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SUBMISSION

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

The World Wide Fund for Nature-Australia (WWF-Australia) welcomes the opportunity to provide comment on the Draft National Environmental Standard (Environmental Offsets) 2025 legislative instrument and Policy Paper.

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to 'stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature'. WWF-Australia has offices around Australia and is backed by our 1.2 million supporters.

In this submission we recommend specific wording changes to improve the Australian Government's draft National Environmental Standard (Environmental Offsets) 2025 legislative instrument (the Draft Offsets Standard) as well as more general recommendations to improve the policy paper.

Context

Nature is essential to our well-being and survival. It provides the air we breathe, the water we drink and the food we eat. Nearly half of our \$900 billion GDP depends on nature,¹ so a healthy natural environment is critical to our prosperity as a nation. But nature is being destroyed. The 2021 State of the Environment report sets out in detail this picture of accelerating species extinctions and failing environmental protections with most biodiversity indicators declining.²

Released in 2021 the Independent Review of Australia's federal environment law the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) led by Professor Graeme Samuel (Samuel Review) found that 'Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. The EPBC Act is ineffective. It does not enable the Commonwealth to effectively protect environmental matters that are important for the nation.'³

The topline message of the Samuel Review was that National Environmental Standards would enable the Commonwealth to rebuild trust and 'step up its efforts to deliver nationally important outcomes for the environment by setting clear outcomes through new, legally enforceable Standards ... [and] taking an adaptive approach, through better planning, measuring the effectiveness of implementation and adjusting where needed to achieve outcomes'.³

In late 2025 the Australian Government passed amendments to the EPBC Act which included the power for the Minister to make National Environmental Standards and apply them to certain decision-making under the Act. WWF and other groups have long advocated for National Environmental Standards to improve decision-making and welcomed these reforms, particularly the inclusion of a non-regression clause in the standards making framework. We have also encouraged the government to release drafts of the Standards, alongside reforms so they could be made into legally enforceable instruments early in 2026. We therefore appreciate that two of the draft Standards were available prior to the legislative reform bills being passed, and that the Minister for the Environment has committed to consulting on a First Nations Engagement standard early in 2026.

Overarching Comments

Offset principles supported

The principles in the Offsets Standard are generally sound, best practice and include Samuel's advice regarding ecological feasibility. With some amendments (detailed below) the Offsets Standard principles will likely lead to a significant improvement in the quality of offsets compared to current practice.

We have included an additional principle that will strengthen the framework. Offsets must enhance community-led regenerative stewardship, not only deliver ecological outcomes. Projects delivered in isolation from communities best placed to steward long-term outcomes often lead to failure. Proponents and the Holder should be encouraged to look for opportunities to build local regenerative economies, create land-based employment, and leverage community-led conservation models to increase the likelihood of better ecological outcomes and regional prosperity.

The offset scheme can and should be built to complement Australian Government policy and initiatives to regenerate nature, address climate impacts, strengthen local custodianship and regenerative livelihoods.

Restoration Contributions risk promoting extinction and undermining the integrity of reforms

The Offsets Standard approach currently introduces a regression from current policy primarily because the principles do not apply to the Restoration Contribution Holder. The option to pay a restoration contribution charge in lieu of delivering an actual offset would undermine many of the key principles in the Standard and lead to poor, potentially perverse outcomes for nature. It is a very real risk to the integrity of not only the proposed Offsets approach but to the entirety of the Australian Government's EPBC reform agenda. The offsets framework has insufficient guardrails to rule out 'out-of-kind trading'. It is too flexible and high risk. We should learn from the New South Wales and Queensland use of offset funds, both of which have failed. In Queensland most developers opted to pay into a fund — yet very little of these offsets have been delivered. An independent review of the New South Wales offset payment scheme recommended it be phased out⁴.

The ability to pay money into a fund is not offsetting; it is essentially 'payment for destruction'. Increasing 'ecological flexibility' in offset trading rules is likely to undermine biodiversity impact avoidance:

Out-of-kind trading often increases the pool of potentially eligible offsets with limited conservation justification. This interferes with vital information regarding the scarcity of the impacted biodiversity feature, thereby disincentivising impact avoidance. When a biodiversity feature under threat of development is scarce, expensive offsets are an essential feature of the economics of offsetting which communicate that scarcity, not a problem to be regulated away.⁵

To avoid perverse outcomes for matters of national environmental significance (MNES) the Restoration Contributions Holder must spend restoration contribution charges consistent with the Standard.

The Standard itself must make it clear that restoration contributions must meet all principles in the Standard and result in measurable ecological outcomes that truly compensate for the approved impact.

The Standard must be legally enforceable

The Standard must avoid unqualified and discretionary language. The word 'should' needs to be replaced with 'must' or 'will' throughout (pages 2,3,4,5).

Assurance detail should be in the Standard

The policy paper acknowledges that:

In many cases offsets are not secured or not delivered properly... Monitoring, compliance, and enforcement of offset conditions are weak. There is no transparency around the location, quality or quantity of approved offset.

Yet neither the policy paper nor the legislative instrument detail how these issues will be addressed with any certainty.

The reason that the Samuel Review strongly recommended replacing the EPBC Act's 2012 Offsets Policy with 'binding laws' is that the policy (and the commitment to maintain a register) was not implemented.

To ensure implementation, details must be included in the Standard, not further policy or guidance. The Standard should detail how it's performance will be assured through an effective monitoring, evaluation and reporting of outcomes for all affected MNES to provide regulatory assurance. The Standard should also detail what will happen if the outcomes are not being met.

Trading functioning habitat for the promise of future habitats is a high-risk venture. Considering the significant issues with the use of offsets to date, we recommend the introduction of an offset bond scheme, at least for higher risk offsets to ensure that offsets are delivered in a timely manner and that in the event of a default, the government has the necessary resources to deliver the offset.

Comments on the Legislative Instrument

Text amendments required to improve the Draft Offsets Standard are provided below. Recommended additions are in [bracketed text] and text to be removed ~~struck through~~.

Definitions

measurable improvement means a tangible and quantifiable increase in [the population size of a species or] condition of [an area based] affected protected matter relevant to a current [fixed and measured] baseline.

offset means measures to compensate to a gain for residual ~~significant~~ impacts to protected matters [within an ecologically relevant timeframe].

Objects

The use of the term 'residual significant impacts' as proposed risks misinterpretation and introducing a second test of significant impact, one that applies after avoidance and mitigation measures have been identified. Where a project has been identified as having a significant impact on an MNES, any permitted impact on that MNES must be compensated for. Replace with the term 'residual impacts'.

It is also important to specify that the object is not only to provide a framework but to do so in order to deliver net gain for each MNES. Recommended edited text for the Object to read:

~~The object of this Standard is to provide a framework in which~~ offsets (where permitted) adequately compensate for residual impacts to deliver a[n absolute net gain for each affected protected matter].

Outcomes

The outcomes must be that offsets result in compensation, not that they are available. The language should be more directive and precise:

The outcomes ~~which this standard is intended to achieve~~ are that [for each affected matter]:

(a) ~~offsets are relevant and available to~~ compensate for the impact to the protected matter and support recovery or conservation;

(b) offsets result in a measurable improvement [within an ecologically relevant timeframe] from the baseline at the time the relevant decision is made under the Act for protected matters; and

(c) offsets [result in an absolute net gain for each affected matter and thereby] provide certainty that protected matters will be protected and enhanced.

Principles

To facilitate the realisation of the above outcomes the following amendments are needed to clarify that the principle must be applied and deliver on policy intent:

Principle 1—Feasibility

(1) An offset activity ~~should be~~ [is] capable of being commenced at the time the relevant decision is made under the Act.

(2) The delivery of offsets activities ~~should~~ [must] be:

(a) feasible; and

(b) based on appropriate and suitable data and information which shows, with a high degree of certainty, that the offset activity will [deliver the specified outcome and] ~~likely~~ contribute to the recovery or conservation of the affected protected matter [and;

(c) is not inconsistent with a conservation planning instrument].

(3) A high degree of certainty should be demonstrated through:

(a) existing substantiated expert knowledge* ~~or~~ [based on] 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) [in the case that neither (a) nor (b) is available and as long as it does not contradict (a), independent expert review and endorsement of the proposed offset activity and associated outcomes for the protected matter [by a recognised expert in that particular field or taxa], as well as comprehensive adaptive management plans.

*Further information is required on who experts will be, how they will be appointed, their minimum expertise requirements, and how their independence will be ensured.

Principle 2—Security

The offset must be legally protected - 'practical or administrative' protection is not sufficiently secure and risks the integrity of the offset being maintained. Offset proposals must be able to demonstrate that they will continue to provide ecological value under future climate change scenarios:

- (1) Offset activities ~~should~~ [must] be securely protected.
- (2) An offset activity is securely protected where there are, or will be, suitable [legal] mechanisms in place to ensure that the offset activity will be delivered and, ~~if relevant,~~ maintained for the duration of the impact. [To be clear, if the impact includes permanent destruction of habitat the offset must be in perpetuity].
- [(3) Offset plans must describe the contingencies that will be employed if measurable improvements are not detected within certain timeframes as described in Principle 4.
- (4) Offset plans must provide a high degree of certainty that the offset will continue to provide an absolute net gain under future climate change scenarios.]

Principle 3—Direct and tangible

'Must' to replace 'should' throughout.

We do not support the inclusion of indirect offsets in the definition of 'direct and tangible'. This sends highly mixed messages to the regulated community, the Australian Public and decision makers. Whilst we appreciate the need to undertake research this should be by exception, never more than 10% of the total offset requirement, and only where a conservation planning document identifies this as the highest priority. Where a direct and tangible offset is not possible then the impact cannot be allowed to go ahead. Research and other indirect activities should be funded through another mechanism.

Principle 4—Measurable improvements

WWF-Australia supports the use of a fixed and measured baseline to determine net gain. The Standard should be clear however that it means absolute net gain rather than relative net gain. That is, that there is an increase in the total number of individuals or hectares of habitat, compared to when the decision is made, within an ecologically relevant timeframe. The timeframe for measuring progress on the delivery of net gain should be embedded in the Standard. Discussion of the 'absence of action' invites confusion and infers that 'net gain' would be relative to a declining (variable) baseline – that is an estimate of what the population is inferred to be at some time in the future.

- (1) Offset activities ~~should~~ [must] deliver a measurable improvement [in the population size of threatened species or] to the condition of [an area based] affected protected matter relative to the baseline for the affected protected matter.
- (2) The baseline for an affected protected matter is an evidence-based estimate of the likely [population size and/or] condition of a protected matter at the time the relevant decision is made under the Act. ~~and in the absence of the action or offset activity being undertaken.~~
- [(3) Offsets must deliver net gain over the baseline population size and/ or condition within an ecologically relevant timeframe.

(4) Offset management plans must specify the indicators and timeline that will be used to measure progress in delivering net gain].

Principle 5—Additionality

'Must' to replace 'should' throughout.

Principle 6—Like-for-like

'Must' to replace 'should' throughout. Wording should make it clear that both like for like offsets are required and that areas identified as a high priority for restoration under conservation planning documents should be targeted. Indirect action (i.e. research project or public education) should make up a maximum of 10% of offsets (as per existing policy), and only where this is identified as a higher priority for the protected matter in conservation planning instruments.

(2) An offset activity ~~should~~ [can] only deviate from the like-for-like requirement [in exceptional circumstances] where a conservation planning document, ~~bioregional guidance plan, or bioregional plan~~ identifies a higher conservation priority for the affected protected matter. [Indirect offset activities can not exceed 10%].

Principle 7—Relevant area

We strongly support the Government's inclusion of the concept of ecological relevance in this principle.

(1) Offset activities ~~should~~ [must] be delivered in an area that is ecologically relevant to the affected protected matter and in a way which enhances the effectiveness of conservation and recovery efforts for the affected protected matter.

(2) An offset activity will be delivered in an area that is ecologically relevant to the affected protected matter where the offset activity is delivered within the same bioregion as the impact, or, where this is not ~~reasonably practicable~~ [possible], within an alternative, ecologically similar, bioregion that is as close to the site of the affected protected matter as possible, that will result in the same or better outcome for the protected matter as if the offset activity was delivered in the same bioregion as the impact.

[(3) Offsets must be located close enough to the impacted site to ensure local population structure and viability is not compromised as a result of the impact.]

Principle 8—Offset commenced prior to impact

'Must' to replace 'should' throughout

It is particularly important that this principle applies to Restoration Contributions Holder to ensure that contributions are 'locked in' and appropriate offset activities commence prior to impacts occurring.

Principle 9 — Community-inclusive restoration

An additional principle should be added to the Standard to read:

- 1) Where relevant offset activities must be governed and implemented in ways that respect self-determination, and ensure Free, Prior and Informed Consent,
- (2) Offset activities must enable equitable benefit-sharing and incorporate Traditional Ecological Knowledge wherever possible.
- (3) Offset activities should strengthen community-led regenerative conservation outcomes.

Monitoring, reporting and evaluation

A framework for measuring and publicly reporting against the outcomes in the Standard needs to be developed. It should include the ability to evaluate if the Standard is solving the problem it was designed to address. The Standard should articulate how reporting will occur, and who has responsibility for reporting. All detail regarding the monitoring, reporting and evaluation of the Standard should be included in the Standard itself.

Comments on the Policy Paper

All references to ministerial satisfaction should be removed as it acts as a subjective and unconstrained legal test where the Minister (or their delegate) must only be personally satisfied that criteria have been met. This invites uncertainty. Replace with language that bases the test in facts.

For brevity we address issues not covered in our comments on the legislative instrument (see comments made above).

Proposed application of the Offsets Standard (page 3)

We note that Minister must make decisions consistent with the Standard.

We strongly support the Standard applying to the Minister's decision whether or not to approve an action under Part 9 of the Act.

For landscape-scale approaches, the decision-maker must ensure the Standard will be met, it is not enough to 'have regard to whether the approval to undertake the class of actions, or the making of a guidance bioregional plan or a bioregional plan, is not inconsistent with the Standard'.

For accreditation of state and territory processes the Minister must ensure that approval decisions made under the accredited process would result in the outcomes in the Offsets Standard.

We support the Regulations prescribing impacts to protected matters that cannot be offset and the ability of the Minister to make declarations as to what cannot be offset via a restoration contribution payment. The Standard should make specific reference to this circumstance, including reference to protection statements as a mechanism to identify these situations. We recommend that an initial batch of protection statements and declarations identifying entities that cannot be offset (including via a restoration contribution payment) are published when the final Offsets Standard is released.

Objectives of the Offsets Standard (page 7)

Amend definitions to read:

[Absolute] net gain: the measurable improvement for the affected protected matter relative to an agreed baseline.

Baseline: An evidence-based estimate of the likely condition of a protected matter ~~in the absence of the action or offset being proposed.~~

As discussed above clarity is needed regarding the definitions of 'net gain'. If net gain is defined as the delta from a declining and variable baseline (and inferred future population size or condition) this will continue the declining health of protected matters. Only absolute net gain results in actual compensation and only if it is applied to all residual impacts on the MNES arising from the activity.

Outcomes of the Standard (page 8)

WWF-Australia strongly supports the use of a fixed and measured baseline to determine absolute net gain.

Principles to be applied through the Offset Standard (page 9)

We strongly support these principles and their integration throughout the Standard and Act. We provide amendments (above to the legislative instrument and below for the policy paper where these are not already covered above) to improve the likelihood that the principles will achieve the policy intent of the Standard. The Restoration Contribution Holder must adhere to the principles when delivering offsets resourced by restoration contributions.

Principle 4: Measurable improvements - Offsets deliver a measurable improvement for the affected protected matter relative to an agreed baseline

References to future scenarios conflicts with the definition of net gain via a fixed baseline. Net gain against a shifting baseline is relative and will lock in decline of species and ecosystems. Absolute net gain using a fixed baseline is required to achieve the outcomes for our international biodiversity protection obligations. Text can be amended to read: 'Offset activities deliver a[n absolute] net gain for the affected protected matter ~~relative to a baseline that reflects what would have happened in the absence of the proposed offset activity~~'.

The Australian Government must ensure that **absolute** net gain is delivered against a fixed and measured baseline for each affected matter to truly compensate for impacts on nationally protected matters.

Principle 6: Like-for-like – Offsets provide for a like-for-like outcome for the affected protected matter to compensate for residual significant impacts

WWF-Australia strongly supports and welcomes the clarity provided ruling out 'out of kind' trading: 'In no instances will trading offsets across different protected matters be considered as a suitable offset'.

Attachment A: Legislative setting for Offsets

We note that the text should now read 'Approval only if consistent with the Offset Standard'.

WWF-Australia strongly supports 'Approval only if no unacceptable impacts' as an essential element of integrity in the regulation of the Act and ensuring offsets are not allowed to permit unacceptable impacts.

Ability to discharge residual offset compensation obligations through offset contribution payments

Contribution payments as currently proposed are not supported due to the significant risks this option poses to effective achievement of the environmental outcomes (see extensive discussion above). The Standard and Regulations must clarify that the requirements for spending offset payments must be consistent with the Standard including its principles.

Ability to make Regulations

Given the criticism by the Samuel Review regarding the unfettered discretion in decision making process, the proposal that, 'in the absence of regulations the Minister retains discretion over what constitutes a net gain' (page 23) risks extending the failure of the Act. It should not be up to the Minister to retain discretion over what constitutes a net gain - this can be determined with reference to clear, enforceable criteria that are scientifically based. The proposition that Regulations could allow exemptions to the net gain test also risks undermining the Standard.

Protection Statements

WWF-Australia maintains that Protection Statements must provide equal or greater protection than recovery plans, threat abatement plans and conservation advices.

Ministerial Rulings

WWF-Australia is concerned that 'ruling on the use of offsets and offset payments when offset measures are known not to be ecologically feasible ensuring funds are directed towards outcomes for protected matters' risks setting precedents based on highly discretionary decisions. The Policy Paper should commit to a process of robust public participation and expert advice before making any such rulings.

Attachment C: Application of Principles to the Restoration Contributions Holder

The Regulation should stipulate that the Holder must meet the requirements set out in the principles. We do not support 'exemptions or variations for the Holder when compared to proponent-delivered offset requirements' except in truly exceptional and constrained circumstances.

How the Standard will apply to the Holder

The discretion to only 'consider' the Standard and restoration contributions without limits or requirements to comply with the core principles of the Offsets Standard fundamentally compromise the whole of the Standard and the Australian Government's work to strengthen environmental protections under the EPBC Act. Safeguards need to be included which limit risks and ensure achievement of the principles and take into account learnings from other jurisdictions where financial contribution offsets have proven to undermine environmental protection. Suggested amendments to the policy text include:

The Restoration Contributions Holder will be required to ~~consider~~ [apply] the Offsets Standard when making decisions around the expenditure of funds. This is to ensure that restoration actions funded by the Restoration Contributions Holder are consistent with the outcomes and principles set out in the Offsets Standard ~~where possible~~.

The Restoration Contributions Holder ~~would not, however,~~ [will] be required to not act inconsistently with the Offsets Standard when making these decisions. [exceptional circumstances] ~~This is consistent with the provisions in the EPBC Act which will specifically allow for the Restoration Contributions Holder to depart from the like-for-like principle~~

[Almost invariably,] where delivering a like-for-like offset is not feasible [then an impact on protected matters will not be approved].

The Standard should clearly communicate that where adequate offsets can not be found or are not feasible then the option of offsetting is not available. WWF-Australia do not support the policy settings required to provide flexibility to the Holder in the application of the Offsets Standard outlined in Table 1 (Pages 27-28). The rationale for National Environment Standards is 'clear rules' for everyone to play by. As Professor Samuel stated in the foreword to his Final Report:

National Environmental Standards are the centrepiece of my recommended reforms. The activities of government should be consistent with the Standards, noting that an elected government should always retain the ability to exercise discretion in individual cases. Such discretion should be a rare exception, demonstrably justified in the public interest, with reasons and environmental implications transparently communicated.

Holding the Holder to a lower standard than the National Environmental Standard is a massive inconsistency and risks undermining the reform agenda.

Conclusion

Given most proponents will likely choose restoration contributions, the Standard will be largely undermined because the Restoration Contribution Holder will not be bound to it. To ensure the credibility and intent of these reforms in providing stronger protections for nature, there is a critical need for this discrepancy to be fixed.

Once that issue is addressed, the draft National Environmental Standard (Environmental Offsets) 2025 legislative instrument (the Draft Offsets Standard), with some minor amendments set out in this submission, will greatly improve the delivery of offsets under the EPBC Act. The substitution of a few words will vastly improve enforceability.

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