engagement Standard, Community Consultation Standard and a Data and Information Standard. The Samuel Review recommended a full suite of nine Standards.²

Disappointingly, the provisions in the EPBC Act for developing and applying Standards, and the draft Standards prepared to date, fall short of the comprehensive framework envisaged by the Samuel Review. More work is needed to ensure Standards can play the important role intended to set limits, lift environmental outcomes and deliver clear and consistent decision making.

¹ Professor Graeme Samuel AC, Independent Review of the EPBC Act – Final Report (**Samuel Review**), p 52.

² Samuel Review, p 51. The full suite of Standards should include:

- matters of national environmental significance
- Commonwealth actions and actions involving Commonwealth land
- transparent processes and robust decisions, including– judicial review– community consultation– adequate assessment of impacts on MNES – including climate change impacts– disclosure of emissions profile– quality regional planning
- Indigenous engagement and participation in decision-making
- compliance and enforcement
- data and information
- environmental monitoring and evaluation of outcomes
- environmental restoration, including offsets
- wildlife permits and trade.

This submission provides feedback and key recommendations as follows:

- 1. Overarching comments on draft National Environmental Standards**
- 2. Feedback on the draft Offsets Standard**
- 3. Broader comments on the Commonwealth environmental offsets framework**

Our separate submission on the **draft MNES Standard** provides general feedback on the legal framework for making and implementing Standards in the EPBC Act, which should also be considered.

1. Overarching comments on draft National Environmental Standards

In this section of our submission, we outline deficiencies common to the first two draft Standards released for public comments - the draft MNES Standard and the draft Offsets Standard - and highlight key issues that must be addressed across all Standards, namely:

- 1.1 Standards must specify environmental outcomes and set out clear, legally enforceable measures by which they will be achieved
- 1.2 Standards must include parameters within an outcome or objective is to be achieved, and processes or actions to be followed or taken in achieving an outcome or objective
- 1.3 The full suite of Standards must be urgently developed, and must be in place prior to accrediting any frameworks

We include recommendations for consideration

in not only amending the draft Standards, but to consider as all Standards are being developed, to ensure all Standards are fit-for-purpose and effective.

1.1 Standards must specify environmental outcomes and set out clear, legally enforceable measures by which they will be achieved

The Samuel Review found that a fundamental shortcoming of the EPBC Act is that it does not focus on environmental outcomes but rather on process, and does not provide sufficient constraints on discretion. This, it found, has resulted in uncertainty and poor environmental outcomes. In our view, as drafted, the draft Standards may exacerbate existing flaws in the EPBC Act identified by the Samuel Review by failing to specify clear environmental outcomes to be met, and by entrenching and extending discretionary decision-making powers of the Minister and their delegates.

In particular, we provide the following feedback:

- The current draft Standards provide discretionary, qualified language that is unclear and difficult for stakeholders to understand and to enforce. Standards should use clear, unqualified language ('must', 'will', 'ensure'), not discretionary language ('aims', 'is intended', 'reasonable', 'may', 'if possible' or 'where necessary'). This level of discretion is further compounded when read in the context of the Act's multiple requirements that the Minister must be 'satisfied' their decision is 'consistent with the Standard' prescribed for

that decision (for example, the decision to accredit a bilateral agreement).³ The discretionary use of ‘satisfied’ will make it difficult for the public to hold a decision-maker to account where they fail to uphold the Standard meaningfully.

- The current draft Standards include ‘outcomes’ that are not consistent with Samuel Review’s recommendation for environmental outcomes based (rather than process oriented) decision-making. For example, as currently drafted the ‘outcome’ for each draft Standard is:
 - ultimately about process (i.e. ‘decisions’ for the draft MNES Standard and ‘framework’ for the draft Offsets Standard);
 - not clear or specific, and uses vague and qualified language which is not tied to the objectives and principles. For example, ‘this Standard **aims to** ensure decisions provide for the protection, conservation, and, **where necessary**, recovery of... matters of national environmental significance’ (emphasis added).
- The objectives, outcomes and principles contained in Standards must be coherently and consistently framed to ensure ambition is achieved through clear criteria that achieve or are consistent with that ambition. In the absence of this language, the Standards will not perform the role envisaged in the Samuel Review and risk being ineffective or counterproductive.
- As drafted, the draft Standards will be difficult to enforce. Again, this does not align with the Samuel Review. To assist in ensuring they are enforceable, the Standards should provide for SMART requirements: specific, measurable, actionable, realistic, and time-bound.
- Standards must contain requirements that bind proponents, not only decision-makers, to ensure that approval holders have an ongoing requirement to comply with the Standards and achieve relevant environmental outcomes. This could be done, for example, through the Standards requiring the imposition of conditions of approval relating to requirements for environmental outcomes (not simply relating to process).
- As drafted, the draft Standards are not sufficiently granular, and instead further detail is intended to be set out in policies and guidance. Making further policies and documents that sit under the Standard will defeat the purpose of the Standards being a single place to provide clear, simple guidance for decision-makers, proponents and the public. It would also risk reducing the enforceability of the Standards, where detail being provided in non-statutory documents may create ambiguity as to what is the enforceable threshold.
- The Samuel Review criticised the EPBC Act framework where ‘[d]ecision-making requirements are buried within hundreds of pages of legislation and statutory documents, and unenforceable guidelines and policies.’⁴ To provide effective, clear and enforceable Standards, and to provide the granular detail envisaged by the Samuel Review, we strongly recommend all necessary considerations should be included in the Standards themselves rather than creating further guidelines. Where policies and guidance are still required, these should be provided for public consultation alongside draft Standards so they can be considered as a whole.

³ See EPBC Act, new ss 46(3)(e) and (f). These provisions have not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

⁴ Samuel Review, p 52.

Recommendation 1: Amend the draft Standards to clearly specify environmental outcomes and set out clear, legally enforceable measures, including as follows:

- (a) Standards must use clear, unqualified language, to ensure they are understood and are enforceable.
- (b) Objectives, outcomes and principles must be coherently and consistently framed to ensure ambition is achieved through clear criteria that aligns with that ambition, and are outcomes focused, not process focused.
- (c) Standards must set SMART requirements: specific, measurable, actionable, realistic, and time-bound.
- (d) All necessary considerations must be included in the Standards themselves rather than creating further guidelines. Where policies and guidance are still required, these should be provided for public consultation alongside draft Standards so they can be considered as a whole.
- (e) Standards should ensure, for example through requiring mandatory conditions on approvals, that approval holders have mandatory, enforceable, ongoing obligations for environmental outcomes.

1.2 Standards must include parameters within an outcome or objective is to be achieved, and processes or actions to be followed or taken in achieving an outcome or objective

New section 514YD of the EPBC Act sets out the process for making, and the contents of, Standards. Subsection 514YD(4) states that a National Environmental Standard:

- (a) must prescribe one or more outcomes or objectives; and
- (b) may prescribe any of the following:
 - (i) parameters within, or principles by which, an outcome or objective is to be achieved;
 - (ii) processes or actions to be followed or taken in achieving an outcome or objective.

We note that neither the draft MNES Standard nor draft Offsets Standard has prescribed:

- parameters within an outcome or objective is to be achieved; or
- processes or actions to be followed or taken in achieving an outcome or objective.

While subsection 514YD(4) permits, but does not require, the relevant standard to prescribe parameters, processes, or actions, it is disappointing they are not included in the draft Standards. It is these parameters, processes, or actions which enable the Standard to be sufficiently prescriptive and detailed to ensure that the environmental outcomes specified in the Standard are met (noting our separate comments that the drafting of the Outcome in the draft Offsets Standard must be amended to ensure it relates to environmental outcomes for MNES, not matters of process).

For example, the Samuel Review noted that Standards for MNES must be 'precise' and 'quantitative'. If Standards do not contain clear, mandatory, measurable requirements for the meeting of environmental outcomes they will not perform the role envisaged in the Samuel Review and risk being ineffective or counterproductive. As noted above, Standards should provide

for SMART requirements: specific, measurable, actionable, realistic, and time-bound. These requirements would fall within the parameters, processes or actions provided for by subsection 514YD(4)(b) but not included in the draft MNES Standard as currently drafted.

Professor Samuel acknowledged that the Samuel MNES Standard set out in the Appendix to the Samuel Review was itself not sufficiently precise, and that Standards must evolve in a way that requires ecologically sustainable development, and for the values and attributes of MNES to be protected, maintained and actively enhanced.⁵ The Samuel Review urged the MNES Standard must become ‘granular and measurable’ so as to be able to ‘be applied with greater precision and efficiency’.⁶

The Samuel Review recommended and provided examples for how this could be effected:

- ‘definitive mapping of habitat critical to the survival of a species will provide greater clarity than a more general scientific description of that habitat’;⁷
- ‘National Environmental Standards for threatened species could be expressed in quantitative measures to support recovery over a specific time frame – with targets that specify the intended outcomes’;⁸
- ‘Measures such as population size and trends, and the area and quality of habitat available across a landscape type (that is, population numbers, hectares, threat management and years), should be developed’;⁹
- ‘[h]ard lines and no-go zones in the Standards [to] protect critical assets and prevent unacceptable impacts’.¹⁰

Recommendation 2: Include parameters, processes, and actions in Standards that specify precise, quantitative, requirements in order to ensure environmental outcomes for MNES are achieved.

1.3 The full suite of Standards must be urgently developed, and must be in place prior to accrediting any frameworks

The Samuel Review recommended that: ‘The National Environmental Standards set out in detail in Appendix B [of the Samuel Review Report] should be adopted in full. The remainder of the suite of Standards should be developed without delay to enable the full suite of nine Standards to be implemented immediately. Standards should be refined within 12 months.’¹¹

We strongly support the full suite of Standards suggested by the Samuel Review, and further the Review’s strong warning that the Standards must be subject to regular review and strengthening in alignment with the findings of increasing quality data and information to support their development.

⁵ Samuel Review, p 53.

⁶ Samuel Review, p 53.

⁷ Samuel Review, p 53.

⁸ Samuel Review, p 53.

⁹ Samuel Review, p 53.

¹⁰ Samuel Review, p 52.

¹¹ Samuel Review, p 53.

It is imperative that a full suite of Standards is implemented prior to development or revision of any bilateral agreements or declarations devolving EPBC Act powers, and ideally prior to any further significant decisions under the EPBC Act. The provisions of the EPBC Act are drafted in a way to allow decisions to be made in the absence of Standards. The current provisions of the EPBC Act only require decisions to be made where the decision-maker is 'satisfied' that the decisions is 'consistent' with Standards as 'prescribed by regulations'.¹² This means that where Standards have not been prescribed by regulations for particular decisions, there is a possibility the decision could be made without applying the Standards. Allowing key decisions to be made without Standards in place and prescribed for decisions undermines the intent of the reforms and the Samuel Review.

In particular, it is essential that the Standards are implemented prior to the accreditation of any frameworks that devolve EPBC Act powers to another entity. Devolution of EPBC Act powers was sold to the public on the basis of the strong National Environmental Standards working to ensure that the frameworks and processes of accredited entities will have to meet the requirements of the Standards. It would be disingenuous to then allow any accreditation to occur prior to the finalisation of the full suite of Standards, and risks accrediting poor quality frameworks, for example state or territory environment planning and approvals legislation.

The latest 2021 *State of the Environment* Report makes it clear that 'the state and trend of the environment of Australia is poor and deteriorating because of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction'.¹³ That is why it is important that these Standards are strong, measurable, enforceable, ambitious and backed by solid scientific understanding of the status of environmental values, to lead to the 'quantum shift' that Professor Samuel stated was required to halt and reverse this decline. Anything less risks repeating the failings of the EPBC Act.

Recommendation 3: Implement the full suite of Standards recommended by Professor Samuel as a matter of priority and prior to any decisions being made under the reformed EPBC Act, including with respect to accreditation or the changed management of Regional Forest Agreement operations.

¹² For example, EPBC Act, new ss 33(3)(e) and (f) states that the Minister must not accredit a management or authorization framework unless they are satisfied that (e) 'the framework is consistent with any national environmental standard prescribed by regulations for the purposes of this paragraph' and (f) 'approving the action or class of actions in accordance with the framework will be consistent with any [Standards] as prescribed by regulations for the purposes of this paragraph'. This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

¹³ Commonwealth Government, 2021 *State of the Environment Report, Key findings*, available at: <https://soe.dcceew.gov.au/overview/key-findings>.

2. Feedback on the draft Offsets Standard

The National Environmental Standard (Environmental Offsets) 2025 (**draft Offsets Standard**) has a critical role to play in addressing longstanding and well-documented failings in the regulation and delivery of environmental offsets in Australia.

Environmental offsets have too often been relied upon as a mechanism to justify approval of damaging developments, despite persistent evidence that existing offset frameworks - at both Commonwealth and state and territory levels - fail to deliver genuine, timely and ecologically relevant outcomes. Weak standards, excessive discretion, poor transparency, and limited compliance and enforcement contribute to ongoing environmental decline and has undermined public confidence in the effectiveness of offset frameworks.

In this context, the draft Offsets Standard and the proper application of the mitigation hierarchy represent a pivotal opportunity to establish clear, enforceable national rules for biodiversity offsetting. The Standards must ensure offsets are a measure of last resort and that, where permitted, they deliver real, additional and lasting environmental gains rather than entrenching further loss. Please refer to our submission on the Draft MNES Standard for more detail comments on the mitigation hierarchy.

This section of our submission is structured as follows:

- 2.1 Draft Offsets Standard Objects
- 2.2 Draft Offsets Standard Outcomes
- 2.3 Draft Offsets Standard Principles

We include key recommendations for strengthening the draft Offsets Standards.

2.1 Draft Offsets Standard Objects

The draft Offsets Standard provides:

‘The object of this Standard is to provide a framework in which offsets (where permitted) adequately compensate for residual significant impacts to deliver a net gain and contribute to the protection and enhancement of protected matters.’

We are concerned that this is too process focused (e.g. ‘to provide a framework’) and doesn’t provide the clear outcomes and lifted ambition envisaged by the Samuel Review (e.g. ‘adequately compensate’ is neither clear nor ambitious).

To strengthen the Object it should be amended, for example as follows:

The object of this Standard is to ~~provide a framework in which~~ ensure offsets (where permitted) ~~adequately compensate~~ are effectively achieved and managed to ensure ecologically appropriate compensation for residual significant impacts to deliver a net gain and contribute to the protection and enhancement of protected matters.

We note that the term ‘net gain’ is not defined in the Standard – see our further discussion in relation to this at Principle 4.

We also suggest this section use the term ‘Objectives’ rather than ‘Objects’ to be consistent with the terminology in section 514YD of the EPBC Act (and the draft MNES Standard).

Recommendation 4: Amend the Objects of the draft Offsets Standard to provide clear outcomes and lift ambition, for example:

The object of this Standard is to ~~provide a framework in which~~ ensure offsets (where permitted ~~adequately compensate~~ are effectively achieved and managed to ensure ecologically appropriate compensation for residual significant impacts to deliver a net gain and contribute to the protection and enhancement of protected matters.

Recommendation 5: Replace the term ‘Objects’ with term ‘Objectives’, to be consistent with the terminology in section 514YD of the EPBC Act.

2.2 Draft Offsets Standard Outcomes

The draft Offsets Standards provides:

‘The outcomes which this standard is intended to achieve are that:

- b) offsets are relevant and available to compensate for the impact to the protected matter and support recovery or conservation;
- c) offsets result in a measurable improvement from the baseline at the time the relevant decision is made under the Act for protected matters; and
- d) offsets provide certainty that protected matters will be protected and enhanced.’

As per our suggestions for the Objects of the Standard, we recommend that the Outcomes are strengthened to be clear and ambitious. This should include:

- a focus on ensuring the effective achievement of ecologically appropriate offsets that compensate for residual significant impacts, in alignment with the Principles outlined in the Standard.
- explicit reference to essential elements of the Principles in the Outcomes, including that offsets are timely, like for like and viable long term.

Further:

- We support the focus on the ‘availability’ of the offset which is a fundamental factor that needs to be considered prior to allowing an offset to be used to justify an impact – this should also be clearly integrated into the draft MNES Standard as part of the mitigation hierarchy (see our separate submission on the draft MNES Standard).
- We support the reference to an offset being ‘relevant’ to compensate for the impact, but we recommend that this wording be expanded to refer more consistently to the essential elements of the Principles. This would ensure coherence in the policy and ensure that the Principles contribute to achieving the Outcomes. For example, offsets that are relevant may mean offsets that are like for like (Principle 6), additional (Principle 5) and feasible (Principle 1) etc.
- We have significant concerns that the baseline for determining improvement will be the baseline at the time the relevant decision is made. This fails to account for ongoing environmental decline and essentially ‘locks in’ a declining baseline, meaning that real improvement is never achieved. It is also unclear if, in the case of modification/extension

applications, the proposed baseline would be at the point of the modification/extension decision (which could further entrench decline), or the original project approval decision. ‘Absolute net gain’ is the scientifically recommended approach to ensure net gain assists in improving the quality of environmental values, and must be defined in accordance with the best available science. This requires selecting a suitable baseline, not simply the baseline at the time of a decision. As an example, the Nature Positive Initiative has adopted a 2020 baseline to underpin its goal of halting and reversing nature loss by 2030 and achieving full recovery by 2050.¹⁴ Data underpinning Australia’s State of the Environment reports (the most recent dated 2021) could support a fixed baseline being set.

Recommendation 6: Amend the draft Offsets Standard Outcomes to better align with the Principles of the Standard (e.g. by referring to like for like, additional and feasible etc.), to ensure consistency and clarity in language.

Recommendation 7: Adopt a baseline that will ensure absolute net gain, to ensure that the provision of ‘net gain’ leads to absolute net gain, not net gain based on an ever-declining baseline.

2.3 Draft Offsets Standard Principles

Principle 1 – Feasibility

In general, we support the key elements of Principle 1 with respect to ensuring the feasibility of an offset, and in particular:

- The focus on the general ‘feasibility’ of the offset, although noting that this should be assessed at the time of the mitigation hierarchy being implemented to determine whether to move to the consideration of offsets at all in justifying an impact (see further our feedback separate on the MNES Standard).
- The focus on the need for ‘appropriate and suitable data and information which shows, with a high degree of certainty, that the offset activity will likely contribute to the recovery of conservation of the affected protected matter’, along with the reference to ‘substantiated expert knowledge or peer reviewed science’ and all points in subsection (3) to this Principle. The need for proposed offsets to be based on the best available substantiated science is a fundamental consideration to ensure that offsets proposed are legitimate and likely to be effective in compensating for residual significant impacts. We strongly recommend specification of the need to include this evidence as part of the application and assessment process. This would ensure relevant information is available for consideration by the decision-maker, community and expert scientists during the assessment process.
- The focus on taking into consideration the reasonably foreseeable future adverse impacts of climate change, to ensure that the proposed impacts and proposed offsets are grounded in an understanding of the impacts climate change will have on the values and any offset created.

We make the following comments and suggestions for strengthening Principle 1:

- The term ‘will likely contribute’ to the recovery or conservation of the affected protected matter in subsection (2)(b) is vague and weakens the criteria provided in the Principle. This

¹⁴ Nature Positive Initiative, ‘What is nature positive’, available at <https://www.naturepositive.org/what-is-nature-positive/>

must be amended to state a clear need for the offset activity to demonstrate that it will contribute to the recovery or conservation of the protected matter. Given the evidentiary threshold being required through the other subsections in this principle, and the fact that these offsets are compensating for impacts to Australia's environmental values of national significance, there should be certainty that the offset will fully compensate for the impacts allowed.

- Further clarity is needed in relation to subsection (4) of this Principle where 'alternative methods' are referred to. We recommend that alternative methods should explicitly require options to avoid and mitigate the impact. Further, we recommend that subsection (4) also reference subsections (2) and (3) in determining whether the offset should be allowed to be pursued. This would make clear that feasibility must be demonstrated before an offset can be approved in accordance with the Standard.
- The term 'feasible' has not been clearly defined. The Offsets Policy Position includes the following information on circumstances in which an offset would not be feasible:

'An offset could be seen as not feasible when the values being impacted cannot be realistically replaced, restored or compensated for. For example, this may be due to:

- suitable areas are not available for protection or restoration,
- scarcity of matter being impacted,
- habitat features cannot be feasibly replicated in an ecologically relevant timeframe,
- values are location specific and cannot be substituted, such as World Heritage properties or Ramsar wetlands,
- the offset is unable to meet Principles in the Offsets Standard, or
- confidence in the proponent's ability to deliver an offset is low. This could be due to proposed cost, or the level of offset commitment could not be realistically achieved.'

We recommend these factors be incorporated into the Standard itself as important criteria for determining what is 'feasible'. This would assist in providing the granularity envisaged by the Samuel Review.

In relation to the last bullet point of this list, we also recommend that any previous track record or reputation of a proponent's ability to deliver an offset is considered. For example, if a proponent has a past history of not delivering offsets (in any jurisdiction) that adequately compensate for residual significant impacts, this should be a relevant consideration when assessing Principle 1. Such factors are similarly considered under relevant NSW legislation for the authorisation of mining activity. The *Mining Act 1992* (NSW) and the *Mining Regulation 2016* (NSW) allow the decision-maker for mining approvals to declare a person 'not fit and proper' for the purposes of making decisions.¹⁵ In making the declaration, the decision-maker may consider a range of factors, including the person's record of compliance with relevant legislation, whether the management of the activities or works that are to be authorised, required or regulated are not or will not be in the 'hands of a technically good person', and whether the person is not of good repute.

- The Standard should also clarify (here at Principle 1, or elsewhere) circumstances where offsets are not appropriate or permitted. We note that the Offsets Policy Position provides

¹⁵ *Mining Act 1992* (NSW) Part 18 Division 2 and *Mining Regulation 2016* (NSW) s 89E.

that the Regulations will also prescribe which impacts to protected matters cannot be compensated, and new section 134AA will allow the Minister to make declarations to specify certain entities (e.g. threatened species) that are not able to be offset via a restoration contribution payment. Protection statements can help inform decisions to declare entities under section 134AA. The Standard could reference these as well. It would be useful to provide an initial tranche of protection statements and declarations alongside the final Offsets Standard identifying matters of national environmental significance that cannot be offset.

Recommendation 8: Require evidence relied upon to justify and plan offsets to be included as part of the application and assessment process. This would ensure relevant information is available for consideration by the decision-maker, community and expert scientists during the assessment process.

Recommendation 9: Amend Principle 1: Feasibility, subsection (2)(b), to require the offset activity to demonstrate that it will contribute to the recovery or conservation of the protected matter, by removing the current term ‘will likely contribute’ to the recovery or conservation of the affected protected matter in subsection (2)(b), which is vague and weakens the criteria provided in the principles.

Recommendation 10: Amend Principle 1: Feasibility, subsection (2)(b), to specify that ‘alternative methods’ includes options to avoid and mitigate the impact, and to also reference subsections (2) and (3) in determining whether the offset should be allowed to be pursued. This would make clear that feasibility must be demonstrated before an offset can be approved in accordance with the Standard.

Recommendation 11: Provide greater granularity in the Standard by incorporating the factors from page 18 of the Offsets Policy Position into the Standard as criteria to help assess feasibility when considering a proposed offset. These factors should also include consideration of a proponent’s reputation and past history of delivering offsets.

Recommendation 12: Clarify circumstances where offsets are not appropriate or permitted, including by cross-referencing relevant mechanisms of the Act and providing an initial tranche of protection statements and declarations alongside the final Offsets Standard identifying matters of national environmental significance that cannot be offset.

Principle 2 – Security

Ensuring the legal security over an offset site is also a fundamental element of ensuring the effective, long-term viability of the offset. We recommend Principle 2 be amended to ensure that true security of the offset is achieved and not compromised by unclear or inappropriate language.

The Australian Conservation Foundation’s report, *Set and forget: How offsets under national environmental law drive habitat destruction*, demonstrates significant issues with how security has been provided to date for offsets. It highlights issues regarding inadequate conditions being imposed on projects with respect to legal security requirements and recommends solutions.¹⁶ We

¹⁶ Australian Conservation Foundation, *Set and forget: How offsets under national environmental law drive habitat destruction*, 1 May 2024, available at: <https://www.acf.org.au/news/set-and-forget-how-offsets-under-national-environmental-law-drive-habitat-destruction>.

recommend the review of this report and implementation of its recommendations (pp 29-30), where relevant.

More specifically, we provide the following comments and suggestions for strengthening Principle 2:

- Subsection (1) should be amended to refer to ‘offset sites’ not ‘offset activities’ and protection must be legally enforceable – it is the site itself that must be subject to legal protection and it is not relevant to legally secure an activity. This is unclear in the Standard as drafted, and we recommend amending subsection (1) of Principle 2 to replace ‘offset activities’ with ‘offset sites’.

If the intention is to ensure that any offset provided via activity that is not tied to a site is also subject to this principle, for example research or management of a threat, then this should be referenced separately. This would be such that any site-specific offset, which should be the vast majority of offsets, is subject to site specific legal protection.

- Subsection (2) should provide more detailed information, for example by specifying that:
 - security is provided via legally enforceable protection for site-specific offsets, for example legal covenants;
 - suitable mechanisms to ensure that the offset activity will be delivered should specify a suitable plan, including an adaptive management plan should unexpected matters arise that may impact the viability of the offset;
 - the security must be maintained in perpetuity, not just for the duration of the impact. The current drafting refers to the ‘duration of the impact’, which lacks specification and may be confusing to stakeholders, including decision-makers. The Standard should clarify that the security must be provided in perpetuity for impacts that are permanent e.g. clearing of habitat.
- For subsections (3) and (4) ‘Management of offset site for maintenance period’, we recommend that the ‘activity period’ and ‘maintenance period’ and whether the impact is considered to be temporary or not temporary be required to be specified in the application materials for assessment. This information should also be included in the conditions of approval, to provide transparency as to how these concepts are determined.
- We also suggest the language in subsection (3) could be tightened. For example, by replacing ‘is managed to prevent’ to just be ‘prevent’, because ‘managed to’ could be read as process and not outcomes focused. We also suggest replacing the term ‘should’ with ‘must’.

So (3) would read ‘**Management** arrangements **must** be put in place to ensure that the site where any offset activities will occur **prevents** loss and degradation of the protection matters....’

- Finally, we recommend that (3) specify a requirement that any loss or degradation of the protected matter that does occur must be remediated.

<p>Recommendation 13: Amend Principle 2: Security, subsection (1) to refer to ‘offset sites’ not ‘offset activities’ as needing security, and that protection must be legally enforceable. For</p>

indirect offsets not tied to a site, this should be addressed in a separate subsection, so it is clear what kind of security is required for each.

Recommendations 14: Amend Principle 2: Security, subsection (2) to specify that:

- (a) security is provided via legally enforceable protection for site-specific offsets;
- (b) suitable mechanisms to ensure that the offset activity will be delivered should specify a suitable plan, including an adaptive management plan should unexpected matters arise that may impact the viability of the offset;
- (c) the security must be maintained in perpetuity, not just for the duration of the impact. An example or note may assist to clarify that the security must be provided in perpetuity for impacts that are permanent e.g. clearing of habitat.

Recommendations 15: Amend Principle 2: Security, subsections (3) and (4) to require 'Management of offset site for maintenance period', the 'activity period' and 'maintenance period' and whether the impact is considered to be temporary or not temporary to be specified in the application materials for assessment as well as the conditions to an approval, to provide transparency as to how these concepts are determined.

Recommendations 16: Strengthen the language in Principle 2: Security, subsection (3) by replacing 'is managed to prevent' to just be 'prevent', because 'managed to' is process and not outcomes focused. Also replace the term 'should' with 'must'.

Recommendations 17: Amend Principle 2: Security, subsection (3) to require that any loss or degradation of the protected matter that does occur must be remediated.

Principle 3 – Direct and tangible

We support the focus on the need for offset activities to provide a direct, tangible and quantifiable benefit to the affected protected matter – this will assist in ensuring that offsets are effective for compensation to the impacted protect matter itself.

We provide the following comments and suggestions for strengthening Principle 2:

- Subsection (1): Reference to the offset activity 'contributing to [the protected matter's] overall recovery and conservation' is unclear and may lead focus away from compensation for the actual impact caused to the localised occurrence of the value at the expense of focusing on the national viability of the protected matter. We recommend that subsection (1) be amended, for example as follows:
 - 1) Offset activities should provide a direct, tangible and quantifiable benefit to the affected protected matter by contributing to its ~~overall~~ localised recovery and conservation.
- Subsection (3) provides for the potential for indirect offsets to be used where specified by a conservation planning instrument as a high priority for the value. Indirect offsets do not directly compensate for an impact, and as the Offsets Policy Position states, they 'are less likely to deliver tangible benefits'. The Principle does not limit the use of indirect offsets – that is, there are no constraints on the proportion of the offset that can be provided by indirect activities. This is retrograde step compared to the existing EPBC Act environmental

offsets policy which requires 90% of offsets to be direct offsets.¹⁷ There are also no constraints on the repeated use of priority activities as indirect offsets for multiple impacts/projects. Overreliance on priority activities as offsets may mean that the priorities for a species change as needs are met, but there is currently no mechanism for addressing this within the framework.

- The notes in Principle 3 reflect the detail included in the Offsets Policy Position and should be included in Principle directly (not as a note), in order to provide the granularity envisaged by the Samuel Review and ensure effective and consistent application of the Principle.

We also note that in order to ensure effective implementation of subsection (3), conservation planning instruments must be redrafted to specifically provide for the clear prioritisation of actions needed to assist a protected matter. These instruments are intended to provide guidance where recovery plans provide a list of recovery actions but do not provide prioritisation of the actions, because they were not drafted with the provision of indirect offsets in mind. Further the priority list must be revised when conservation planning instruments are reviewed (e.g. in the case of recovery plans and threat abatement plans, at intervals of not longer than 5 years)¹⁸ to ensure that the priority list of actions reflects the current state of the protected matter and its habitat.

Recommendation 18: Amend Principle 3: Direct and Tangible, subsection (1) to refer to ‘overall localised recovery and conservation_ to provide more certainty of how recovery and conservation must be undertaken and ensure localised offsets that are more directly related to an impacted area are prioritised over easier to achieve recovery efforts elsewhere.

Recommendation 19: Amend Principle 3: Direct and Tangible to put clear constraints on the use of indirect offsets, consistent with the current EPBC Act environmental offsets policy.

Recommendation 20: Incorporate the Notes in Principle 3 directly in the instrument itself, (rather than as notes), to provide granularity and ensure effective and consistent application of the Principle.

Principle 4 – Measurable improvements

While the Object of the draft Offsets Standard is to deliver a net gain, the Outcomes and Principle 4 refer to ‘measurable improvement’. There is no clear explanation in the draft Offsets Standard of how net gain and measurable improvement interact.

The Offsets Policy Position provides the following definition of net gain: ‘Net gain: the measurable improvement for the affected protected matter relative to an agreed baseline’,¹⁹ but this is not included in the draft Offsets Standard. If this is how the two concepts are intended to interact, then that definition of net gain should be included in the draft Offsets Standard itself.

It is also unclear how that definition of net gain interacts with the concept of net gain and ‘passing the net gain test’ in the EPBC Act.²⁰ The EPBC Act does not define net gain or ‘passing the net gain test’

¹⁷ Department of Sustainability, Environment, Water, Population and Communities, ‘*Environment Protection and Biodiversity conservation Act 1999 Environmental Offsets Policy*’, October 2012, available at https://www.dcceew.gov.au/sites/default/files/documents/offsets-policy_2.pdf

¹⁸ EPBC Act, s 279.

¹⁹ Offsets Policy Position, p 7.

²⁰ See EPBC Act, new s 527K. This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](#).

with reference to ‘measurable improvement’. It is unclear exactly how the draft Offsets Standard might inform the ‘passing the net gain test’ in the EPBC Act.

Further clarity on these terms, and the interaction between the Offsets Standard and the ‘passing the net gain test’ in the EPBC Act is needed.

With respect to the definition of baseline in Principle 4, as stated above, ‘absolute net gain’ is the scientifically recommended approach to ensure net gain assists in improving the quality of environmental values, and must be defined in accordance with the best available science. This requires selecting a suitable baseline not simply the baseline at the time of a decision. Selecting a baseline from the point in time of the relevant decision will likely mean that the baseline is ever-declining on the basis of environmental trends in Australia for decades for most protected matter. As an example, the Nature Positive Initiative has adopted a 2020 baseline to underpin its goal of halting and reversing nature loss by 2030 and achieving full recovery by 2050.²¹ Data underpinning Australia’s State of the Environment reports (the most recent dated 2021) could support a fixed baseline being set.

Recommendation 21: Clarify how the terms ‘net gain’ and ‘measurable improvement’ interact in the draft Offsets Standard.

Principle 5 – Additionality

Ensuring that offsets are truly additional and not an activity that would already have been provided is a fundamental premise of ensuring the offset is able to compensate for a new impact to the protected matter. To ensure that any ‘approved state or territory offset or an advanced restoration action’ are additional and do not allow for double counting, more specificity is needed of these requirements. For example, some of the granular information in the Offsets Policy Position could be incorporated directly into Principle 5.

Recommendation 22: Amend Principle 5 to provide more specificity to ensure that any ‘approved state or territory offset or an advanced restoration action’ are additional and do not allow for double counting (for example, by incorporating some of the granular information in the Offsets Policy Position directly into Principle 5).

Principle 6 – Like-for-like

Ensuring offsets are ‘like-for-like’ in their relevance to the protected matter is another fundamental principle of ensuring the effectiveness of offsets at compensating for impacts allowed to protected matters. We recommend the ‘like-for-like’ principle should apply to all offset activities, including those provided via Restoration Contributions (see our more detailed comments on Restoration Contributions below). Regarding subsection (2), see also our earlier comment regarding deviation where a conservation planning document, bioregional guidance plan, or bioregional plan identifies a higher conservation priority for the affected protected matter. Conservation planning documents should be updated and regularly reviewed to ensure priority lists are in place and up-to-date.

Recommendation 23: Apply the ‘like-for-like’ principle to all offset activities, including those provided via Restoration Contributions.

²¹ Nature Positive Initiative, ‘What is nature positive’, available at <https://www.naturepositive.org/what-is-nature-positive/>.

Principle 7 – Relevant area

We support the requirement that offsets be provided in an ecologically relevant area, within the same bioregion or if that is not possible, within a bioregion that is as close as possible to the site of the affected protected matter that will result in the same or better outcome. We generally support Principle 7 as drafted.

Recommendation 24: Retain a Principle requiring that offsets be provided in an ecologically relevant area.

Principle 8 – Offset commenced prior to impact

We generally support a Principle which provides for the timely delivery of the offset prior to the impact occurring to the protected matter. It is essential that environmental offsets are secured and implemented in a timely manner because delays fundamentally undermine their capacity to compensate for environmental harm. Ecological losses are immediate and often irreversible, while offset outcomes are inherently uncertain and typically take years or decades to materialise, if they are delivered at all.

However, we are concerned that the current wording of Principle 8 does not provide sufficient safeguards to ensure offsets are substantially secured prior to the impact occurring, rather than merely meeting a lower threshold of having ‘commenced’. Allowing impacts to proceed before offsets are demonstrably established shifts risk from proponents to the environment and the public, creates perverse incentives for non-delivery, and entrenches a ‘promise now, deliver later’ approach that has demonstrably failed under existing frameworks. Requiring offsets to be **secured** (rather than merely having commenced) before impacts occur is therefore critical to avoiding net environmental loss, ensuring accountability and enforceability, and maintaining the integrity and credibility of the environmental approval system.

As an example of how the Standard could prescribe processes or actions to be followed or taken in achieving an outcome or objective, it could specify that this Principle could be applied by setting conditions of approval that require offsets to be secured before commencement of a project and environmental outcomes are achieved (e.g. via implementation of an approved offsets management plan). These conditions may also specify what the proponent is required to demonstrate to fulfil this condition (e.g. evidence that demonstrates the offset is secured and monitoring and reporting under a management plan).

Recommendation 25:

- (a) Amend Principle 8 to require offsets to be secured (rather than 'commenced') before impacts occur.
- (b) Specify that Principle 8 could be applied by setting conditions of approval that require offsets to be secured before commencement of a project and environmental outcomes are achieved (e.g. via implementation of an approved offsets management plan). These conditions may also specify what the proponent is required to demonstrate to fulfil this condition (e.g. evidence that demonstrates the offset is secured and monitoring and reporting under a management plan).

2.4 Other matters

The Offsets Policy Position states: ‘The Regulations will also prescribe which impacts to protected matters cannot be compensated’.²² This has the potential to provide further safeguards against the inappropriate use of offsets and we look forward to receiving more information on how the Regulations will be used to prescribe which impacts to protected matters cannot be compensated, and how this will interact with declarations made under section 134AA identifying protected matters for which a restoration contributions charge condition must not be attached.

3. Broader comments on the Commonwealth environmental offsets framework

In this section of our submission, we highlight broader concerns with the Commonwealth environmental offsets framework, including in relation to:

- 3.1 General concerns with environmental offsetting
- 3.2 Restoration contributions
- 3.3 Bioregional restoration measures
- 3.4 Offsets calculators

3.1 General concerns with environmental offsetting

In light of the growing reliance on environmental offsets, significant questions have been raised about their effectiveness and ability to deliver environmental outcomes that genuinely compensate for the negative impacts of projects.²³

It is essential that any framework allowing environmental offsets is designed in accordance with best practice principles to ensure that offsets can achieve real environmental outcomes that compensate for the impacts of projects. The Samuel Review noted the importance of bringing integrity to offsets under the EPBC Act. The Review found that the previous Environmental Offsets Policy ‘contributes to environmental decline rather than active restoration’.²⁴

Reform of the EPBC Act in December 2025 provided an opportunity to address many of these issues. However, in its current form, the Offsets Framework introduced by the EPR Act will allow projects to be approved with no real guarantee that genuine offsets will be delivered or that environmental

²² Offsets Policy Position, p 5.

²³ See, for example: Bull, J.W., Blake Suttle, K., Gordon, A., Singh, N.J., and Milner-Gulland, E.J. (2013). Biodiversity offsets in theory and practice, *Fauna and Flora International, Oryx*, 47(3) 369-380, available at <https://www.cambridge.org/core/journals/oryx/article/biodiversity-offsets-in-theory-and-practice/EDBF70717C273662B6D8EE0876370095>; Curren, M. et al. (2014). Is there empirical support for biodiversity offset policy? *Ecological Applications*, 24(4) pp 617-632, available at <https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1890/130243.1>; Fallding, M. (2014). Biodiversity Offsets: Practice and Promise, (2014) 31 *Environmental Planning & Law Journal* 33, available at http://www.biodiversityoffsets.net/wp-content/uploads/2015/01/Biodiversity-offsets_practice-and-promise.pdf; Gordon, A., Bull, J.W., Wilcox, C., Maron, M., (2015). Perverse incentives risk undermining biodiversity offset policies. *J. Appl. Ecol.* 52, 532–537, available at <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/13652664.12398>; Gibbons, P., Macintosh, A., & Constable, A., and Hayashi, K. (2017). Outcomes from 10 years of biodiversity offsetting. *Global Change Biology*. 24. 10.1111/gcb.13977, available at <https://openresearch.repository.anu.edu.au/handle/1885/251919>; Pope, J., Morrison-Saunders, A., Bond, A. et al. When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets. *Environmental Management* 67, 424–435 (2021), available at <https://doi.org/10.1007/s00267-020-01415-0>; Maron, M., von Hase, A., Quétier, F. et al. Biodiversity offsets, their effectiveness and their role in a nature positive future. *Nat. Rev. Biodivers.* 1, 183–196 (2025). <https://doi.org/10.1038/s44358-025-00023-2>

²⁴ Samuel Review, p 138.

outcomes will be achieved.²⁵ Further legislative amendments are needed to tighten up the Offsets Framework to ensure it delivers genuine environmental outcomes and does not simply ‘green light’ destructive development under a false pretence of environmental benefit. As noted above, the draft Offsets Standard also needs to be significantly strengthened if it is to be a tool to bring real integrity into the system.

3.2 Restoration Contributions

The new Offsets Framework contains too much flexibility, including a new option to pay a ‘restoration contribution charge’ in lieu of securing direct, upfront offsets and inadequate accountability measures. The ability to pay money into a fund is not offsetting; it is essentially ‘payment for destruction’ and is a regression from existing EPBC Act environmental offsets policy which does not allow this.

The Offsets Policy Position sets out (p26-28) that while delivery of offsets by a proponent requires the proponent to meet all of the principles outlined in the draft Offsets Standard, the Restoration Contributions Holder need not meet all of the principles. This includes fundamental principles of like-for-like, feasibility, legal security over the maintenance period, being within the same bioregion, direct and tangible and timeliness.

Proponents are more likely to choose to pay money into a fund rather than source real offsets themselves for the residual significant impacts that must be compensated. This is a quicker, less burdensome approach whereby they can discharge their regulatory obligations and place them on the Government instead to deal with. However, it also undermines the achievement of effective offsets where the Restoration Contribution Holder is able to acquit the funds via alternative restoration actions that are not required to meet many fundamental principles of effective offsets. This puts at serious risk the efforts to try to reverse the decline of Australia’s most significant environmental values – the very purpose of the EPBC Act reforms.

Lessons have been learnt from jurisdictions, particularly New South Wales and Queensland, where payment into a fund is available to discharge offset obligations.²⁶ Notably, the use of an offsets fund:

- exacerbates time-lags between ecological impact and compensation
- increases the risk that ecologically equivalent offsets will not be delivered
- can result in ‘shortfalls’ where there are underestimates in the amount of money needed to deliver offsets

²⁵ See EDO’s *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*, 18 November 2025, available at <https://www.edo.org.au/wp-content/uploads/2025/11/251118-EDO-submission-to-EPBC-reforms-package-1.pdf>.

²⁶ See, for example:

- Audit Office of New South Wales, *Effectiveness of the Biodiversity Offsets Scheme*, 31 August 2022, available at <https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme>
- New South Wales Parliament, Legislative Council, Portfolio Committee No. 7, *Integrity of the NSW Biodiversity Offsets Scheme*. Report no. 16, November 2022, available at <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2822>
- IPART, *Biodiversity Credits Market Monitoring Annual Report 2023-24*, December 2024, available at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Annual-Report-2023-24-Biodiversity-Credits-Market-Monitoring-December-2024.PDF

- weakens the price signals intended to deter impacts on valuable biodiversity assets, particularly where offsets markets are in use

In NSW, the Independent Pricing and Regulatory Tribunal (IPART) has recommended the phasing out of the Biodiversity Conservation Fund, and the NSW Government is taking steps to limit the use of the Fund.²⁷

Further, offsetting should not be seen as commensurate with restoration. Restoration contribution charges must be used for the specific task of ‘compensating’ for impacts of a specific action, separate to broader restoration that is needed to restore landscapes and ecosystems damaged by decades of overuse and mismanagement.

It is important that the Restoration Contributions framework is tightly regulated to remove risks of ‘pay to destroy’ with no environmental outcomes. Detailed recommendations in relation to Restoration Contributions are set out in EDO’s *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*.²⁸

²⁷ The *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Act 2024* (NSW) introduces provisions into the *Biodiversity Conservation Act 2016* (NSW) that provide that the regulations may prescribe circumstances in which a person must not satisfy an obligation to retire biodiversity credits by paying into the Biodiversity Conservation Fund. Regulations are still under development.

²⁸ EDO, *Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills*, 18 November 2025, available at <https://www.edo.org.au/wp-content/uploads/2025/11/251118-EDO-submission-to-EPBC-reforms-package-1.pdf>.

See specifically, Recommendation 2:

2. The proposal to introduce ‘restoration contribution payments’ must be removed or integrity introduced
 - Remove the option allowing the payment of restoration contributions charges in lieu of offsets.
 - If restoration contributions charges remain as part of the framework, there must be:
 - Stronger upfront restrictions on the use of restoration contribution charges, including, for example:
 - an upfront requirement to confirm whether a suitable offset is possible for the matter (e.g. require this to be a consideration prior to setting conditions requiring payment of restoration contribution charges); and
 - a regularly updated list or register of a list of matters for which a restoration contribution charge is not suitable/available (e.g. due to scarcity or because a matter is to be able to be recreated or restored).
 - Requirements for the Restoration Contributions Holder to spend restoration contribution charges consistent with all offset principles (i.e. general restoration actions must be consistent with the Offsets Standards); and greater transparency and accountability on the use of alternative restoration actions (e.g. require public notification if no general restoration action is available; require specific numbers and skills of people on the Restoration Contributions Advisory Committee).
 - Embed key transparency and accountability measures in the legislation, including in relation to:
 - Security (e.g. require legal protection of offset sites e.g. through land management agreements), where relevant.
 - Enforcement (e.g. mechanisms for enforcing the Offsets Standard; legislative requirements including monitoring and reporting etc.).
 - Transparency (e.g. legislate a requirement for an Offsets Register in addition to the proposed requirement for the Restoration Contributions Holder to establish a register for Restoration Contributions; requiring details of all alternative restoration actions in the Holder's annual report including the residual significant impact and approval that the alternative restoration action relates to and the reasons why a like-for-like offset was not considered feasible).

3.3 Bioregional restoration measures

New section 177AH of the EPBC Act²⁹ allows for ‘bioregional restoration measures’ to be specified in bioregional plans. These include measures for the region which the Minister is satisfied ‘are necessary or convenient to mitigate, repair or compensate for likely damage to one or more impacted protected matters that has been, will be or may be caused by priority actions’. The drafting of this section implies that bioregional restoration measures are essentially pre-determined landscape-scale offsets for classes of actions approved under a bioregional plan.

We are concerned that such bioregional restoration measures (i.e. offsets) may jeopardise the otherwise granular assessment of MNES impacted by a particular project activity in a particular area and the need for specific offsets that meet the principles to compensate for those impacts.

Landscape-scale offsets are likely to be broad-brushed and may not integrate consideration of all MNES impacted equally or to the extent they are impacted by an activity.

While we support the intent of bioregional planning as a tool for pre-assessing areas for their suitability for particular activities on the basis of consideration of values of the area and minimising impact to those values, this could still be achieved without removing any project specific impact assessment, application of the mitigation hierarchy and applicable offsets.

We recommend that project-specific impact assessment, including of offsets, is still provided for bioregional planning priority activities, to ensure impact assessment, the application of the mitigation hierarchy and the provision of offsets are all relevant to the actual impacts of a project. Projects under bioregional plans would still receive the benefit of pre-assessment of the activity in the area and the MNES in the area, including the benefit of the increased data, which will speed up assessment and decision processes.

3.4 Offsets Calculator

We understand that the Government seeks to continue to make use of a calculator for determining offsets under the EPBC Act.³⁰ It is unclear if the Government intends to update the existing *Offsets Assessment Guide*,³¹ which is currently used to calculate offset requirements and/or whether it intends to finalise the *Concept Model for Calculating Restoration Contributions* that was under development in 2024.³² There are significant flaws and weaknesses in the current *Offsets Assessment Guide* which require attention and amendment to ensure these flaws do not continue to undermine offsets outcomes. We recommend the methodology be finalised for determining offsets and for determining the calculations of restoration contributions.

3.5 Transparency and accountability

In addition to the requirement for the Restoration Contributions Holder to establish a register for Restoration Contributions in the Act, the legislation must formalise requirements

²⁹ See EPBC Act, new s 177AH. This provision has not yet commenced – see *Environment Protection Reform Act 2025* (Cth), available at: [Environment Protection Reform Act 2025 - Federal Register of Legislation](https://www.federalregister.gov/?date=2025-03-26&title=Environment+Protection+Reform+Act+2025).

³⁰ Offsets Policy Position, p 23.

³¹ Department of Climate Change, Energy, the Environment and Water, *Offsets Assessment Guide*, <https://www.dcceew.gov.au/environment/epbc/approvals/offsets/guidance/offsets-assessment-guide>

³² See Department of Climate Change, Energy, the Environment and Water, Discussion Paper - Concept Model for Calculating Restoration Contributions, set out in *Consultation materials on National Environmental Laws 26-28 March 2024*, available at https://storage.googleapis.com/files-au-climate/climate-au/p/prj2a856c124c355ffc31cc7/page/Mar_2024_consultation_document_pack.pdf

for an offsets register that includes full details of all offset approval conditions, who must undertake the offset, who is to enforce it, what is required to be achieved and include information on offset sites and the legal mechanism used to protect the site. Ideally the Register should also include details and evidence outlining the basis on which any offset was assessed and decided.

*Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you have further enquiries.*