Environmental Defenders Office

Restoration Contributions Holder
Federal Department of Climate Change, Energy, the Environment and Water
Lodged online

19 October 2026

Dear Restoration Contributions Holder,

**Re Consultation Paper: Proposed Methodology for Calculating Restoration Contributions Charges**

Environmental Defenders Office (**EDO**) is an environmental legal centre specialising in public interest environment law. We help people who want to protect the environment through law, including where they are concerned about the impacts of activities on matters of national environmental significance. We have a long history of engaging in reforms to both federal and state environment laws along with advising and representing people with respect to these laws.

We welcome the opportunity to provide feedback on the Consultation Paper: Proposed Methodology for Calculating Restoration Contributions Charges (**Consultation Paper**). Thank you for accepting our late submission.

Impacts on nationally protected matters are frequently allowed on the basis of proposed impacts being compensated for, and may not otherwise be allowed. A framework that allows the collection of money for offsets that are not actually possible, or a calculator that does not require enough money to facilitate effective offsets, will lead to an ongoing decline in our nationally protected species and environmental values.

The methodology for calculating the amount to be paid as a restoration contribution charge is therefore critical: if it systematically underestimates the true cost or uncertainty of restoration, it risks failing to achieve the environmental outcomes needed to adequately compensate for the impacts of actions.

Our feedback on the Consultation Paper is set out below:

- We generally **support** the proposal for the methodology underpinning the Restoration Contributions Calculator (**RCC**) to account for delivery costs, feasibility constraints and risk. Proponents must be required to pay the full costs of delivering the environmental outcomes needed to appropriately compensate for their actions. Lessons can be learnt from other jurisdictions where independent reviews have found a risk of insufficient funds to acquit offset obligations, which could result in sub-optimal biodiversity outcomes.[1] We also

[1] See, for example, Audit Office of New South Wales, 'Effectiveness of the Biodiversity Offsets Scheme', August 2022, https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme

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**support** the proposal that the RCC will be updated annually to reflect changes in underlying cost assumptions.

- We **support** the intention that coverage of the Restoration Contributions System will initially be for a subset of threatened species and/or threatened ecological communities in which offsets have found to be possible.

  We **recommend** that:

  - this initial subset, and any expansion, should be informed by advice of the Restoration Contributions Advisory Committee, the Threatened Species Scientific Committee, the Indigenous Advisory Committee and also public consultation;
  - the range of species and ecological communities that the system can apply to at all times should be limited to species where there is a level of confidence that appropriate offset sites will be able to be located and secured, and that management of those sites is expected to deliver the necessary improvement and environmental outcomes. This should include evidence of previous examples where offsetting has been successful for a particular species or ecological community; and
  - offsets should not be available, including via restoration contribution payments or otherwise, where an offset is not possible for a species or area. If there is potential but some uncertainty as to the possibility of an offset being available for a species or area, a restoration contribution should not be allowed and the offset must be proven as viable by the proponent prior to the impact being approved.

- We **support** review of the methodology underpinning the RCC two years after its launch and thereafter every 5 years as part of statutory reviews.
- We **support** transparency measures and annual reporting.

  We **recommend** that reporting includes information on environmental loss and gains across the framework.

- It is unclear how the RCC is able to be designed to use "inputs, together with a range of pre-set variables, to determine the restoration action obligation required to compensate for the impact and achieve a net gain", when net gain has not been prescribed for the purpose of section 527K of the EPBC Act. EDO has previously recommended that the government should prescribe in Regulations "net gain" for the purpose of section 527K. At a minimum this could involve prescribing anticipated policy guidance and calculators. This would then allow the RCC (and the Offsets Calculator) to be the tools for determining net gain, and allow the draft calculators to be reviewed with that lens. On the face of the Consultation Paper, it is unclear how the calculator is explicitly delivering net gain.

  We **recommend** that net gain should be defined with reference to the calculator, and how the calculator is relevant to net gain calculations should be made clear.

- The Consultation Paper indicates that habitat quality of both the impact site and offset site (assumed) will be given a score between 0 – 100, but there is no further detail on the

methodology for determining that score, including whether it will take into account the attributes of a habitat (e.g. feeding trees, hollows) that might be impacted by a proposal and/or needed for a particular species.

We **recommend** that further information be published as to the detail behind the methodology for determining a habitat quality score.

- In calculating quality across and between impact and offset sites, it is not clear:
  - how the assumed offset starting site quality is determined, and if it correlates in any way to the quality of the impact site;
  - whether it would be possible to have an offset site with significantly lower quality than the impact site, and even if after delivering the assumed quality improvement the offset site remains at a lower quality than the impact site, or how net gain has been achieved in this circumstance.

  We **recommend** that:
  - further information about the assumed offset starting site quality is published; and
  - the calculator requires an offset site to achieve higher quality than the impact site, in order to achieve net gain (avoiding the perverse outcome of delivering assumed quality improvement but not ensuring the offset site has a higher quality than the impact site).
- There appears to be an error in Case Study 1, which states that the 'Starting score – based on impact site quality category moderate' is quality score of 45, and the 'Assigned: Assumed Offset Final Quality Score' is 65, but describes the 'Assumed Quality Improvement over 20 years' as a quality score of 30 (our understanding is the assumed quality improvement score should be 20).

**First Nations engagement in accordance with principles of Free, Prior and Informed Consent**

It is disappointing that First Nations perspectives and expertise have not fed into this initial version of the RCC, as acknowledged in the Consultation Paper. Such perspectives should not be considered post facto; relevant First Nations representative organisations should be engaged early, and be at the table in further development and review of the RCC as recognised rights holders. Sufficient time and resources should be provided to enable First Nations' meaningful engagement in this process. Such approach would reflect the principles of Free, Prior and Informed Consent (FPIC), as part of Australia's commitment to and obligations under the UN Declaration on the Rights of Indigenous Peoples. First Nations' perspectives on the assumptions underpinning the costing methodology are vital, including on how "site quality" is determined, and the calculation of access costs for securing agreement of relevant First Nations in accordance with FPIC principles.

**Overarching concerns with the restoration contributions framework remain**

EDO has raised broader concerns about the restoration contributions framework, including in particular the application of National Environmental Standard to the Restoration Contributions Holder. Our most recent feedback is set out in our submission in response to Environment Protection

Reform Consultation: Shaping the Next Phase of Environmental Reforms, submitted to the Department on 13 October 2026 (**attached**).

Thank you for the opportunity to provide feedback. Please do not hesitate to contact Cerin Loane, Special Counsel, Policy and Law Reform, on cerin.loane@edo.org.au if you have any questions or require any further information.

Yours sincerely,
**Environmental Defenders Office**

Cerin Loane
Special Counsel, Policy and Law Reform

Encl.
EDO Submission in response to Environment Protection Reform Consultation: Shaping the Next Phase of Environmental Reforms

Environmental Defenders Office

# Submission in response to Environment Protection Reform Consultation: Shaping the Next Phase of Environmental Reforms

**13 October 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.

**www.edo.org.au**

Lodged online:
https://consult.dcceew.gov.au/environment-protection-reform-consult-shaping-next-phase-environmental-reforms/take-the-survey

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**Acknowledgement of Country**

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 and present 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 colonisation.

EDO recognises the right to self-determination of First Nations peoples, including their right to freely determine their own political status and freely pursue their economic, social and cultural development. This 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.

**The role of EDO & First Nations Peoples**

EDO is a non-Indigenous community legal centre that works on behalf of First Nations peoples around Australia in their efforts to protect their Countries and Cultural Heritage from damage and destruction. EDO has and continues to work with First Nations clients who have interacted with Western laws, including litigation and engaging in Western law reform processes.

Out of respect for First Nations self-determination, EDO's recommendations for Western law reform in relation to First Nations matters are high-level, so as to support First Nations to protect their Countries and Cultural Heritage as they see fit. These high-level recommendations are informed by EDO's engagement with and on behalf of First Nations clients and communities. In making this submission, EDO cannot and does not speak on behalf of First Nations peoples or groups.

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1. Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the next stage of Australia's environment protection reforms, namely the following policy papers and exposure draft Regulations:[1]
    - Policy papers:
        - Overview paper
        - Paper 1: Streamlining single project approvals
        - Paper 2: Enabling landscape scale pathways
        - Paper 3: Delivering new compensation options
        - Paper 4: Other consequential changes
    - Environment Protection and Biodiversity Conservation Amendment (2026 Measures No. 2) Regulations 2026 (**Draft Regulations**).

2. We understand this to be the final tranche of draft Regulations required ahead of the full suite of reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) commencing on 1 December 2026, although we note not all proposed provisions described in the policy papers have been included in the Draft Regulations.

3. Our submission is structured as follows:
    - Response to consultation materials:
        - Streamlining single project approvals (Consultation Paper 1)
        - Enabling landscape scale pathways (Consultation Paper 2)
        - Delivering new compensation options (Consultation Paper 3)
    - Other opportunities to strengthen the framework via the regulations

4. Given the short time frame for this consultation we have not had capacity to consider the Other Consequential Changes Consultation Paper.

5. We comment on relevant provisions of the Draft Regulations in the context of each Consultation Paper. Disappointingly, the Draft Regulations were only provided part way through the consultation period and the Consultation Papers don't clearly identify relevant, corresponding provisions in the Draft Regulations, making review of the consultation materials difficult for stakeholders. Given the limited time the Consultation Papers, and particularly the Draft Regulations, have been made available for review and comment we have not been able to provide analysis and submissions on all aspects. More time was needed to ensure accurate interpretation and more meaningful submissions.

6. Further we note that provisions described in the Consultation Papers (for example, provisions relating to Consultation Paper 2) do not appear to be included in the Draft Regulations. It is unclear if there will be further consultation undertaken on those missing elements. Where we have indicated general support for proposals set out in the Consultation Paper, it is contingent on seeing final drafting of proposed provisions.

7. A summary of our key recommendations is set out below.

[1] https://consult.dcceew.gov.au/environment-protection-reform-consult-shaping-next-phase-environmental-reforms

## Summary of recommendations

**Recommendation 1:** Regulatory provisions are needed to limit the level of risk, uncertainty and complexity of a project able to be assessed by streamlined assessment to ensure adequate environmental assessment to reduce environmental and community impacts.

**Recommendation 2:** Require a bioregional plan to specify the assumed development level that underpins the plan. Assumed development level should also be defined for clarity.

**Recommendation 3:** Do not proceed with transitional provisions as proposed and require all bioregional guidance plans made under the new EPBC Act to meet new requirements.

**Recommendation 4:** Prescribe for the purpose of section 177AM of the EPBC Act that the Minister considered relevant protection statements and threat abatement plans when making a bioregional plan.

**Recommendation 5:** Clarify what transitional arrangements will apply to strategic assessments that have commenced, or will commence, before the new tests take effect on 1 December or an earlier date prescribed by proclamation.

**Recommendation 6:** Prescribe under 177CS (2)(c)) that decisions relating to general restoration actions are to be consistent with the Environmental Offsets Standard, or specific elements or Principles of that Standard (e.g. Principles 1 – 7). For other relevant decisions of the Restoration Contribution Holder, maintain the requirement that the Restoration Contribution Holder must have regard to the Standard.

**Recommendation 7:** Prescribe the Data and Information Standard as a matter the Restoration Contribution Holder must have regard to when undertaking their role, such as when spending an amount on restoration actions.

**Recommendation 8:** Where impacts are permanent, restoration actions should be maintained in perpetuity.

**Recommendation 9:** The timeframe for restoration actions to commence should be reduced (e.g. 2 years for restoration actions, bioregional restoration actions and exempt amount restoration actions to commences and 3 years for alternative restoration actions).

**Recommendation 10:** Amend various provisions in the draft Regulation to mirror the National Environmental Standard (Environmental Offsets) 2026, by requiring that an action must be a direct offset unless a relevant conservation planning document identifies an indirect offset as a higher priority measure for the affected matter.

**Recommendation 11:** The draft Regulations must explicitly prevent the Restoration Contributions Holder from proceeding to an alternative restoration action in the first year from the receipt of the restoration contribution, and require the Restoration Contributions Holder to undertake reasonable efforts to secure a general restoration action in that first year. Similar provisions must be included in relation to alternative bioregional restoration actions.

**Recommendation 12:** Prescribe some form of recourse if the time period prescribed by the Regulations to deliver a general restoration action, alternative restoration, bioregional restoration action or alternative bioregional restoration action is not met.

**Recommendation 13:** More explicitly set out the specific components of the Environmental Offsets Standard that are required to be considered by an advanced restoration action, with specific reference to the Standard, including in the Minister's consideration of the application and in the Register.

**Recommendation 14:** Amend clause 6C.07 to require the Minister to update the entry for a registered advanced restoration action within 5 business days.

**Recommendation 15:** Limit the ability for the Minister to vary, revoke or suspend an advanced restoration action once it has been used to satisfy a condition attached to an approval under the Act.

**Recommendation 16:** 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.*

## Response to consultation materials

### Streamlining single project approvals (Consultation Paper 1)

8. The reforms introduce a new 'streamlined assessment' pathway (New Division 5A). This pathway is introduced with the removal of two assessment pathways: referral Information and public environmental report. The assessment pathways of environmental impact statement, accredited assessment process and public inquiry are to remain in the Act.

9. Streamlined assessment can be chosen as the assessment approach when the Minister is satisfied (after considering the matters in s87(3)), that:

    - the approach will allow the Minister to make an informed decision whether or not to approve under Part 9, for the purposes of each controlling provision, the taking of the action; and

    - the greenhouse gas emissions information for the action has been provided (amending s87).

10. There is nothing in proposed new s87(3) which specifies consideration of the scale, nature,

complexity and certainty of the impacts and environmental record of the proponent, nor the public concern with regard to the action. There is nothing specifying the level of environmental impact assessment that must be in an application for the Minister to be satisfied they have enough information, and no requirements around public consultation of that impact assessment.

11. A 'designated report writer' (which can be the EPA CEO or Secretary of the Department) must prepare and give the Minister a recommendation report relating to the action 'as soon as practicable' after the Minister decides that the referral will be assessed via streamlined assessment (new s100B). The Minister must make their decision as to whether to approve or reject a referral application and any conditions on an approval within 30 days of the assessment approach decision (amending s1309(1B)). Typically, this decision period only starts when the recommendation report has been finalised, rather than from when the assessment approach decision is made.

12. There will be public consultation on whether the referred application will have an impact or likely impact on any matter of national environmental significance to warrant EPBC Act assessment (EPBC Act s74(3)) (i.e. the referral decision), which is only 10 business days. There will not be consultation at any other stage of a streamlined assessment process. In the 10 business day referral consultation it will be necessary for the public to have to get across potentially voluminous environmental impact assessments, try to seek expert assistance in their review, and provide helpful submissions.

13. There is no requirement that detailed submissions on the application materials be taken into consideration, given the consultation at the referral stage is limited to whether the project needs EPBC Act assessment and what matters are controlling provisions for it.

**Streamlined assessment is weaker and subject to less accountability and transparency than any other assessment in the previous EPBC Act provisions**

14. The assessment pathways that streamlined assessment will replace provide for greater accountability and transparency. The weakest environmental assessment option in the EPBC Act is assessment by 'referral information' (Part 8, Division 3A), which rests assessment on the information provided at the time of referral and does not require any further environmental impact assessment work to be done.

15. Referral information assessment could only be chosen if the Minister is satisfied the criteria in the Regulation are met (EPBC Act s87(4A) applying EPBC Reg 5.03A), being:

    (a) the potential scale and nature of the relevant impacts of the action can be predicted with a high level of confidence;

    (b) the relevant impacts are expected to be short term, easily reversible or small in scale;

    (c) adequate information is available about relevant impacts on the matters protected;

    (d) the action is likely to have a significant impact on only a small number of protected

matters or elements of each relevant protected matter;

(e) if the information is available—the person proposing to take the action has a satisfactory record of responsible environmental management and compliance with environmental laws;

(f) the degree of public concern about the action is, or is expected to be, moderately low.

16. Further, in making a decision on an assessment on referral information, the Minister must not consider financial or economic factors (EPBC Reg 5.03A(2)).

17. Assessment on referral information also provided a public consultation requirement on the recommendation report provided as to whether the application should be approved and what conditions should be placed on it, where streamlined assessment does not currently provide for any of these criteria.

**What are the risks with streamlined assessment?**

18. This new assessment pathway could apply to any development except fossil fuel projects, including significant critical mineral mines or complex new activities posing untested and uncertain environmental risks. There is no constraint as to what level of environmental impact assessment must be provided for the Minister to be satisfied.

19. There is no public consultation on the decision on assessment approach, nor will there be consultation on the recommendation report, reducing accountability and transparency around these projects.

20. The short time frame of 30 business days from the decision on assessment approach to final decision will put enormous strain on the assessing officers and risks undermining the environmental assessment of potentially high-risk projects.

21. Under the drafting proposed, a large critical mineral mine proponent could put forward a pre-prepared environmental impact statement (EIS) of many thousands of pages, potentially of questionable quality and accuracy, prepared with no guidance as to the terms of reference and undertaking consultation outside of a structured legislative process, and this could be waved through the streamlined assessment process with just 10 business days consultation on whether the project should be referred. A bureaucrat will then need to review the entire EIS, determine whether the information is accurate and prepare a decision with conditions, if approved, in less than 30 business days to meet the decision deadline.

22. There are a raft of serious issues with this pathway as drafted, but they are easily fixed by safeguards being put in place. In addition to limiting the risk, complexity and uncertainty of projects going through the streamlined assessment, this assessment pathway should be subject to all Standards.

**Information requirements in the regulation**

23. The Exposure Draft of the Regulation proposes provisions to set out information

requirements to demonstrate sufficient information has been provided to access the streamlined assessment, at Part 2. We support that these requirements have been set out in some detail in the Draft Regulation and not left entirely to the discretion of the decision-maker.

24. Given the limited time the Draft Regulation has been open for consultation we have not had sufficient capacity to go through the proposed information requirements in detail to ascertain their adequacy.

**Recommendation 1:** Regulatory provisions are needed to limit the level of risk, uncertainty and complexity of a project able to be assessed by streamlined assessment to ensure adequate environmental assessment to reduce environmental and community impacts.

## Enabling landscape scale pathways (Consultation Paper 2)

25. Our comments in this section respond to Consultation Paper 2 – Enabling landscape scale pathways, which provides an overarching explanation of the proposed regulations. We note however that relevant provisions have not been included in the draft Regulations, which has limited our ability to interrogate the proposed changes and provide substantial feedback.

**Section 2 – Bioregional Planning**

**Application of National Environmental Standards**

26. We generally **support** the proposal to prescribe the four National Environmental Standards made by the Minister in August 2026 to decisions to make bioregional plans.

27. We generally **support** the proposal to prescribe the National Environmental Standards for Community Engagement and Data and Information to the making a bioregional guidance plan. Again, relevant provisions are not included in the draft Regulations.

28. We acknowledge the statement in the Policy Paper that this approach, in which the National Environmental Standards for Matters of National Environmental Significance (**MNES**) and Environmental Offsetting are not prescribed for making a bioregional guidance plan, reflects the fact that bioregional guidance plans do not authorise actions or establish offset requirements. We also note that the content of bioregional guidance plans, as set out in section 176A of the EPBC Act, would allow the bioregional guidance plans to include provisions that relate to MNES, including threatened species and ecological communuties and heritage areas, and also suitable management actions for listed threatened species or listed ecological communities in the region, including offsets.

29. The Policy Paper also states that "(t)he intent is to prescribe that bioregional guidance plans and bioregional plans must also be consistent with future Standards as appropriate, once made". We agree that future Standards should be prescribed for the purpose of making bioregional guidance plans and bioregional plans. We also acknowlegde that a provision of this type would ensure the anticipated National Environmental Standard for First Nations engagement would also apply once made. However, generally prescribing unknown future

standards with the caveat "as appropriate" risks uncertainty about whether a Standard, or the extent to which a Standard, might apply to decisions.

30. Even if a general 'future Standards' provisions is included in the Regulations, we **recommend** that for certainty new Standards should be expressly prescribed by the Regulations for specific decision at the time the new Standard is made.

**Mandatory requirements for the content of bioregional plans**

31. We generally **support** the proposal to embed clear, mandatory requirements for the content of bioregional plans, including how environmental values, impacts, and restoration actions are identified, managed and monitored.

32. In addition to the proposed inclusions set out in the Policy Paper, we **recommend** the Regulations clearly require a bioregional plan to specify the assumed development level that underpins the plan. This would support the subsequent proposal in the Policy Paper that before registering a priority action, the minister must be satisfied that the proposed action would not exceed the assumed development level specified by the plan.

33. Also there is no definition of an assumed development level. This should be added for clarity.

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|---|
| **Recommendation 2:** Require a bioregional plan to specify the assumed development level that underpins the plan. Assumed development level should also be defined for clarity. |

**Registering priority actions**

34. We **support** the proposal for the regulations to prescribe that before registering a priority action, the minister must be satisfied that the proposed action would not exceed the assumed development level specified by the plan.

**Review of bioregional plans**

35. We generally **support** the proposed matters that a review must consider, namely that a review must:
    - evaluate the effectiveness of the plan's monitoring objectives
    - consider how well the plan provides practical guidance for decision-makers and proponents
    - consider whether the assumed development level remains appropriate
    - examine whether the plan reflects up-to-date information on relevant protected matters, and
    - consider the implications of any relevant rulings made under the EPBC Act.

36. We note these are in addition to the matters set out in section 177CD(4) of the EPBC Act that require that the Minister also consider:

    - the extent to which the bioregional plan has promoted the objects of this Act,

- the extent to which the bioregional plan has resulted in a net gain for impacted protected matters in the region to which the bioregional plan relates, and
- the extent to which the bioregional plan has achieved its objectives.

**Transitional arrangements**

37. The Consultation Paper indicates that additional transitional rules will clarify how the new legislative tests apply to bioregional guidance plans that were developed and consulted on before new legislative requirements take effect on 1 December (or an earlier date prescribed by proclamation). To date, there has been public consultation on the Queensland Draft Gulf Plains Bioregional Guidance Plan and Draft Brigalow Belt North Bioregional Guidance Plan. This means when making those plans, the minister will not need to be satisfied that they are consistent with the National Environmental Standards. As noted above, under the proposed regulations intend to prescribe the National Environmental Standards for Community Engagement and Data and Information to the making a bioregional guidance plan

38. In EDO's submission on those two draft Bioregional Guidance Plans, we submitted that finalisation of the draft Guidance Plans should be delayed so that they are made under, and in compliance with, the reformed EPBC Act.[2] While substantial work has been done on developing the plans to date, delaying the finalisation of the draft plans would ensure they are fit-for-purpose in the context of the new EPBC Act framework. To that end, the proposed transitional provisions should not be made and any guidance plans made once the full suite of reforms commence should be required to meet new EPBC Act requirements.

**Recommendation 3:** Do not proceed with transitional provisions as proposed and require all bioregional guidance plans made under the new EPBC Act to meet new requirements and all Standards.

39. We note that the Consultation Paper does not propose to prescribe anything for the purpose of section 177AM - Matters to which the Minister must have regard in deciding whether to make a bioregional plan. This is potentially a missed opportunity to prescribe additional matters for the Minister's consideration in making bioregional plans.

40. One additional requirement that could be prescribed is for the Minister to consider any relevant protection statement and threat abatement plan. While section 177AM requires the Minister to relevant consider conservation advices and recovery plans, protection statement and threat abatement plans are not required to be considered.

**Recommendation 4:** Prescribe for the purpose of section 177AM of the EPBC Act that the Minister considered relevant protection statements and threat abatement plans when making a

[2] EDO, Submission on Queensland Bioregional Guidance Planning: Draft Gulf Plains Bioregional Guidance Plan, Draft Brigalow Belt North Bioregional Guidance Plan, Interactive Tool, July 2026, https://www.edo.org.au/wp-content/uploads/2026/07/260724-EDO-Submission-to-Bioregional-Guidance-Planning-1.pdf

bioregional plan.

**Section 3 – Strategic assessments**

**Regulation development**

41. We generally support the proposed requirement to prescribe that a decision to approve a strategic assessment must be consistent with the National Environmental Standards relating to Matters of National Environmental Significance (MNES), Community Engagement, Offsets, and Data and Information.

42. We note that the Consultation Paper does not specify that it is the intent is to prescribe that strategic assessments must also be consistent with future Standards as appropriate, once made, which intends to do for bioregional guidance plans and bioregional plans.

**Transitional provisions**

43. The Consultation Paper states that additional transitional rules to clarify the application of the new legislative tests to strategic assessments that commenced, or will commence, before the new tests take effect on 1 December or an earlier date prescribed by proclamation. Yet, it does not specify what those transitional provisions will entail. We note, for example, that the consultation is currently underway on Draft Terms of Reference (Tors) for the Strategic Impact Assessment Report for forestry operations in Regional Forest Agreement (RFA) regions of NSW, and the draft ToRs anticipate that new legislative tests will apply, however the Consultation Paper does not explicitly confirm this.[3]

**Recommendation 5:** Clarify what transitional arrangements will apply to strategic assessments that have commenced, or will commence, before the new tests take effect on 1 December or an earlier date prescribed by proclamation.

## Delivering new compensation options (Consultation Paper 3)

**Matters that will guide the restoration contributions holder (Consultation Paper 3 – section 2.2.2)**

- ***Application of the Environmental Offsets Standards***

44. The policy intent of the government is to require that the Restoration Contributions Holder must have regard to the National Environmental Standard for Environmental Offsets (the Environmental Offsets Standard) when delivering restoration actions.

45. This will be implemented as follows:

[3] https://www.nsw.gov.au/have-your-say/strategic-assessment-of-forestry-rfas

- For the purpose spending restoration contributions on restoration actions, proposed clause 12D.03 prescribes the Environmental Offsets Standard as a matter the Restoration Contributions Holder must have regard to under subsection 177CX(f) of the Act.
- For the purpose of spending exemption amounts on restoration actions, proposed clause 12D.04 prescribes the Environmental Offsets Standard as a matter the Restoration Contributions Holder must have regard to under subsection 177CY(1)(b) of the Act.
- For the purpose of spending bioregional plan registration charges and bioregional plan restoration contributions on bioregional restoration actions, proposed clause 12D.12 prescribes the Environmental Offsets Standard as a matter the Restoration Contributions Holder must have regard to under section 177CZ of the Act.

46. Notably, it is not intended to prescribe anything for the purpose of section 177DC of the Act which provides that the Restoration Contributions Holder must not spend an amount on a restoration action unless satisfied it would be consistent with any national environmental standard that is prescribed by the regulations.

47. The policy paper explains the reasoning behind this as follows:

> "This is for avoidance of doubt where the Environmental Offsets Standard and the Restoration Contributions Holder's delivery requirements under the EPBC Act differ, including where not all principles of the Environmental Offsets Standard are applicable to context the Restoration Contributions Holder will be operating in. For example, Principle 8 of the Environmental Offsets Standard requires that an offset commences prior to impact, however this will not always be possible when a restoration contribution has been paid.

48. This approach is categorical. It prescribes the entirety of the Environmental Offsets Standard as something the Restoration Contributions Holder must have regard to, and does not prescribe any element of the Environmental Offsets Standard as something that decisions of the Restoration Contributions Holder must be consistent with.

49. An alternative approach could be to prescribe specific elements of the Environmental Offsets Standard to specific decisions of the Restoration Contributions Holder, acknowledging that the Act itself envisages contributions to be spent differently in different circumstances. For example, subsection 177CS (2)(c)) could prescribe that decisions relating general restoration actions are to be consistent with the Environmental Offsets Standard, or specific elements or Principles of that Standard; and separately 177CS (5)(d) could be used to require the Restoration Contributions Holder to have regard to the Environmental Offsets Standard, or specific elements or Principles of that Standard (e.g. Principles 1 – 7) when making decisions in relation to alternative restoration actions. This would build integrity into the framework by requiring the Restoration Contributions Holder to endeavour to deliver general restoration actions consistent with the Environmental Offsets Standard in the first instance, before subsequently moving on to alternative restoration actions which must consider, but not be consistent, with the Standard.

**Recommendation 6:** Prescribe under 177CS (2)(c)) that decisions relating to general restoration actions are to be consistent with the Environmental Offsets Standard, or specific elements or Principles of that Standard (e.g. Principles 1 – 7). For other relevant decisions of the Restoration Contribution Holder, maintain the requirement that the Restoration Contribution Holder must have regard to the Environmental Offsets Standard.

- ***Application of other Standards***

50. It is not intended to prescribe any other National Environmental Standards to decisions of the Restoration Contributions Holder. There has been no clear explanation of why the National Environmental Standard (Data and Information) 2026 (**Data and Information Standard**) will not be prescribed. That objective of the Data and Information Standard is to ensure that decisions made under the Act are based on appropriate data and information, and to extend the availability of credible data and information assets for use in such decisions.

51. The Principles of the Data and Information Standard are that data and information should be representative, transparent, comparable, reusable and ethically collected and used. To ensure integrity in the restoration contribution framework, decisions relating to the spending of restoration contributions should be based on robust and appropriate data information. Notably, proposed clause 6C.06 - Registration of advanced restoration actions, notes the Data and Information Standard, but the Standard is not actually prescribed for the purpose of data and information provided in the description of the advanced restoration action.

52. We recommend the Data and Information Standard is prescribed as a matter the Restoration Contribution Holder must have regard to when undertaking their role, such as decisions on spending an amount on restoration actions. This would at least ensure the Restoration Contribution Holder turns their mind to the quality and reliability of data relied on to make decisions.

**Recommendation 7:** Prescribe the Data and Information Standard as a matter the Restoration Contribution Holder must have regard to when undertaking their role, such as when spending an amount on restoration actions.

- ***Conservation planning documents and committee advice***

53. It is proposed that when the Restoration Contributions Holder is delivering bioregional restoration actions and exemption amount restoration actions, they will be required to have regard to the same matters as already required in the legislation for general and alternative restoration actions, including advice given by any other committee established under the EPBC Act, or the Australian Heritage Council, any conservation planning documents the Restoration Contributions Holder considers relevant, any bioregional plans or bioregional guidance plans they consider relevant, and any other matters they consider relevant.

54. This will be implemented as follows:

- For the purpose of spending exemption amounts on restoration actions, by proposed clause 12D.04 (3)(b).

- For the purpose of spending bioregional plan registration charges and bioregional plan restoration contributions on bioregional restoration actions, by proposed clause 12D.12(b). Proposed clause 12.08 also the Restorations Contributions Holder to consider the advice of the Restoration Contributions Advisory Committee in relation to alternative bioregional restoration actions.

55. We generally **support** this proposal.

**Pooling of funds (Consultation Paper 3 - section 2.2.3)**

56. The Consultation Paper states:
"The legislation enables the Restoration Contributions Holder to pool restoration contributions. To provide flexibility to deliver combined restoration actions, regulations are required to enable the Restoration Contributions Holder to pool restoration contributions with other restoration charges as appropriate."

57. It is unclear which specific provisions of the Draft Regulations implement this.

    Pooled fund activities should be required to meet the Offsets Standards Principles (in line with our recommendation that these should be prescribed to decisions by the Restoration Contributions Holder), otherwise they should at least be required to be spent in a way that relates to the purpose for which the charge was originally imposed.

**Acquitting liabilities in advance (Consultation Paper 3 section 2.2.4)**

58. The Consultation Paper explains that in addition to advanced restoration actions, the EPBC Act allows the Restoration Contributions Holder to acquit liabilities for a general or alternative restoration action as a result of the outcomes achieved through previous expenditure of funds, and proposes to mirror this for bioregional plan amounts and exemption amounts with provisions in the Regulation.

59. To that end, we acknowledge that the Draft Regulations mirror the Act as intended. What is unclear however, is in all instances, how the Restoration Contribution Holder will fund actions in advance, given the Holder is generally required to spend an amount that reasonably relates to the amount of restoration contribution charge imposed in relation to a residual significant impact, meaning there should not be excess funds to spend in advance. For transparency, there should be clear reporting of all fund expenditure in advance, and information on the Register tracking when actions carried out in advance have been used for subsequent liabilities.

**Maintenance of restoration actions (Consultation Paper 3 section 2.2.5)**

60. The EPBC Act does not require a specific maintenance period for any restoration action – this will be prescribed in the regulations, via the definition of applicable maintenance period which provides:

> ***applicable maintenance period***, in relation to a restoration action or bioregional restoration action, means the period that:
>
> (a) starts when the restoration action or bioregional restoration action has been delivered; and
>
> (b) ends as follows:
>
> (i) unless subparagraph (ii) or (iii) applies—when the restoration action or bioregional restoration action becomes durable;
>
> (ii) if the restoration action or bioregional restoration action becomes durable less than 25 years after delivery—25 years after delivery;
>
> (iii) if the restoration action or bioregional restoration action does not become durable or becomes durable more than 100 years after delivery—100 years after delivery.

61. This uses a similar (but not same) approach as the Environmental Offsetting Standard. EDO has previously raised concerns with how the framework is setting maintenance periods. In particular:

- Key terms such as 'long term' are not clearly defined
- Where impacts are long-term or permanent, offsets should be maintained in perpetuity, not simply 100 years.

62. We are also concerned with several assumptions in the Consultation Paper that underpin the approach take in the regulations. For example:

- It is unclear what scientific evidence is relied on to set a minimum 25-year maintenance period.
- The reasoning for taking a different approach than in the Environmental Offsetting Standards (which uses a minimum 20 year period) is that "(u)nlike for proponent-delivered offsets, the Restoration Contributions Holder does not have an enduring relationship with the impacting action and therefore requires an ecologically sound, standard maintenance period in order to have certainty in its ability to acquit its legal and delivery requirements. We submit that any maintenance period must be set having regard to the relevant impact and the ecological requirements for compensating for those impacts, and not arbitrary, standard periods.

**Recommendation 8:** Where impacts are permanent, restoration actions should be maintained in perpetuity.

**Restoration actions will commence within three years (Consultation Paper 3 section 2.2.6)**

63. We generally support the regulations prescribing a time period in which restoration actions (of all kinds) must commence. However, we make the following comments:

    - Three years is too long, given that impacts from an action can commence once a restoration contribution is paid. Three years is a significant time lag between an impact occurring and a restoration action commencing. We suggest that it be reduced (e.g. 2 years for restoration actions, bioregional restoration actions and exempt amount restoration actions to commences and 3 years for alternative restoration actions).
    - It is unclear what happens if the prescribed timeframe is not met. We note that NSW has recently introduced new provisions that provide that if the NSW Biodiversity Conservation Trust (BCT) does not spend money within the relevant acquittal period, the BCT must enter into an agreement with the Minister about how the BCT will meet its obligation in relation to spending the money.[4] This provides some accountability and oversight where the BCT does not meet the set timeframe. The Draft Regulations should provide some form of recourse if the time period prescribed by the Regulations is not met.

**Recommendation 9:** The timeframe for restoration actions to commence should be reduced (e.g. 2 years for restoration actions, bioregional restoration actions and exempt amount restoration actions to commences and 3 years for alternative restoration actions).

64. We note also that it also proposed to across various provisions that a restoration action (of various kinds) must be
    (i) a direct restoration action, or
    (ii) an indirect restoration action identified by a conservation planning document as having high priority for the affected matter.

65. We suggest the wording for indirect restoration actions should mirror that in the National Environmental Standard (Environmental Offsets) 2026, specifically that it 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.

**Recommendation 10:** Amend various provisions in the draft Regulation to mirror the National Environmental Standard (Environmental Offsets) 2026, by requiring that an action must be a

[4] *Biodiversity Conservation Act 2016* (NSW), section 6.31(6).

direct offset unless a relevant conservation planning document identifies an indirect offset as a higher priority measure for the affected matter.

**Delivery of alternative restoration actions and alternative bioregional restoration actions (Consultation Paper 3 section 2.2.7)**

66. The Consultation Paper states that:

    - "The proposed regulations will prescribe that the Restoration Contributions Holder cannot proceed to an alternative restoration action until a minimum of one year from the receipt of the restoration contribution. This will ensure that there is a reasonable attempt to deliver a general restoration action before deciding that this is not feasible, while also ensuring there are not unnecessary delays on commencing appropriate alternative restoration actions.".

    - "Alternative restoration actions will be required to commence within four years from the receipt of the restoration contribution. This allows for one year to consider the general restoration action and a further three years to deliver the alternative restoration action."

67. Proposed clause 12D.02 implements the requirement that an alternative restoration action will be required to commence within four years from the receipt of the restoration contribution (being one year more than the three years required for general restoration actions). However, it is not clear which, if any, provisions explicitly prevent the Restoration Contributions Holder from proceeding to an alternative restoration action until a minimum of one year from the receipt of the restoration contribution, or to compel the Restoration Contributions Holder to undertake reasonable efforts to secure a general restoration action in that first year.

68. The Consultation Paper also states that proposed regulations will also create a provision for the Restoration Contributions Holder to deliver alternative bioregional restoration actions where the successful delivery of a bioregional restoration action, as outlined in the plan, is not feasible or would not provide the best environmental outcome. However, it does not describe clearly what parameters will be put on the use of alternative bioregional restoration actions, and whether they will be similar to what is required for alternative restoration actions under the Act. Notably, in terms of timing for commencement, the draft Regulations does not specify four years for alternative bioregional restoration actions, but simply says as soon as is practicable. It is unclear what would be considered to be 'as soon as is practicable' or what would happen if this was not done. Finally, again, there is nothing that specifically prevents the Restoration Contributions Holder from moving directly to alternative bioregional restoration actions or compelling the Restoration Contributions Holder to undertake reasonable efforts to secure a general bioregional restoration action in the first year.

**Recommendation 11:** The draft Regulations must explicitly prevent the Restoration Contributions Holder from proceeding to an alternative restoration action in the first year from the receipt of the restoration contribution, and require the Restoration Contributions

Holder to undertake reasonable efforts to secure a general restoration action in that first year. Similar provisions must be included in relation to alternative bioregional restoration actions.

**Recommendation 12:** Prescribe some form of recourse if the time period prescribed by the Regulations to deliver a general restoration action, alternative restoration, bioregional restoration action or alternative bioregional restoration action is not met.

**Specific requirements for bioregional restoration actions (Consultation Paper 3 section 2.2.8)**

69. As outlined in the Consultation Paper, it is proposed that regulations for bioregional restoration actions mirror requirements in the legislation and proposed regulations for general and alternative restoration actions.

70. EDO has previously raised concerns that alternative restoration actions have the potential to undermine the framework because they deviate from stricter best practice offsetting. Those concerns remain in the context of alternative bioregional restoration actions.

**Management plans (2.3.1)**

71. Section 2.3.1 of the Consultation Paper outlines various provisions that will be include in the Regulations relating to management plans. In response we provide the following feedback:

- We generally support the proposal to include the following requirements in the Regulations in relation to general and alternative restoration actions:
    - requirements that if a third party has been engaged to deliver the restoration action, the management plan include information about the third party, and, where an activity on the schedule will be completed by a third party, this is noted in the schedule;
    - requirements that the criteria for when the result of the restoration action becomes durable will be provided in the management plan;
    - requirements that the management plan must be completed upon commencement of the delivery of the restoration action.
- We generally support the proposal to include provisions in the Regulations requiring the Restoration Contributions Holder to develop a management plan for bioregional restoration actions.
- We generally support the proposal to include provisions in the Regulations requiring the Restoration Contributions Holder to develop a management plan for exemption amount restoration actions.

**Register (2.3.2)**

72. Regulations are proposed to plug gaps where the EPBC Act does not currently require information to be included in Registers established under the Act. This includes in relation to

alternative bioregional restoration actions which are established by the Regulations and details of exemption amount restoration actions. We generally **support** these requirements.

73. As noted above, the Register must include information for tracking when actions are carried out in advance, and then used for subsequent liabilities.

**Annual Reporting (2.3.2)**

74. Proposed regulations set out additional requirements for annual reporting relevant to bioregional planning and exemption amount restoration actions. We generally **support** these provisions.

**Advanced restoration actions (Consultation Paper 3, section 3)**

75. Section 170CAA of the EPBC Act provides that the Regulations may make provision for and in relation to advanced restoration actions. It is proposed to implement the framework for advanced restoration actions via Part 6C of the Draft Regulations.

76. We generally support the decision to legislate the framework for advanced restoration actions. This should ensure greater integrity and transparency around the use of advanced offsets. In particular we **support** provisions that require a register of advanced restoration actions to be established and maintained, for management plans to be developed for each advanced restoration action, and monitoring and reporting requirements.

77. We provide the following feedback on the Part 6C of the Draft Regulations, and recommendations for strengthening the framework.

***Meeting the Environmental Offsets Standard***

78. The Consultation Paper states that "(t)o help provide early clarity on whether an advanced restoration action would meet the Environmental Offsetting Standard at time of assessment, the registered person or entity will need to meet relevant components of the Standard at time of registration". There does not appear to be anything in the Regulation that explicitly requires this, although clause 6C.04(2)(d) does require that an application includes the information referred to in subclauses 6C.06(3) and (4), including information about how an advanced offset will be securely protected, and how it will be feasible and tangible and deliver an expected improvement.

79. Similarly, there is nothing in proposed clause 6C.05 that explicitly requires the Minister to consider whether an advanced restoration action application meets relevant components of the Environmental Offsetting Standard, although they are required to be satisfied that an advanced restoration action is likely to result in an expected improvement considering the information in 6C.04(2)(d).

80. Finally, the Consultation Paper states that the regulations will prescribe the requirements of the registration of advanced restoration actions, including whether the application is consistent with relevant components of the National Environmental Standards. Again, this is not explicit in the regulations although we note subclauses 6C.06 (3) and (4) outline the

information required in the description of an advanced offset on the Register, including for example, how an advanced offset will be securely protected, and how it will be feasible and tangible and deliver an expected improvement.

81. Given that an advanced restoration offsets will be required to meet the requirements of the Environmental Offsets Standard at the approval stage, it would be useful to more explicitly set out the specific components of the Environmental Offsets Standard that are required to be considered by an advanced restoration action, with specific reference to the Standard, including in the Minister's consideration of the application and in the Register.

**Recommendation 13:** More explicitly set out the specific components of the Environmental Offsets Standard that are required to be considered by an advanced restoration action, with specific reference to the Standard, including in the Minister's consideration of the application and in the Register.

***Updating the Register***

82. The proposed regulations require the Minister to update the Register within 20 business days. We suggest this time should be reduced - it is important that the Register is kept up-to-date, as decisions are likely to be being made based on information included in the Register. For example, the regulations prevent advanced restoration actions to be used to satisfy a condition where it has already been used for such a purpose or where it has been suspended or revoked. If the Register is not updated quickly, there is a risk that decisions will be made on out-of-date information. We suggest the time be set at 5 business days.

**Recommendation 14:** Amend clause 6C.07 to require the Minister to update the entry for a registered advanced restoration action within 5 business days.

***Varying, revoking or suspending an advanced restoration action***

83. The regulations allow the Minister to vary, restore or suspend an advanced restoration action, in prescribed circumstances. Other than the requirements in clause 6C.09(4), which require the Minister to be satisfied that the advanced restoration action would still be feasible, and likely to result in the expected improvement, before varying the agreement, there does not appear to be anything restricting the Minister from varying, revoking or suspending an advanced restoration action after it has been attached to a condition of consent for an approval under the Act.

84. Where an advanced restoration action is used to satisfy a condition attached to an approval under the Act, then there should be limits on varying, revoking or suspending the advanced restoration action.

**Recommendation 15:** Limit the ability for the Minister to vary, revoke or suspend an advanced restoration action once it has been used to satisfy a condition attached to an approval under the Act.

## Other opportunities to strengthen the framework via the regulations

### Passing the net gain test

85. There is currently no proposal to prescribe net gain for a matter for the purpose of section 527K(1)(b)(i) of the EPBC Act. Without anything prescribed under 527K(1)(b)(i), the determination of net gain is essentially at the discretion of the Minister under 527K(1)(b)(ii).

86. EDO has previously raised concerns with this approach, and recommended that 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.[5]

**Recommendation 16:** 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.*

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

[5] EDO, 'Submission on the Exposure draft of the National Environmental Standard for Environmental Offsets', June 2026, https://www.edo.org.au/wp-content/uploads/2026/06/260609-EDO-Submission-Exposure-Draft-Environmental-Offsets-Standard-and-Appendix-A.pdf