



**Biodiversity
Council**

Submission to the National Environmental Standard for Environmental Offsets

3 June 2026

About The Biodiversity Council

The Biodiversity Council brings together leading experts including Indigenous knowledge holders to promote evidence-based solutions to Australia's biodiversity crisis. The Council was founded by 11 universities with the support of Australian philanthropists.



Introduction

The Biodiversity Council welcomes the opportunity to provide feedback on the [draft National Environmental Standard for Environmental Offsets](#) (Offset Standard).

Our understanding

The consultation includes a policy paper and legislative instrument. The legislative instrument formalises the standard as law under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The policy paper explains how the standard is intended to work.

The development of National Environmental Standards formed the centrepiece of the Samuel Review recommendations. The Review concluded that the Act focussed too heavily on process and that standards which set clear outcomes and requirements provide benefits to the community, businesses and government.

The Review noted that precise, quantitative standards for MNES will “provide for effective environmental protection and biodiversity conservation and ensure that development is sustainable in the long-term.”

This is the second round of public consultation on the MNES Standard. The first round of consultation ran from November 2025 to January 2026.

Overview of our findings

Critical weaknesses in the November 2025 version of the offsets standard remain in current drafting. We outlined those critical weaknesses in [our response to the 2025 version](#). In summary, they include:

- Any offsets delivered by the Restoration Contributions Holder (which will likely be the vast majority) are not bound by the same principles, outcome or objective in the Standard and can deliver offsets that are not ‘Like-for-Like’.
- The standard does not define the required outcome for an offset and net gain remains undefined.

Additional areas of concern emerge in reviewing the current version of the offsets standard, including:

- Substituting process for outcomes - A new Clause 7 enables the objectives and outcomes of the Standard to be ignored if the high-level, process-based principles are met. This mirrors the changes to the MNES Standard and represents a grave retrogression from earlier commitments by this government to develop

“outcomes-based standards” in line with the recommendations of the Samuel Review.

- The security principle has been weakened.
- The feasibility principle has been weakened.

Overall, we find that the current version of the standard suffers from most of the weaknesses we identified in earlier drafts, and some new weaknesses that further undermine the value of the standard for achieving the objectives of the Act and the EPBC reform process. This is very disappointing and will likely lead to ongoing biodiversity loss at the current or an accelerated rate.

We make recommendations to improve the Standard in the following areas:

- constraints on the Restoration Contributions Holder and restoration contributions payments
- improving the objective, including clarifying net gain
- securing offsets in perpetuity
- tightening feasibility considerations.

Detailed analysis and recommendations

The Biodiversity Council has analysed the current wording of the standard to identify shortcomings and to make recommendations to improve it. As a closing note we have provided commentary on the process of consultation about standards.

This analysis and commentary is provided below.

1. Restoration Contributions Holder is not bound by the offset rules in the Standard and can deliver offsets that are not ‘Like-for-Like’

Under the amended *Environment Protection and Biodiversity Conservation Act 1999*, instead of sourcing an offset themselves, proponents can now make a restoration contribution payment to the Holder who then has the responsibility of finding an offset.

The option to make a payment instead of securing offsets fundamentally undermines the operation of the Standard, unless the Standard applied to offsets delivered under either pathway. Proponents now have the option of making a restoration contribution payment to the newly-established Restorations Contribution Holder, in-lieu of delivering or sourcing a compliant offset themselves. This option is intended to “simplify and streamline processes, reduce uncertainty and delays and provide strategic offset actions for greater restoration outcomes”.¹ If delivering or sourcing an offset themselves, a proponent would be expected

¹ See DCCEEW website:

<https://www.dcceew.gov.au/environment/epbc/epbc-act-reform/stronger-environmental-protection-restoration>

to meet all the principles. However, the policy paper outlines that the Holder has flexibility in applying six of the eight principles—those relating to Like-for-Like, feasibility, direct and tangible, relevant area and timeframe for delivery. The Holder does this by funding an ‘alternative restoration action’.

It is highly likely that proponents will choose to pay the Holder rather than source their own offsets because it discharges their obligations more quickly. The Holder may also be able to source offsets at a lower cost than proponents because of flexibility in applying offsetting principles. This is consistent with other payment-in-lieu of offset schemes. For instance, the NSW Independent Pricing and Regulatory Tribunal has found that most (~80%) of development proponents are choosing to satisfy their offset obligations by paying into the NSW Biodiversity Conservation Fund rather than purchasing credits in the market.²

In Queensland, for State offsets, the figure is greater than 95%. Alternative restoration actions are likely to be most attractive to proponents and deliver the most benefit in reducing approval times, for those species and communities where it is hardest to find a compliant offset. However, these are likely to be those species and communities that are fewest in number, highly localised in their distribution, and/or most difficult to recover. In other words, the species and communities that are the most imperilled and hardest to address impacts on are the ones for which this pathway will be most used. As such, the Holder is also likely to find it difficult to provide Like-for-Like offsets for these species and communities, so is more likely to fund an alternative restoration action even if it will not compensate for residual impacts on the affected matter. If the department continues to approve projects impacting these species and communities even if no like-for-like offsets are available, these species will be put at increasing risk of extinction.

Recommendation 1: The Biodiversity Council recommends that the Holder should be bound by the standard the same as any other delivery pathway. Then, if it turns out they take a payment that they find is inadequate to deliver on the requirements, no further payment pathway routes can be used for that matter until the reason for the problem is resolved (if it can be).

Recommendation 2: The Biodiversity Council recommends that the approver has to be convinced that an offset is possible before they approve a payment to the Holder.

² IPART (2024) Biodiversity Credits Market Monitoring Annual Report 2023-24
https://www.ipart.nsw.gov.au/documents/annual-report/annual-report-2023-24-biodiversity-credits-market-monitoring-december-2024?timeline_id=15688

2. The standard does not define the required outcome for an offset.

The overarching objective in the draft Standard (which sits above the Outcomes³) is:

“5 Objective

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.”

There have been minor changes to this objective from the original November 2025 draft Standard, most notably ‘the required net gain’ replaces ‘a net gain’. This is a slight change but does not address the fundamental problem outlined in our original submission that the term ‘net gain’ is not adequately defined.

The draft Standard defines ‘required net gain’ as “the net gain for the protected matter within the meaning of section 527K of the Act.” However, [527K](#) is “Passing the net gain test in relation to residual significant impact” which doesn’t relate to an outcome in the ‘real world’ but rather satisfying conditions of the approval. Section 527K(1)(b)(i) suggests that the regulations may prescribe net gain for a matter, but if they do not then the Minister must simply be satisfied. At this stage, the government has not included a definition in the draft regulations. Instead, the policy paper notes 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.”

Why does this matter?

When actions have a residual significant impact on a Matter of National Environmental Significance, then this impact must be offset. Each offset must fully compensate for each impact on a protected matter. This means an offset gain must be equivalent to the loss: the same type, at least the same adequate size, and at least the same duration.

Equivalence is not measured in terms of hectare by hectare trades, but by the change in outcomes for the impacted protected matter. Activities at the offset site must also generate improvements (‘gains’) that are additional to any existing or planned conservation activities or regulatory requirements (i.e. they meet the Additionality criterion) and the size of this improvement gain must be sufficient to compensate for the loss at the impact site. To determine whether a proposed offset will fully compensate for an impact requires the following steps to be taken:

³ The 6 Outcomes provision begins with “The following outcomes of this standard are intended to promote the objective in section 5”.

1. Quantifying the residual significant impact from the time the project is being assessed to calculate the residual impact (the amount of 'loss' required to be offset).
2. Quantifying the amount of improvement ('gain') delivered from each activity proposed as part of the offset by comparing the outcome for the impacted protected matter prior to the offset actions, with that expected to occur from the offset actions, excluding any that would occur regardless.
3. Adjusting that gain to account for uncertainty and time lags.
4. Determining if the total gains from the proposed offset meet or exceed the residual impact (if not, additional offset activities or offset sites are required).

To quantify losses and gains requires clear methodologies and calculators, such as the existing [EPBC Act offsets assessment guide](#). According to the policy paper, it is *anticipated* the offsets and restorations contributions calculator will “determine compensation obligation associated with a residual significant impact, assess the suitability of an offset proposals and calculate Restoration Contributions.” At present there is no net gain calculator or methodology available for examination.

The [policy paper notes](#) that “net gain will be assessed on case-by-case” and the Minister has discretion to determine if “the total proposed compensation, which may be achieved through a combination of offsets and restoration contributions, will result in a meaningful improvement for the protected matter that is greater than the residual significant impacts caused by the proposed action”. However, there is no guidance publicly available on how the Minister will do this.

The high levels of discretion and lack of strong and clearly articulated outcomes in the current draft of the standard means that decision-making is likely to be inconsistent, subjective, and open to bias, reducing certainty for both proponents and for environmental outcomes.

Recommendation 3: The Biodiversity Council recommends that the Objective be redrafted as follows -

This standard will 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: The Biodiversity Council recommends that the legislative instrument includes the definition of net gain and baseline included in the policy paper with the following amendments:

Net gain: the measurable improvement for the affected protected matter relative to an agreed baseline, with reference to greater than the residual significant impacts of an action or a class of actions over an ecologically relevant timeframe.

Baseline: An evidence-based estimate of the likely condition of a protected matter at the point of approval of an action or a class of actions [static baseline from approval date].

Recommendation 5: The Biodiversity Council recommends that the Standard include a provision as follows -

Determining net gain

For the purpose of section 527K(1)(b)(i) of the Act, the net gain 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.*

3. Substituting process for outcomes

The test of consistency with an outcome-based standard must be whether the outcome is achieved, or where the outcome is a future state, whether there is high confidence that the outcome will be achieved. Notwithstanding the lack of clarity over what the desired outcome is, this standard does not require the outcome to be achieved.

The new Clause 7(2) and 7(4) provides that activities will achieve the outcomes and objectives of the Standard if the principles are met. This inappropriately elevates the Principles above the outcomes and objectives of the standard. If a proponent applies the principles in the standard, their project is deemed to meet required outcomes and objectives regardless of real-world consequences.

Recommendation 6: The Biodiversity Council recommends that 7(2) and 7(4) be deleted.

4. The security principle has been weakened

The timeframe for security has been weakened in the draft Standard.

The November 2025 version stated that

“The maintenance period is the time which begins when the outcome intended by an offset activity has been achieved and ends:

*(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*

*(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.” [emphasis added]*

The draft Standard states that:

“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 earlier of: (i) **20 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); or (ii) until the outcome of the offset activity becomes self-sustaining.” [emphasis added]*

This is inconsistent with offset policies around Australia. In Victoria, for an offset site to deliver a gain, it must be secured in perpetuity⁴ and *all* offset site landowners are required to permanently protect their sites with an on-title security agreement.⁵ In NSW, offset gains are required to be maintained in perpetuity.⁶ The logic for both schemes is that as losses to biodiversity are permanent the gains to compensate for those losses must be permanent as well.

For temporary or short-term impacts, the net gain does not have to be maintained beyond 20 years even if the outcome is not self-sustaining. This is highly problematic. It would suggest that the offset has failed. It calls into question whether the impact can truly be considered temporary.

Recommendation 7: *The Biodiversity Council recommends that offsets be secured in perpetuity.*

5. The feasibility principle has been weakened

The feasibility principle has been weakened in two key ways:

- a) evidentiary requirements
- b) removal of the direction that if offsets are infeasible then further avoidance and mitigation should be undertaken.

In the 2025 version of the Standard there was a requirement under 2(b) that there is a high degree of certainty that the offset is reliable. This was demonstrated through:

⁴ Victorian Auditor General’s Officer (2022) Offsetting Native Vegetation Loss on Private Land May 2022. Independent assurance report to Parliament 2021-22:17. p. 16

https://www.audit.vic.gov.au/sites/default/files/2022-11/20220511_Offsetting-Native-Vegetation-Loss-on-Private-Land.pdf

⁵ Ibid. p.19

⁶ Gordon, Al, et al. (2025) Five years of offsetting native vegetation: The challenge of achieving no-net-loss *Ecological Indicators* **179**, 114180 <https://www.sciencedirect.com/science/article/pii/S1470160X25011124>

“(a) 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

(b) independent verification of prior success for an analogous activity; or

(c) independent expert review and endorsement of the proposed offset activity and associated outcomes for the protected matter, as well as comprehensive adaptive management plans.”

The current draft Standard states that:

“(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).”

With the draft Standard defining as a ‘suitably qualified expert’ as “a person who has appropriate professional qualifications, knowledge, training, skills or experience relevant to the subject matter of the offset activity.”

Existing *substantiated* expert knowledge speaks to the substance of evidence.

Evidence from a suitably qualified expert speaks to judgement, likely made by environmental consultants.

Our [Nature Repair Market submission](#) discussed the issues with consultants making judgments about the benefits associated with offset activities. The 2021 submission to the inquiry into the integrity of the NSW biodiversity offsets scheme by the [Ecological Consultants Association of NSW](#) noted that the accreditation of consultants for assessment of offset sites require botanical skills, but “does not recognise the specific knowledge and skills required to adequately assess fauna values and impacts.”

Providing consultants with significant discretion to apply their own judgements is risky. A [2024 report commissioned by the Commonwealth Government](#) to ground truth EPBC Act offset sites found that

“However, erroneous and incomplete information led to discrepancies being common throughout the associated information. In some limited instances, site conditions as assessed were significantly different from those reported in the provided documentation, bringing into question the credibility of the information provided.”

Key challenges identified in the report included “overly optimistic management action targets” and “[Offset Management Plans] that do not have a long enough duration to meet management action targets”.

This isn’t new. A [2014 Senate Inquiry into environmental offsets](#) noted significant concerns with consultants’ conflicts of interest and their subjective judgement. The Environment

Institute of Australia and New Zealand, Australia's peak body for environmental practitioners, noted that offset plans are often developed on "an ad-hoc basis" under "extreme time pressures".

It is important to note that despite the NSW government having an accreditation scheme for consultants, there was still a case of significant corrupt conduct in 2021.⁷

Recommendation 8: *The Biodiversity Council recommends that the Feasibility principle include the following:*

An offset activity will be feasible if there is a high level of confidence that the 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.

Recommendation 9: *The Biodiversity Council recommends that 'evidence from a suitably qualified expert' be removed from the list of appropriate evidence.*

Recommendation 10: *The Biodiversity Council recommends that the factors that should be considered in determining offset feasibility that are included in the ['Demonstrating Feasibility' section of the Policy Paper](#) be included as 'Note' under the principle (i.e. 'suitable areas not being available for protection or restoration', 'a lack of sufficient scientific understanding of the affected protected matter where the consequence of the risk is substantial', 'scarcity of the affected protected matter', 'habitat features (e.g., caves) that cannot be feasibly replicated in an ecologically relevant timeframe', 'values that are location specific and cannot be substituted, such as World Heritage properties or Ramsar wetlands' etc.)*

Our position on the process of consultation about standards

Overall, the consultation process around standards is extremely inefficient, fragmentary and frustrating for stakeholders. It seems likely to result in highly suboptimal standards because it is not possible to scrutinise draft standards without line of sight on other key instruments and processes. The Offsets Standard is one component of the offset system where each part has been developed and consulted on independently. For instance, three issues papers for the Nature Repair Market - which will manage the supply-side of the offset market - were consulted on in May.⁸ The National Environmental Protection Agency - which will be responsible for setting approval conditions for offsets and determining if offset requirements are met - is due to commence 1 July 2026. The Restoration Contributions Holder - which may

⁷ See:

<https://www.theguardian.com/environment/2021/apr/28/deeply-concerning-government-consultant-made-millions-from-nsw-environmental-offsets> & https://www.nature.org.au/government_must_refer_biodiversity_offsets_scandal_to_icac_and_review_the_w_hole_system

⁸ See our submission [here](#).

take offsets payments - is yet to be established. Key technical pieces are not yet available including the offsets and restorations calculator - which will help determine the quantum of offset required - and the Threatened Species Characteristic calculator tool - which will help determine the benefits provided by offset activities - have not been released for public consultation. The process is rushed and there are likely to be significant gaps or oversights. The definition of required net gain is also not provided and will sit in a separate regulation.

This problem is exacerbated by the fact that the Standard will guide decisions about offsets at different scales. For instance, the Standard will be the benchmark for assessing the adequacy of bilateral agreements that delegate decisions from the Federal Minister to the States are adequate (State scale), bioregional plans and strategic assessments (landscape scale) and will be used for individual approvals (project scale). This requires careful consideration of how the principles will be applied (or misapplied) to different types of decisions in a variety of contexts.