



Environmental
Defenders Office

Submission on the Exposure draft of the National Environmental Standard for Environmental Offsets

9 June 2026

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

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.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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Lodged online: <https://consult.dcceew.gov.au/environmental-offsets-standard>

For further information on this submission, please contact:

Cerin Loane
Special Counsel, Policy and Law Reform
T: 1800 626 239
E: cerin.loane@edo.org.au

Zoe Neumayer
Senior Solicitor, Policy and Law Reform
T: 1800 626 239
E: zoe.neumayer@edo.org.au

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.

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Executive Summary

1. Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Exposure draft of the National Environmental Standard for Environmental Offsets (**Exposure Offsets Standard**) and accompanying Updated Draft Policy Position Paper: National Environmental Standard for Environmental Offsets (**Offsets Policy Paper**). The Exposure Offsets Standard is intended to be made a National Environmental Standard under new provisions in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).
2. EDO remains concerned that the Exposure Offsets Standard, and broader offsets framework under the reformed EPBC Act, lacks integrity and will not lead to improved environmental outcomes. It will simply allow ‘business-as-usual’ to continue under the guise of compensating for impacts. In doing so it will further entrench environmental decline.
3. In particular, we are concerned that:
 - The **offsets framework lacks an overarching architecture**. Elements are being developed in a piecemeal fashion and key information is still missing - bringing into question how the framework will operate in practice.
 - The Exposure Offsets Standard **contains problematic provisions (namely subsections 7(2) and 7(4)) that make the Objective and Outcomes of the Standard irrelevant**. These sections must be removed from the Standard. Similar concerns were raised in our submission on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance) 2026.
 - The **Exposure Offsets Standard is weaker than the earlier version, and key stakeholder concerns have not been addressed**. In particular:
 - Principles in the Exposure Offsets Standard have been weakened, compared to the earlier draft Offsets Standard.
 - The Exposure Offsets Standard requires that offset activities deliver “the required net gain” – but there is still uncertainty about what “net gain” means.
 - Allowing proponents to make restoration contributions payments, with no strict limitations, undermines the integrity of the entire framework.
4. Further amendments to the Offsets Standard are required to ensure offset activities are delivered in line with best practice. More broadly, the government must ensure there is a clear and transparent framework for environment offsets. All elements must be underpinned by scientific rigour and integrity so that residual impacts on matters of national environmental significance are genuinely compensated. This must be achieved by activities that will deliver improved outcomes and reverse environmental decline.

Summary of Recommendations

Recommendation 1: Remove “rulings” from the definition of “*conservation planning document*”.

Recommendation 2: Expand the definition of “*suitably qualified expert*” to require the expert to also be independent.

Recommendation 3: Amend the Objective of the Exposure Offsets Standard to be less process-focused, as follows:

~~This~~ The objective of this standard ~~provides a framework~~ is to ensure that offset activities (where permitted) adequately compensate for the residual significant impacts of an action or class of actions on an affected protected matter to deliver the required net gain in a way that contributes to the restoration, recovery and enhancement of that protected matter.

Recommendation 4: Prescribe in Regulations “net gain” for the purpose of section 527K of the EPBC Act. At a minimum this could involve prescribing anticipated policy guidance and calculators, as follows:

Determining net gain

For the purpose of section 527K(1)(b)(i) of the Act, the net gain prescribed for the matter is determined in accordance with the following, as relevant:

- *The Net Gain Policy made by the Minister, as in force from time to time;*
- *The Offsets Calculator made by the Minister, as in force from time to time;*
- *The Restoration Contributions Calculator, as in force from time to time.*

Recommendation 5: Amend section 6 of the Exposure Offsets Standard to frame the Outcomes as achieving the Objective, rather than promoting the Objective, as follows:

The following outcomes of this standard are intended to ~~promote~~ achieve the objective in section 5:

...

Recommendation 6: Delete subsection 7(2) and 7(4) from the Exposure Offsets Standard.

Recommendation 7: Amend the “appropriate evidence” provisions across the Exposure Offsets Standard to require:

- that the expert is suitably qualified and independent – see Recommendation 2; and
- that the evidence presented by the expert includes substantiated expert knowledge or peer reviewed science; and
- that the evidence presented demonstrates the matters relevant to the appropriate section. For consistency across the Standard, the appropriate evidence provision should point to the relevant section and subsection to which it applies (as currently drafted there is inconsistency across the Standard).

Recommendation 8: Add an additional criterion for consideration of whether an offset activity is feasible, namely “whether the values or attributes being impacted can be realistically replaced, restored or compensated for”. This should be supported by specifying information about what

might not be considered feasible, as set out in the Offsets Policy Paper.

Recommendation 9: Re-insert “the reasonably foreseeable future adverse impacts of climate change” as a consideration when considering feasibility.

Recommendation 10: Amend Principle 2 to revert to the original drafting in the earlier draft Offsets Standard for short term impacts, and for long term or permanent impacts set a minimum period of 100 years, or in perpetuity where appropriate.

Recommendation 11: Delete “or qualitative’ from subsection 10(2)(a) of the Exposure Offsets Standard.

Recommendation 12: Amend Principle 4 to make it clear that measurable improvement to the affected protected is an improvement that is equal to or greater than the required net gain for the protected matter, as stated in the Outcomes at subsection 6(b).

Recommendation 13: Reinstate information from the earlier draft Offsets Standard about the types of activities that would not be considered additional into Principle 5, including any existing conservation activities, investment, and regulatory obligations.

Recommendation 14: Reinstate the original wording in Principle 6 to provide that an offset activity should only deviate from the like-for-like requirement where a conservation planning document identifies a higher conservation priority for the affected protected matter.

Recommendation 15: Change “reasonably practical” to “possible” in Principle 7, subsection 14(2)(b).

Recommendation 16: Delete the words “*that is intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on the affected protected matter*” from section 15(1). These words are superfluous because they are captured in the definition of “offset activity”.

Recommendation 17: Amend section 15(3)(a) to require that a plan must form part of the conditions of approval for the action to ensure that the plan, and the requirement for the offset commence prior to impact, can be enforced.

Recommendation 18: Insert a new Principle into the Offsets Standard to require a proponent to take reasonable steps to identify offset before being permitted pay a restoration contribution charge as a way of compensating for a residual significant impact on a protected matter.

Introduction

5. The 2025 reforms to the EPBC Act provided an opportunity to establish a robust Commonwealth environmental offsets framework underpinned by integrity and which delivered genuine environmental outcomes. Instead, the framework that is being delivered embeds poor environmental offsetting practices (such as unchecked offsets payments) and is unlikely to deliver on-ground outcomes that will genuinely compensate for impacts on matters of national environmental significance.
6. 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.
7. We are concerned that issues raised by stakeholders throughout the reform process remain unaddressed, including in the Exposure Offsets Standard. In fact, this version of the Standard weakens some components of the Standard compared to the earlier version.
8. This submission responds to the Exposure Offsets Standard and includes key recommendations for amending the Exposure Offsets Standard. A marked-up version of the Standard at **Appendix A** demonstrates how recommendations could be implemented. We note Recommendation 4 would be implemented via Regulations and is therefore not shown in Appendix A.
9. We remain concerned with other elements of the offsetting framework, including the restoration contributions framework, and the lack of an overarching architecture for the framework more broadly. We briefly discuss these concerns in this submission and otherwise direct the Department to our earlier submissions which should be read together with this submission.¹
10. For the purpose of this submission, we use the following terms:
 - **Exposure Offsets Standard** refers to the Exposure draft of the National Environmental Standard for Environmental Offsets 2026.
 - **Earlier draft Offsets Standard / earlier version** refers to the National Environmental Standard (Environmental Offsets) 2025 which was on public exhibition November 2025 - January 2026.

¹ See specifically:

- EDO, 'Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills', November 2025, pp 12-14, available at <https://www.edo.org.au/publication/submission-to-the-inquiry-into-the-environment-protection-reform-bill-2025-and-six-related-bills/>
- EDO, 'Submission on the draft National Environmental Standard (Environmental Offsets) 2025', January 2026 pp 26 – 30, available at <https://www.edo.org.au/wp-content/uploads/2026/02/260130-EDO-Submission-Draft-Environmental-Offsets-Standard.pdf>
- EDO, 'Submission on the ongoing development of the Nature Repair Market', May 2026, available at <https://www.edo.org.au/wp-content/uploads/2026/05/260511-EDO-submission-Nature-repair-market-ongoing-development.pdf>

- **Offsets Standard /the Standard** – refers to the Offsets Standard generally (including an anticipated finalised version of the Standard).

11. The submission structured as follows:

- Key concerns with the Exposure Offsets Standard.
- Broader concerns with the EPBC Act environmental offsetting and restoration contributions framework.
- Appendix A – Marked-up version of Exposure Offsets Standard demonstrating how EDO recommendations could be implemented.

Key concerns with the Exposure Offsets Standard

Section 4 – Definitions

12. We are pleased to see new and updated definitions in the Exposure Offsets Standard. As raised in our previous submission, inconsistent language within the Standard and between the Standard and EPBC Act was causing uncertainty and ambiguity. New and updated definitions go some way towards addressing these concerns.

13. We recommend that the definitions be further amended as follows:

- **Rulings should be excluded from the definition of “conservation planning document”:** Unlike other instruments in the definition, such as recovery plans and protection statements, which have the specific purpose of outlining action for conservation and are informed by advice from the Scientific Committee, Rulings have the different purpose of setting out the Minister’s opinion on the way in which one or more specified environment law provisions should apply. Conservation planning documents are relied on in Principles 3 and 6 to identify higher conservation measures and priorities. These Principles should not rely on Rulings to identify higher conservation measures and priorities.
- **The term “suitably qualified expert” should be expanded to require the expert to also be independent:** For example, the definition should be amended as follows:

suitably qualified and independent expert means a person who has appropriate professional qualifications, knowledge, training, skills or experience relevant to the subject matter of the offset activity and has no actual, perceived, or financial conflicts of interest with the project or the parties involved.

The independence of the expert is important to ensure there is no conflict of interest or bias that would affect the evidence provided by the expert to inform decision making under the Act.

Recommendation 1: Remove “rulings” from the definition of “conservation planning document”.

Recommendation 2: Expand the definition of “suitably qualified expert” to require the expert to also be independent.

Section 5 – Objective

14. The Objective in section 5 of the Exposure Offsets Standard has been revised and now reads:

“This standard provides a framework to ensure that offset activities (where permitted) adequately compensate for the residual significant impacts of an action or class of actions on an affected protected matter to deliver the required net gain in a way that contributes to the restoration, recovery and enhancement of that protected matter.”

15. We are concerned that the Objective is still too process-focused and simply a statement of what the Standard does, rather than what it must achieve. This could be rectified with some minor edits as follows:

~~This~~ ~~The objective of this standard provides a framework~~ ~~is~~ to ensure that offset activities (where permitted) adequately compensate for the residual significant impacts of an action or class of actions on an affected protected matter to deliver the required net gain in a way that contributes to the restoration, recovery and enhancement of that protected matter.

Required net gain

16. We note that “required net gain” is defined as:

*“**required net gain** means the net gain for the protected matter within the meaning of section 527K of the Act”*

17. This change (compared to the earlier draft Offsets Standard) clarifies that “net gain” for the purpose of the Standard is intended to have the same meaning as section 527K of the EPBC Act. This clarification is useful, but we are concerned that it is still unknown what constitutes “net gain” for the purpose of section 527K. This is because section 527K provides that an action “passes the net gain test” if complying with the conditions of the approval results in a net gain, **as prescribed by Regulations, or otherwise as the Minister is satisfied in appropriate.**

18. At this stage, there has been no proposal for Regulations to prescribe net gain. Stakeholders are being asked to comment on the Outcomes and Objective of the Exposure Offsets Standard without knowing what “net gain” actually means, and as such, are unable to assess whether the Offsets Standard, and the offsets framework more broadly, will actually deliver genuine, on-ground improvements and environmental outcomes.

19. More concerningly, we understand that the government does not intend to prescribe anything for purpose of section 527K. The Offsets Policy Paper provides that:

“Policy documentation will provide guidance for application of the net gain test to protected matters, and outline the evidence required for the Minister to be satisfied compensation would achieve a net gain. The policy will be supported by an updated Offsets Calculator and a new

Restoration Contributions Calculator.”

20. If it is the intention to provide guidance via policy documentation and calculators, then, at a minimum, these materials must be prescribed by the Regulations for the purpose of section 527K. Otherwise there is a regulatory gap and nothing in law clearly defining net gain, despite this being a key element of the reformed EPBC Act. Further, in the case of restoration contribution charges and bioregional plan registration charges, the amount to be paid, or method for calculating the amount to be paid must be prescribed in Regulations under the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*.

Recommendation 3: Amend the Objective of the Exposure Offsets Standard to be less process-focused, as follows:

~~This~~ The objective of this standard ~~provides a framework~~ is to ensure that offset activities (where permitted) adequately compensate for the residual significant impacts of an action or class of actions on an affected protected matter to deliver the required net gain in a way that contributes to the restoration, recovery and enhancement of that protected matter.

Recommendation 4: Prescribe in Regulations “net gain” for the purpose of section 527K of the EPBC Act. At a minimum this could involve prescribing anticipated policy guidance and calculators, as follows:

Determining net gain

For the purpose of section 527K(1)(b)(i) of the Act, the net gain prescribed for the matter is determined in accordance with the following, as relevant:

- *The Net Gain Policy made by the Minister, as in force from time to time;*
- *The Offsets Calculator made by the Minister, as in force from time to time;*
- *The Restoration Contributions Calculator, as in force from time to time.*

Section 6 – Outcomes

21. Section 6 of the Exposure Offsets Standard should be amended to frame the outcomes as achieving the objective, rather than promoting the objective. For example:

The following outcomes of this standard are intended to ~~promote~~ achieve the objective in section 5:

Recommendation 5: Amend section 6 of the Exposure Offsets Standard to frame the Outcomes as achieving the Objective, rather than promoting the Objective, as follows:

The following outcomes of this standard are intended to ~~promote~~ achieve the objective in section 5:

...

Section 7 – Principles

22. Section 7 has been significantly amended in comparison to the earlier draft Offsets Standard. The changes have significant implications for the application of the Exposure Draft Standard and the broader EPBC Act framework and are **not supported**.

Subsection 7(2)

23. Subsection 7(2) states (emphasis added):

*(2) An offset activity intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on an affected protected matter **will achieve the objective and outcomes in section 5 and 6 of this standard where that offset activity is consistent with the principles** in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard.*

24. This means that the test for determining whether an offset activity will achieve the Outcomes and Objective of the Standard is simply whether the action is consistent with the Principles, and not whether the offset activity itself adequately compensates for damage to deliver the required net gain, as required by the Outcomes and Objective.
25. Provisions such as these are often referred to as a ‘deeming’ provision, meaning that it deems the Objective and Outcomes to have been met simply by applying the Principles, rather than considering whether on the facts the Objective or Outcomes have been met in their own right.
26. Subsection 7(2) undermines the Objective and Outcomes of the Exposure Offsets Standard. We are concerned that sections drafted in this way are inconsistent with the Act’s requirements for Standards, and how the Principles and Objectives interact within the Standard itself. These concerns are set out in more detail EDO’s submission on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance) 2026.²

Subsection 7(4)

27. Subclause 7(4) follows on from subclause 7(2) and outlines how the Minister may be satisfied that certain decisions, including:
- the approval of an action or class of actions,
 - accreditation of a management or authorisation framework, and actions or classes of actions in accordance with those frameworks,
 - a specific manner of assessment or
 - the making or varying of a bioregional plan,
- are consistent with the Standard simply through either:
- consistency with the Principles, or
 - payment of a restoration contribution charge or bioregional plan restoration

² EDO, ‘Submission on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance) 2026’, May 2026, pp 11-12, available at <https://www.edo.org.au/publication/submission-on-the-exposure-draft-of-the-national-environmental-standard-matters-of-national-environmental-significance-2026/>

contribution (neither of which need to be consistent with the Principles in the Standard).

28. Again, this provision undermines the Objective and Outcomes of the Standard by providing that the Minister can be satisfied there is consistency with the Standard simply by being satisfied there is consistency with the Principles set out in the Standard or payment of a contribution.
29. Regarding the payment of a contribution, subsections 7(4)(a)(ii) and 7(4)(d)(ii) provide that the Minister can be satisfied there is consistency with the Standard simply because residual significant impacts would be compensated by a restoration contribution charge or bioregional plan restoration contribution respectively. There is nothing that requires the Principles in the Standard to be applied to a restoration contribution charge or bioregional plan restoration contribution. Further, in the absence of any particular policy guidance or calculators being prescribed in Regulation (see above), there is nothing in law or Regulations that says exactly how a restoration contribution charge or bioregional plan restoration contribution is to be determined. This means a decision maker could find that an action is consistent with the Standard simply by a proponent making a contribution of an arbitrary amount that does not correspond in any meaningful way to the residual significant impact of the action.

New subsection 7(2) and subsection 7(4) must be removed

30. New subsection 7(2) and subsection 7(4) must be removed from the revised Exposure Offsets Standard. This change would ensure the Principles are not substituted for the Outcomes or Objectives, and ensure that simply paying a restoration contribution charge or bioregional plan restoration contribution will satisfy the Standard.

<p>Recommendation 6: Delete subsection 7(2) and 7(4) from the Exposure Offsets Standard.</p>

Appropriate evidence

31. Provisions relating to “appropriate evidence” are included in each of the Principles in the Exposure Offsets Standard and we therefore provide upfront feedback generally relevant to these provisions as they appear across the Standard.
32. In general, we **support** the inclusion of provisions requiring appropriate evidence across the Principles, noting that in the earlier version this was only an explicit requirement for Principle 1. That said, we note that the requirements for appropriate evidence have been changed, and in our view weakened. Given ongoing concerns about the integrity of environmental offsets and the ability for offsets to deliver genuine environmental outcomes, it is important that decisions pertaining to offsets are based on robust and credible scientific evidence.
33. The earlier draft Offsets Standard required, in the context of determining for the purpose of Principle 1, with a high degree of certainty that an offset activity will likely contribute to the recovery or conservation of the affected protected matter, that the high degree of certainty be demonstrated through:

- *existing substantiated expert knowledge or peer reviewed science on how the offset activity will achieve offset objectives with a high confidence of success, taking into consideration the reasonably foreseeable future adverse impacts of climate change (including recommended actions in conservation planning documents); or*
- *independent verification of prior success for an analogous activity; or*
- *independent expert review and endorsement of the proposed offset activity and associated outcomes for the protected matter, as well as comprehensive adaptive management plans.*

34. This requirement in Principle 1 has been removed and replaced with the following provisions

(3) The required high level of confidence referred to in subsection (2) must be based on appropriate evidence.

(4) Appropriate evidence may include:

(a) evidence from a suitably qualified expert; or

(b) existing peer reviewed science; or

(c) other evidence that demonstrates the matters in subsection (2).

35. In our view, these evidence requirements are weaker. Simply requiring evidence from a suitably qualified expert does not guarantee that the evidence is independent, robust and based on peer reviewed science. A proponent could simply present a paid consultant’s report as evidence. We suggest the evidence provisions could be strengthened to require:

- that the expert is suitably qualified and independent – see our recommendations for updating the definition of suitable qualified expert above; and
- that the evidence presented by the expert includes substantiated expert knowledge or peer reviewed science; and
- that the evidence presented demonstrates the matters relevant to the appropriate section. For consistency across the Standard, the appropriate evidence provision should point to the relevant section and subsection to which it applies (as currently drafted there is inconsistency across the Standard).

36. These amendments should be replicated across all the relevant provisions in each of the Principles in the Standard.

Recommendation 7: Amend the “appropriate evidence” provisions across the Exposure Offsets Standard to require:

- that the expert is suitably qualified and independent – see Recommendation 2; and
- that the evidence presented by the expert includes substantiated expert knowledge or peer reviewed science; and
- that the evidence presented demonstrates the matters relevant to the appropriate section. For consistency across the Standard, the appropriate evidence provision should point to the relevant section and subsection to which it applies (as currently drafted there is inconsistency across the Standard).

Section 8 - Principle 1—Feasibility

37. We note that the following has been removed from Principle 1:

“An offset activity should be capable of being commenced at the time the relevant decision is made under the Act”

It is unclear why this has been removed, but acknowledge that Principle 8 also deals with commencement of an offset activity, by requiring that an offset activity must have commenced, before the relevant residual significant impact occurs.

38. Principle 1 however is still missing a key element of feasibility – namely, consideration of whether an offset activity is capable of being delivered, having regard to whether the values or attributes being impacted can be realistically replaced, restored or compensated for. This is a key concept in the Offsets Policy Paper that has not been adopted in Principle 1 itself.³ We recommend that this becomes a clear criterion in subsection 8(2). We also suggest that this addition could be supported by including at Principle 1 a new subsection 8(3), which provides a more detailed explanation of what might not be considered feasible. This is also set out in the Offsets Policy Paper.⁴
39. The reasonably foreseeable future adverse impacts of climate change should also be re-inserted as a consideration when considering feasibility. There has been no explanation of why this removed when it appeared in the earlier draft, and is an appropriate consideration when considering the feasibility of offset activities.
40. As noted above, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 8: Add an additional criterion for consideration of whether an offset activity is feasible, namely “whether the values or attributes being impacted can be realistically replaced, restored or compensated for”. This should be supported by specifying information about what might not be considered feasible, as set out in the Offsets Policy Paper.

Recommendation 9: Re-insert “the reasonably foreseeable future adverse impacts of climate change” as a consideration when considering feasibility.

Section 9 - Principle 2 - Security

41. We generally **support** the inclusion in Principle 2 of new subsections 9(8) – 9(10) which more clearly specify what mechanisms needs to be used to secure an offset activity. In the case of direct offsets, this includes legal protections.
42. We **do not support** the changes in Principle 2, new subsection 9(5) that reduce the maintenance

³ The Offsets Policy Paper states “an offset could be seen as not feasible when the values/attributes being impacted cannot be realistically replaced, restored or compensated for”. See page 13.

⁴ This includes, for example, habitat features (e.g., caves) that cannot be feasibly replicated in an ecologically relevant timeframe. See Offsets Policy Paper, page 13, for a full list of examples.

period for an offset activity. This is a weakening of the Standard compared to the earlier draft, as demonstrated in the table below (emphasis added).

Earlier draft Offsets Standard	Exposure Offsets Standard
<p>The maintenance period is the time which begins when the outcome intended by an offset activity has been achieved and ends:</p> <p>(a) where the impact of the action is temporary—the later of 25 years and when the outcome of the restoration measure is self-sustaining; or</p> <p>(b) where the impact of the action is not temporary—the earlier of 100 years and the day on which the Minister determines that the outcome is self-sustaining.</p>	<p>The applicable maintenance period is the period after the offset activity has been delivered during which the required net gain must be maintained, and specifically:</p> <p>(a) where the damage to the affected protected matter is short term or temporary – the earlier of:</p> <p>(i) 20 years; or</p> <p>(ii) until the outcome of the offset activity becomes self-sustaining; or</p> <p>(b) where the damage to the affected protected matter is long term or permanent – the earlier of:</p> <p>(i) the period of the approval or bioregional plan (as relevant); or</p> <p>(ii) until the outcome of the offset activity becomes self-sustaining.</p>

43. There has been no explanation of why the maintenance periods have changed, and as drafted the provisions are ambiguous and will not guarantee that an offset activity is maintained for the duration of an impact. For example:

- Neither “short term” or “long term” are defined, so it is unclear what the distinction is between the two. Is 30 years a short term, or long term impact?
- In subsection 5(a), the use of the terms “the earlier of” means a maintenance period could end before an impact becomes self-sustaining. For example, this means that the proponent is not required to maintain the offset after 20 years, even if the impact does not become self-sustaining in that time. We note the earlier version required “the later of”; and also used 25 years, instead of 20 years.
- In subsection 5(b), the maintenance period can be set by the period of an approval or a bioregional plan, with no minimum period indicated. Again, the use of the term “the earlier of” means a maintenance period could end before an impact becomes self-sustaining. For example, under subsection 5(b), an arbitrary maintenance period of 50 years could be set by an approval, even if the offset activity does not become self-sustainable for 120 years. The note indicates that a bioregional plan remains in force until it is revoked. This could mean that if a bioregional plan is revoked, the maintenance period may also be revoked. If this is the case, then allowing a bioregional plan to set the maintenance period is problematic as it could create a situation where there is no maintenance period in force.

- Where an impact is permanent, an offset must be maintained in perpetuity.
44. Principle 2 must be amended to revert to the original drafting in the earlier draft Offsets Standard for short term impacts, and for long term or permanent impacts set a minimum period of 100 years, or in perpetuity where appropriate.
 45. As noted above, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 10: Amend Principle 2 to revert to the original drafting in the earlier draft Offsets Standard for short term impacts, and for long term or permanent impacts set a minimum period of 100 years, or in perpetuity where appropriate.

Section 10 - Principle 3 – Direct and tangible

46. We **do not support** the addition of “or qualitative” into Principle 3 at subsection 10(2)(a), as a way of describing the benefit to the affected protected matter. No explanation has been given for this change, and it does not align with the Offsets Policy Paper, which provides that a benefit provided by an offset activity must be quantifiable. In order for an environmental offset to compensate for an impact and deliver net gain in a way that can be measured, monitored and enforced, both the impact and the offset must be quantifiable because their purpose is to compensate for a measurable environmental impact. This would align with Principle 4 of the Exposure Offsets Standard, which requires a measurable improvement.
47. As noted above, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 11: Delete “or qualitative” from subsection 10(2)(a) of the Exposure Offsets Standard.

Section 11 - Principle 4 - Measurable improvement

48. As drafted, it is unclear what constitutes “measurable improvement” for the purpose of Principle 4. We note that the earlier draft Offsets Standard included a definition of measurable improvement i.e. measurable improvement means a tangible and quantifiable increase in condition for protected matters relevant to a current baseline. This term is not defined in the Exposure Offsets Standard.
49. We note however that the Outcomes of the Exposure Offsets Standard have been updated to provide (emphasis added):
 - (b) *offset activities provide a measurable improvement to the affected protected matter (compared to the baseline for that protected matter at the time of the relevant decision) **that is equal to or greater than the required net gain for the protected matter;***
50. It therefore appears that the policy intent is for a measurable improvement to the affected protected to be equal to or greater than the required net gain for the protected matter. If that is

the case, then this should be made clear for the purpose of Principle 4.

51. As noted above, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 12: Amend Principle 4 to make it clear that measurable improvement to the affected protected is an improvement that is equal to or greater than the required net gain for the protected matter, as stated in the Outcomes at subsection 6(b).

Section 12 - Principle 5 - Additionality

52. Specific information about the types of activities that would not be considered additional, including any existing conservation activities, investment, and regulatory obligations, were in the earlier draft Offsets Standard and have been removed. This was useful information that helped provide more clarity around the intent of the Principle 5. This detail should be reinstated into the Standard.
53. As noted above, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 13: Reinstate information from the earlier draft Offsets Standard about the types of activities that would not be considered additional into Principle 5, including any existing conservation activities, investment, and regulatory obligations.

Section 13 - Principle 6 - Like-for-like

54. We **do not support** the changes that have been made to Principle 6. The like-for-like principle is fundamental to environmental offsetting because offsets are intended to compensate for specific environmental values that are lost or damaged as a result of an action. If an offset does not protect and enhance the same type of environmental value that is being impacted, there is a risk that the loss will not be genuinely replaced and that overall environmental decline will continue.
55. The changes made to Principle 6 introduce greater flexibility into the Exposure Offsets Standard which weaken the like-for-like requirement compared to the earlier version. The earlier draft Offsets Standard provided that an offset activity should only deviate from the like-for-like requirement where a conservation planning document, bioregional guidance plan, or bioregional plan identifies a higher conservation priority for the affected protected matter. The flexibility was limited to where a conservation planning document expressly identified a higher conservation priority. It is noted that conservation planning documents are informed by advice from the Scientific Committee and public consultation.
56. The Exposure Offsets Standard at subsection 13(2) now allows deviation from like-for-like if:
 - (a) *the offset activity will deliver a greater conservation benefit for the affected protected matter than if a like-for-like outcome was delivered; and*

(b) the offset activity is consistent with the priorities for restoration of the affected protected matter set out in a conservation planning document.

57. While it does require a ‘greater conservation benefit’ and consistency with a conservation planning document, this change introduces discretion into the decision by allowing an action to propose offset activities that are not like-for-like and discretion for the decision maker to approve any such offsets activities, rather than any deviation being limited to circumstances where a higher conservation priority is expressly identified in a conservation planning document. We recommend the original wording be reinstated.
58. Also in relation to Principle 6, as noted above, we are also concerned that the definition of conservation planning document has been amended to include ‘Rulings’. Rulings should be excluded from the definition in accordance with Recommendation 1.
59. If our recommended changes are made to Principle 6 then “appropriate evidence” provisions are not required, as the relevant conservation planning document would be evidence of the higher conservation priority. Otherwise, if Principle 6, subsection (2) is retained as drafted, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 14: Reinstate the original wording in Principle 6 to provide that an offset activity should only deviate from the like-for-like requirement where a conservation planning document identifies a higher conservation priority for the affected protected matter.

Section 14 - Principle 7 – Relevant area

60. We suggest that “reasonably practical” be changed to “possible” in Principle 7, subsection 14(2)(b). It is unclear what is meant by reasonably practical, and this should not include irrelevant factors such as financial costs to the proponent.
61. As noted above, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 15: Change “reasonably practical” to “possible” in Principle 7, subsection 14(2)(b).

Section 15 - Principle 8 – Offset commenced prior to impact

62. The wording “that is intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on the affected protected matter” is superfluous because it is captured in the definition of “offset activity”. These words can be removed from section 15(1).
63. Appropriate evidence for Principle 8 includes “a proposed plan and timeframe for securing, managing and registering the offset activity”. Any such plan must form part of the conditions of approval for the action to ensure that the plan, and the requirement for the offset commence prior to impact, can be enforced.

64. As noted above, the “appropriate evidence” provisions should be amended in accordance with Recommendation 7.

Recommendation 16: Delete the words “*that is intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on the affected protected matter*” from section 15(1). These words are superfluous because they are captured in the definition of “offset activity”.

Recommendation 17: Amend section 15(3)(a) to require that a plan must form part of the conditions of approval for the action to ensure that the plan, and the requirement for the offset commence prior to impact, can be enforced.

Suggested additional Principle

Proposed principle - Reasonable steps to identify offsets

65. An outstanding flaw in the EPBC Act offsets framework is that a proponent of an action can overcome the Offsets Standard by simply electing to pay a restoration contributions charge. There is nothing compelling a proponent to first seek to use direct offsets via an offset activity, and nothing to stop a proponent going straight to payment of a restoration contribution charge in order to avoid having to apply the Principles in the Offsets Standard. We understand these Principles will not apply to the payment of a restoration contribution charge or to restoration actions undertaken by the Restoration Contributions Holder. Combine this with the failure to prescribe net gain for the purpose of section 527K of the Act and the entire framework lacks integrity and will not lead to improved environmental outcomes. It will simply allow ‘business-as-usual’ to continue while entrenching environmental decline.
66. We recommend that an additional Principle be added to the Offsets Standard to require that a proponent take all reasonable steps to identify and secure suitable offset activities before payment of a restoration contribution charge is permitted as a way of compensating for a residual significant impact on a protected matter. For example:

Principle 9 - Reasonable steps to identify offset

- (1) *Before imposing a condition requiring the holder of an approval to pay a restoration contribution charge in relation to a residual significant impact of the action, the decision maker must be satisfied that the proposed holder has taken all reasonable steps to identify and secure suitable offset activities.*
- (2) *The requirement in subsection (1) must be demonstrated by appropriate evidence.*
- (3) *Appropriate evidence may include documentation showing:*
 - (i) *that advanced offsets or biodiversity certificates are unavailable to be purchased; and*
 - (ii) *other efforts to identify and secure suitable offset activities.*

67. This proposal is similar to proposed new Regulations currently on exhibition in NSW that will only allow a proponent to transfer a large credit obligation to the NSW Biodiversity Conservation Fund, after they have taken measures to purchase the credits in the market.⁵ A proponent will be required to make a declaration that they have undertaken an acceptable measure to meet the credit obligation through another pathway.
68. We note that while this amendment, if adopted, would be important, it does not on its own address outstanding concerns in full, and more must be done to build integrity into the how restoration contributions are used and the entire offsets framework more broadly.

Recommendation 18: Insert a new Principle into the Offsets Standard to require a proponent to take reasonable steps to identify offset before being permitted pay a restoration contribution charge as a way of compensating for a residual significant impact on a protected matter.

Broader concerns with the EPBC Act environmental offsetting and restoration contributions framework

69. The Offsets Standard is part of the broader framework for environmental offsetting being introduced by recent reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). The framework includes many new elements, including:
- New legislative provisions in the EPBC Act, including the establishment of a new Restoration Contributions Holder (new Part 12B of the EPBC Act)
 - A new, stand-alone *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*
 - The National Environmental Offsets Standard for Environmental Offsets (Offsets Standard)
 - Policy guidance, including: -
 - The offsets calculator (which we understand will be updated) - -
 - Cost Recovery Implementation Statement of Offset Payments
 - Special Account and Statutory Officeholder Policy
 - Protection statements (which can include information about whether payment of a restoration contribution charge should or should not be available in relation to a residual significant impact)
 - Ministerial rulings (where made to clarify the interpretation of any feature of the offsets framework)
 - Biodiversity certificates issued under the *Nature Repair Act 2023* (Cth)
70. Overall, the offsets framework lacks overarching architecture, with key elements being developed in a piecemeal fashion by different areas of government. It is difficult to comment

⁵ See New South Wales Department of Climate Change, Energy, the Environment and Water, 'Consultation paper Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026', June 2026, available at <https://www.environment.nsw.gov.au/sites/default/files/2026-06/draft-biodiversity-conservation-amendment-bos-regulation-2026-consultation-paper-260081.pdf>

on and to determine the effectiveness of the Draft Offsets Standard in isolation, while pieces of the framework are still missing.

71. EDO remains particularly concerned that allowing proponents to make restoration contributions payments, with no strict limitations, undermines the integrity of the entire framework. The payment of a restoration contribution charge is an alternative option available to offset for residual significant impacts. Allowing proponents to make restoration contributions payments with no strict limitations, in lieu of genuine direct offsets, undermines the integrity of the entire framework and means that improved environmental outcomes are unlikely to be achieved.
72. The Standard continues to exempt offsets provided by way of restoration contribution payment from needing to comply with the Principles of the Standard. This was an issue with the previous draft Offset Standard which has not been rectified. The Principles only apply to “offset activities”, which by definition do not include payment of a restoration contribution charge. The Offsets Policy Paper provides that the Restoration Contributions Holder will be required to have regard to the Offsets Standard when making decisions around the expenditure of funds, but is not required to act consistently with the Standard. This allows the Holder to depart from the Principles, including the like-for-like principle.
73. Uncertainty around the restoration contributions framework, including how restoration contribution charges would be calculated, was a key issue identified by the Environment and Communications Legislation Committee in its inquiry into the Environment Protection Reform Bill 2025 and six related bills. The Committee specifically recommended that:
 - a revised draft National Environmental Standard for Environmental Offsets and the proposed components of any offsets calculator be released for further public consultation (Recommendation 2)
 - the Restoration Contributions Holder should outline the principles to be applied and process to be followed in assessing and calculating the quantum required to offset relevant impacts (including an offset calculator) as soon as possible (Recommendation 9)
 - the Department of Climate Change, Energy, the Environment and Water should engage in further public consultation about the appropriate timing, staging, calculation, and revision of the quantum of offset amounts to be paid by proponents to the Restoration Contribution Holder (Recommendation 11)
74. The Commonwealth offsets framework should be amended to provide more specific parameters on the use of restoration contributions payments to meet offsets requirements. This submission makes a number of specific recommendations in this regard, namely:
 - adding requirements into the Standard requiring genuine consideration of offset activity options before allowing a restoration contribution payment (see Recommendation 18), and
 - including consideration of whether a suitable offset is even possible for the protected

matter, prior to allowing compensation by way of payment of a restoration contribution charge (see Recommendation 8).

These measures would be in addition to and compliment stricter limits on the use of restoration contribution payments set out in a Protection Statement or declaration made under section 134AA of the EPBC Act, or in the Regulations. Other measures to further strengthen the framework should also be considered.

75. We also reiterate other concerns raised in our submission on the earlier draft Offsets Standard, including in relation to bioregional restoration measures offsets calculators and transparency and accountability.⁶
76. Finally, we raise concerns about the uncertainty with how the Offsets Standard will apply to forestry operations under new approval frameworks. We are concerned that prior reservation of forests in the national park estate or 'tick-the-box' approval of existing management frameworks will be considered enough to meet the requirements of the Standard. Any future approval of forestry operations, including under a bilateral agreement or strategic assessment, must give credible and scientifically robust consideration to whether any residual significant impacts are suitably compensated for in line with the Offsets Standard.

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

⁶ See EDO, 'Submission on the draft National Environmental Standard (Environmental Offsets) 2025, January 2026' pp 26 – 30, available at <https://www.edo.org.au/wp-content/uploads/2026/02/260130-EDO-Submission-Draft-Environmental-Offsets-Standard.pdf>

Appendix A

EXPOSURE DRAFT



EXPOSURE DRAFT

National Environmental Standard (Environmental Offsets) 2026

I, Murray Watt, Minister for the Environment and Water, make the following Instrument.

Dated

Murray Watt **DRAFT ONLY—NOT FOR SIGNATURE**

Minister for the Environment and Water

National Environmental Standard (Environmental Offsets) 2026

EXPOSURE DRAFT

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1 Name

This instrument is the *National Environmental Standard (Environmental Offsets) 2026*.

2 Commencement

- (1) Each provision of this standard specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
Insert appropriate text	Insert appropriate text.	Insert appropriate text

Note: This table relates only to the provisions of this standard as originally made. It will not be amended to deal with any later amendments of this standard.

- (2) Any information in column 3 of the table is not part of this standard. Information may be inserted in this column, or information in it may be edited, in any published version of this standard.

3 Authority

This standard is made under section 514YD of the *Environment Protection and Biodiversity Conservation Act 1999*.

4 Definitions

Note: A number of expressions used in this standard are defined in the Act, including:

- (a) action
- (b) advanced restoration action
- (c) approved conservation advice
- (d) bioregional guidance plan
- (e) bioregional plan
- (f) bioregional plan restoration contribution
- (g) bioregional restoration measure
- (h) designated environmental instrument
- (i) impact
- (j) impacted protected matter
- (k) management or authorisation framework
- (l) protection statement
- (m) recovery plan
- (n) residual significant impact
- (o) restoration contribution charge
- (p) Restoration Contributions Holder
- (q) ruling
- (r) threat abatement plan

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In this standard:

Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

affected protected matter means a protected matter that will or may be damaged by a residual significant impact of an action or class of actions.

approved State or Territory offset means an activity required or authorised to be carried out pursuant to a law of a state or territory to compensate for damage that will or may be caused by impacts to an affected protected matter as a result of an action or class of actions.

conservation planning document means any of a recovery plan, a threat abatement plan, a protection statement, an approved conservation advice, a designated environmental instrument, a bioregional guidance plan, **or** a bioregional plan, ~~or a ruling~~.

direct offset means a mechanism that is intended to directly protect, conserve or restore a protected matter and may include the securing and actively managing of land or managing a pest species.

indirect offset means a mechanism that is intended to indirectly protect, conserve or restore a protected matter and may include scientific research and education on existing, new or emerging threats to the protected matter (or a financial contribution towards such research or education).

Like-for-like outcome means an outcome which results in protecting, conserving or restoring the same kind of environmental feature, attribute or habitat of an affected protected matter that will or may be damaged.

offset activity means the doing of any thing or the taking of any measure (including a restoration action or a bioregional restoration action), other than the payment of a restoration contribution charge, to compensate for the damage that may or will be caused by a residual significant impact on a protected matter.

required net gain means the net gain for the protected matter within the meaning of section 527K of the Act.

protected matter means a matter protected by a provision of Part 3 of the Act.

Note: The matters protected by a provision of Part 3 of the Act are set out in section 34 of the Act.

suitably qualified and independent expert means a person who has appropriate professional qualifications, knowledge, training, skills or experience relevant to the subject matter of the offset activity **and has no actual, perceived, or financial conflicts of interest with the project or the parties involved**.

Note: An example of a suitably qualified **and independent** person could be an indigenous traditional owner in relation to offset activities relating to indigenous heritage

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5 Objective

~~This~~ The objective of this standard ~~provides a framework~~ is to ensure that offset activities (where permitted) adequately compensate for the residual significant impacts of an action or class of actions on an affected protected matter to deliver the required net gain in a way that contributes to the restoration, recovery and enhancement of that protected matter.

6 Outcomes

The following outcomes of this standard are intended to ~~promote~~ achieve the objective in section 5:

- (a) offset activities compensate for the damage that will or may be caused by residual significant impacts of actions or classes of actions on affected protected matters and support recovery or conservation;
- (b) offset activities provide a measurable improvement to the affected protected matter (compared to the baseline for that protected matter at the time of the relevant decision) that is equal to or greater than the required net gain for the protected matter; and
- (c) offset activities provide a high level of certainty that affected protected matters will be protected and enhanced.

7 Principles

(1) For subsection 514YD(4) of the Act, the principles by which the outcomes and objectives in section 5 and section 6 of this standard are to be achieved are the principles in sections 8, 9, 10, 11, 12, 13, 14, ~~and 15 and 16~~ of this standard; and

~~(2) An offset activity intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on an affected protected matter will achieve the objective and outcomes in section 5 and 6 of this standard where that offset activity is consistent with the principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard.~~

(3) The principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard only apply in relation to an offset activity that is intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on an affected protected matter where the affected protected matter is a matter protected by a provision of Part 3 that is a controlling provision for the action or an action in the class of actions.

~~(4) A decision-maker may be satisfied that:~~

~~(a) a decision to approve the taking of an action or class of actions, taking into account any conditions to be attached to the approval, is consistent with this standard if the damage that will or may be caused by any residual significant impacts of the action or class of actions on an affected protected matter will be compensated by:~~

~~(i) an offset activity that is consistent with the principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard; or~~

~~(ii) the payment of a restoration contribution charge;~~

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~~(b) a management or authorisation framework, or an approval of an action or class of actions in accordance with a management or authorisation framework, is consistent with this standard if the framework requires the damage that will or may be caused by any residual significant impacts of the action or class of actions on an affected protected matter to be compensated by an offset activity that is consistent with the principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard;~~

~~(c) a specified manner of assessment is consistent with this standard if the manner of assessment requires an assessment of whether the damage that will or may be caused by any residual significant impacts of the action or class of actions on an affected protected matter will be compensated by an offset activity that is consistent with the principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard;~~

~~(d) the making or varying of a bioregional plan is consistent with this standard if the damage that may or will be caused by any residual significant impacts of priority actions to be taken under the bioregional plan on an impacted protected matter will be compensated by a bioregional restoration measure that meets either of the following:~~

~~(i) the bioregional restoration measure is:~~

~~(A) a bioregional restoration action that is required under the bioregional plan to be delivered by a person other than the Restoration Contributions Holder; and~~

~~(B) consistent with the principles in sections 8, 9, 10, 11, 12, 13, 14 or 15 of this standard; or~~

~~(ii) the bioregional restoration measure is a bioregional plan restoration contribution; or~~

~~(ii) the bioregional restoration measure is a bioregional plan restoration action that is required, under the bioregional plan, to be delivered by the Restoration Contributions Holder.~~

~~Note: A bioregional restoration measure may be a bioregional restoration action or a bioregional plan restoration contribution (see sections 528 and 177AH of the Act).~~

8 Principle 1—Feasibility

- (1) An offset activity must be feasible.
- (2) An offset activity will be feasible if there is a high level of confidence that the offset activity:
 - (a) is capable of being delivered, having regard to whether the values or attributes being impacted can be realistically replaced, restored or compensated for; and
 - (b) will contribute to the recovery or enhancement of the affected protected matter; and
 - (c) will, on its own or in combination with other offset activities or the payment of a restoration contribution charge, result in the required net gain for the affected protected matter; and
 - (d) will achieve the intended outcome in a reasonable and ecologically or culturally relevant timeframe, having regard to the damage to the

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protected matter from the residual significant impact **and the reasonably foreseeable future adverse impacts of climate change.**

- (3) For the purposes of subsection 2(a), an offset activity may not be capable of being delivered due to (but not limited to):
- (i) suitable areas not being available for protection or restoration,
 - (ii) a lack of sufficient scientific understanding of the affected protected matter where the consequence of the risk is substantial,
 - (iii) scarcity of the affected protected matter,
 - (iv) habitat features (e.g., caves) that cannot be feasibly replicated in an ecologically relevant timeframe,
 - (v) values that are location specific and cannot be substituted, such as World Heritage properties or Ramsar wetlands,
 - (vi) the offset being unable to meet Principles in the Environmental Offsets Standard, or
 - (vii) low confidence in the proponent's ability to deliver the proposed offset. This could be due to the proposed cost, or an unrealistic level of offset commitment.

- (4) The required high level of confidence referred to in subsection (2) must be based on appropriate evidence.

- (4) (5) Appropriate evidence ~~may~~ **must include:**
- (a) **be provided by evidence from** a suitably qualified **and independent** expert; ~~and or~~
 - (b) **include** existing **substantiated expert knowledge or** peer reviewed science; ~~and or~~
 - (c) ~~other evidence that~~ demonstrates the matters in subsection 8(2).

9 Principle 2—Security

- (1) An offset activity must be securely protected.
- (2) An offset activity will be securely protected if there is an appropriate protection mechanism in place that provides a high level of confidence that:
 - (a) the required net gain will be delivered; and
 - (b) where the offset activity is a direct offset, the offset activity will be maintained for the applicable maintenance period.
- (3) For the purposes of subsection (2)(b), the high level of confidence must be based on appropriate evidence.
- (4) **For the purpose of subsection (3),** Appropriate evidence ~~may~~ **must include:**
 - (a) **be provided by evidence from** a suitably qualified **and independent** expert; ~~and or~~
 - (b) **include** existing **substantiated expert knowledge or** peer reviewed science; ~~and or~~
 - (c) ~~other evidence that~~ demonstrates the matters in subsection 9(2).

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(5) For the purposes of subsection (2)(b), the *applicable maintenance period* is the period after the offset activity has been delivered during which the required net gain must be maintained, and specifically:

- (a) where the damage to the affected protected matter is short term or temporary – the ~~later~~ **earlier** of:
 - (i) ~~20~~ **5** years; or
 - (ii) until the outcome of the offset activity becomes self-sustaining; or
- (b) where the damage to the affected protected matter is long term or permanent – the earlier of:

~~(i) the period of the approval or bioregional plan (as relevant), which must not be less than 100 years, or in perpetuity, where appropriate.~~

~~(ii) until the outcome of the offset activity becomes self-sustaining.~~

Note: A bioregional plan remains in force until it is revoked.

(6) The outcome of an offset activity becomes self-sustaining at the point at which maintenance is no longer needed to maintain that outcome.

Note: Self-sustaining outcomes will not be achieved for all offset activities, and where this is the case, continuation of maintenance activities will be required for the duration of the approval.

(7) The criteria for when the outcome of the offset activity becomes self-sustaining must be provided in a management plan.

(8) For offset activities that are direct offsets, mechanisms that provide legal protections should be used when available and appropriate.

Note 1: An example of an offset activity that is a direct offset is the protection of land.

Note 2: Examples of mechanisms that provide legal protections (where appropriate) include: covenants on land where the offset activity will occur, purchasing land, the use of State or Territory-based offset schemes, the use of statutory-based nature repair markets, Indigenous Protected Areas, indigenous land use agreements and native title determinations.

(9) For offset activities that are direct offsets, an alternative protection mechanism may be used if both of the following apply:

- (a) a mechanism that provides legal protections is not available or appropriate; and
- (b) there is a low risk that other activities will prevent or compromise the offset activity being delivered or maintained for the applicable maintenance period.

(10) The matters in subsection 9(9) must be based on appropriate evidence.

Appropriate evidence ~~must~~ **may include**:

- (a) **be provided by evidence from** a suitably qualified **and independent** expert; ~~or~~ **and**
- (b) **include** existing **substantiated expert knowledge or** peer reviewed science; ~~and~~ **or**
- (c) ~~other evidence that~~ demonstrates the matters in subsection 9(9).

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- (11) For offset activities that are indirect offsets – the appropriate protection mechanism may relate to security of the funding or reliable expertise for the offset activity.

Note: An example of an indirect offset includes research or specialist work.

10 Principle 3—Direct and tangible

- (1) An offset activity should provide a direct and tangible benefit to the affected protected matter.
- (2) An offset activity will provide a direct and tangible benefit to the affected protected matter if there is a high level of confidence that the offset activity both:
- (a) provides a benefit to the affected protected matter that is quantifiable ~~or~~ qualitative; and
 - (a) contributes to the recovery or conservation of the affected protected matter.
- (3) The required high level of confidence referred to in subsection (2) must be based on appropriate evidence.
- (4) Appropriate evidence ~~must may include~~:
- (a) ~~be provided by evidence from~~ a suitably qualified ~~and independent~~ expert; ~~and or~~
 - (b) ~~include~~ existing ~~substantiated expert knowledge or~~ peer reviewed science; ~~and or~~
 - (c) ~~other evidence that~~ demonstrates the matters in subsection 10(2).
- (5) An offset activity must be a direct offset unless a relevant conservation planning document identifies an indirect offset as a higher priority measure for the affected protected matter.

11 Principle 4—Measurable improvements

- (1) There must be a high level of confidence that an offset activity will deliver a measurable improvement to the affected protected matter ~~that is equal to or greater than the required net gain for the protected matter~~ relative to a baseline that reflects what would likely happen in the absence of the offset activity.
- (2) The relevant baseline for the affected protected matter, as referred to in subsection (1), is to be determined at the time of the decision to approve the taking of the action or class of actions, or the making of the bioregional plan (as relevant).
- (3) The required high level of confidence referred to in subsection (1) must be based on appropriate evidence.
- (4) Appropriate evidence ~~must may include~~:
- (a) ~~be provided by evidence from~~ a suitably qualified ~~and independent~~ expert; ~~and or~~
 - (b) ~~include~~ existing ~~substantiated expert knowledge or~~ peer reviewed science; ~~and or~~

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(c) ~~other evidence that~~ demonstrates the matters in subsection 11(1).

12 Principle 5—Additionality

- (1) An offset activity must be likely to deliver an additional benefit to the affected protected matter that would not have otherwise occurred.
- (2) An offset activity that is required to be undertaken by another law, or would otherwise have occurred in the absence of the action being taken, **including any existing conservation activities, investment, and regulatory obligations**, does not deliver an additional benefit.
- (3) Despite subsection (2), an offset activity that is an approved State or Territory offset that applies in relation to the same action or class of actions and the same affected protected matter may meet the requirement in subsection (1).
- (4) Despite subsection (2), an offset activity that is registered as an advanced restoration action under regulations made for the purposes of section 170CAA of the Act is not precluded from delivering an additional benefit.
- (5) The likelihood of delivering an additional benefit must be based on appropriate evidence.
- (6) Appropriate evidence **must may include**:
 - (a) **be provided by evidence from** a suitably qualified **and independent** expert; **and or**
 - (b) **include** existing **substantiated expert knowledge or** peer reviewed science; **and-or**
 - (c) ~~other evidence that~~ demonstrates the matters in subsection 12(1).

13 Principle 6—Like-for-like

- (1) An offset activity must compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on the affected protected matter by delivering a like-for-like outcome for that protected matter.
- (2) Despite subsection (1), an offset activity that does not deliver a like-for-like outcome will be permitted **if where a conservation planning document, bioregional guidance plan, or bioregional plan identifies a higher conservation priority for the affected protected matter. the decision-maker is satisfied that both**:
 - ~~(a) the offset activity will deliver a greater conservation benefit for the affected protected matter than if a like for like outcome was delivered; and~~
 - ~~(b) the offset activity is consistent with the priorities for restoration of the affected protected matter set out in a conservation planning document.~~
- ~~(3) The matter in subsection (2)(a) must be demonstrated by appropriate evidence.~~
- ~~(4) Appropriate evidence may include:~~
 - ~~(a) evidence from a suitably qualified expert; or~~
 - ~~(b) existing peer reviewed science; or~~

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~~(c) other evidence that demonstrates the matter in subsection (2)(a).~~

14 Principle 7—Relevant area

- (1) An offset activity must be located in an area that is relevant to the affected protected matter.
- (2) An offset activity will be located in an area that is relevant to the affected protected matter if:
 - (a) the offset activity is located in the same area in which the residual significant impact on the affected protected matter has or will occur; or
 - (b) where it is not ~~reasonably practicable possible~~ for subsection (2)(a) to be satisfied:
 - (i) the offset activity is located in an area that is ecologically or culturally relevant to the protected matter; and
 - (ii) the locating the offset activity in the area is likely to result in an equivalent or greater conservation outcome for the affected protected matter.

Note: For the purposes of paragraph 14(2)(a), the reference to the 'same area' is not limited to the site of the impact, but may also include nearby or surrounding sites.

- (3) The matters in subsection (2)(b) must be demonstrated by appropriate evidence.
- (4) Appropriate evidence ~~must may include~~:
 - (a) ~~be provided by evidence from~~ a suitably qualified ~~and independent~~ expert; ~~and or~~
 - (b) ~~include~~ existing ~~substantiated expert knowledge or~~ peer reviewed science; ~~and or~~
 - (c) ~~other evidence that~~ demonstrates the matters in subsection 14(2)(b).

15 Principle 8—Offset commenced prior to impact

- (1) An offset activity ~~that is intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on the affected protected matter~~ must be secured and registered, and management of the offset activity must have commenced, before the relevant residual significant impact occurs.

Note: Where an offset activity is to be delivered in distinct stages over an extended time period, an offset may be identified for each stage of the development, and those offsets must commence prior to the impact(s) occurring in relation to the relevant stage.

- (2) The requirement in subsection (1) must be demonstrated by appropriate evidence.
- (3) Appropriate evidence may include:
 - (a) a proposed plan and timeframe for securing, managing and registering the offset activity, ~~that forms part of the conditions of approval~~; or
 - (b) other evidence that demonstrates the matters in subsection (1).

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- (4) Despite subsection (1), where the offset activity is a bioregional restoration action that is required under the bioregional plan to be delivered by a person other than the Restoration Contributions Holder, the offset activity must be secured and delivered in accordance with any timeframes set out in the relevant bioregional plan.
- (5) For the purposes of subsection (1), an offset activity is *registered* if the offset is included in a register of offsets established by a Commonwealth, State or Territory government.

16 Principle 9 - Reasonable steps to identify offsets

- (1) Before imposing a condition requiring the holder of an approval to pay a restoration contribution charge in relation to a residual significant impact of the action, the decision maker must be satisfied that the proposed holder has taken all reasonable steps to identify and secure suitable offset activities.
- (2) The requirement in subsection (1) must be demonstrated by appropriate evidence.
- (3) Appropriate evidence may include documentation showing:
 - (i) that advanced offsets or biodiversity certificates are unavailable to be purchased; and
 - (ii) other efforts to identify and secure suitable offset activities.