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Environment Law Reform Taskforce
Department of Climate Change, Energy, the Environment and Water

To the Taskforce,

**Comment on the exposure draft of the
National Environmental Standard for Environmental Offsets**

Friends of Grasslands (FOG) is a community group dedicated to the conservation of grassy ecosystems in south-eastern Australia - natural temperate grasslands and grassy woodlands. FOG advocates, educates and advises on matters to do with the conservation of these ecosystems, and carries out surveys and on-ground work. FOG is based in Canberra and its members include professional scientists, landowners, land managers and interested members of the public.

The Conservation Council (Council) is the leading environmental advocacy organisation in Canberra and hub for over 40 community groups. Our mission is to protect nature and safeguard ecosystems in the ACT and region. We also support broader initiatives to counter regional and global climate change. The Council is a non-profit, non-government organisation that runs campaigns, promotes and upskills local groups, undertakes research, advocates passionately, and engages and informs our community.

Thank you for the opportunity to comment on the exposure draft of the National Environmental Standard for Environmental Offsets (Offset Standard).

Introduction

FOG recognises that the Offset Standard and its accompanying Policy Paper represent a significant shift in Australia's approach to environmental offsetting, consistent with the *Nature Positive Plan: better for the environment, better for business*.¹ The longstanding emphasis on protecting relatively intact, high-conservation-value habitats under threat, i.e., averted-loss offsets, is being replaced by a model focused on rehabilitating and restoring degraded sites that are like, or have the potential to become like, the habitats of threatened species and ecological communities lost to development.

FOG supports this shift in principle. For FOG's support, however, the Offset Standard must be amended to achieve the following outcomes, explained in more detail under the first two sub-headings in the *Issues* section below:

- To avoid compounding losses through time, offset sites under repair to compensate for permanent impacts must be formally (legally) protected and managed *for the duration of the impact at the impact site, i.e., in perpetuity*.
- All actions and measures taken to 'adequately compensate' for residual significant impacts on protected matters, including the 'more strategic offsets' to be delivered by the Restoration Contributions Holder, must be subject to the Offset Standard.

Before we explain the issues, it is appropriate to note the context. The shift will have immediate benefits for approval holders while protected matters impacted at impact sites must suffice with a promise of future benefits. The shift will alter Australia's environmental offset market *dramatically*. Under the averted loss offset scenario, approval holders must identify, acquire, protect and manage

¹ Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) (2022) *Nature Positive Plan: better for the environment, better for business*, www.dcceew.gov.au/environment/epbc/publications/nature-positive-plan, pp. 3, 21-22

relatively intact high conservation value places for the duration of the residual significant impact at an impact site. This costs. If a like for like high conservation value offset site cannot be found and acquired, that is a powerful market signal, i.e., it should be *expected* the price will go up for damaging intact habitats that are increasingly scarce. By contrast, sadly, places in need of repair are plentiful.

Issues

securing outcomes over time

Our first condition relates to time. To avoid compounding losses through time, offset sites under repair to compensate for permanent impacts must be formally (legally) protected and managed *for the duration of the impact at the impact site, i.e., in perpetuity*.

Starting with management, the notion that an offset site needs management for a short activity period only, sufficient to achieve a net gain state, inappropriately discounts the time dimension. The loss of grassy ecosystems at impact sites is typically permanent. A ‘maintenance period’ won’t work to compensate for grassy ecosystem loss because, intact or otherwise, they need regular, *ongoing* management. Given threats from increasing biomass and invasive species, there is no such thing as a ‘self-sustaining’ grassy ecosystem.

Approved legal mechanisms are already available to legally secure the protection of offset sites from development for the long-term²; as such, the Australian Government has a ready-made list of mechanisms capable of securing offset sites under repair. If necessary, a separate list could be made for this specific purpose, i.e., protecting sites under repair.³ The Offset Standard should insist on the formal protection of sites under repair via mechanisms on an approved mechanisms list listed on a schedule to regulations or rules made under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

scope

Our second condition concerns the scope of the Offset Standard, which is inadequate as currently drafted. In November 2025, the EPBC Act was amended to require that all residual significant impacts on nationally protected matters be compensated to achieve a net gain⁴; given this, an approval will satisfy the net gain test only if compliance with its conditions results in a net gain *for the affected protected matter*.

FOG consider the objective, outcomes and principles of the Offset Standard should therefore apply to *both* ‘offset activities’ delivered by or for approval holders *and* to the outcomes of “more strategic offsets” delivered by the Restoration Contributions Holder following restoration contribution payments⁵. In other words, the Offset Standard should apply to *all* things done and *all* measures taken, including following the payment of restoration contribution charges, to ‘adequately compensate’ with measurable improvement for residual significant impacts on affected protected matters.⁶

The Policy Paper makes the deficiency our point addresses clear, i.e., the Restoration Contributions Holder will not be required to act consistently with the Offset Standard when making decisions around

² Department of Climate Change, Energy, the Environment and Water (online) *Conservation covenanting programs approved by the Environment Minister*, www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs

³ This would be consistent with recommendations 5-6 in: Australian Conservation Foundation (2024) *Set and forget: How offsets under national environmental law drive habitat destruction*, https://canopy.acf.org.au/m/43fc6d973765eb79/original/Offsets_report_single_pages.pdf, p. 29

⁴ Parliament of the Commonwealth of Australia (2025) *Environment Protection Reform Bill 2025: Revised Explanatory Memorandum (Revised EM)*, https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22legislation%2Fems%2Fr7398_ems_cdcd24f7-f04d-43b0-a7de-f532a25d565f%22, p. 3, see also p. 195

⁵ Revised EM n 4, p. 3

⁶ This sentence paraphrases the Offset Standard’s objective (s 5) and definition of ‘offset activity’ (s 4).

the expenditure of funds.⁷ As drafted, it will not be necessary for “more strategic offsets” to be ‘like-for-like’ on secure tenure in a ‘relevant area’ as close to the impact as possible. Given we expect many approval holders will elect to make restoration contribution payments (payments) rather than deliver offset activities themselves⁸, FOG cannot support this standard as is; its scope is too narrow. As drafted, the Offset Standard will be unenforceable for *most* actions taken to restore habitats for the protected matters clearly at risk.

Conceding on the like-for-like and relevant area principles may ensure a capacity to expend payments, avoiding the problems experienced in more than one existing environmental offset scheme based on strategic landscape-scale environmental offsetting approaches (Attachment A).

However, for protected matters, every failure to demonstrate a measurable improvement *for that affected matter* risks a failure to deliver a net gain outcome. If like for like is sacrificed, then wherever this occurs we recommend (and our draft changes suggested in track changes to the Offset Standard below) set a high bar when it comes to the likelihood of achieving an overall strategic net gain.

FOG’s support is conditional on the Offset Standard being re-drafted so net gain claims are underpinned by a high standard of accountability. Anything less and the description of the new regime as a ‘pay to destroy’ scheme will be apt.

lack of overarching architecture

The extent of change between the 2025 and 2026 exposure drafts is evidence of *ad hoc* policy development. The 2026 draft is not a light edit; it is a substantial rewrite.

FOG consider this is so, in large part, because vital elements of the framework are missing. Policy makers are ‘making it up on the run’. For example:

- It remains unclear whether any regulation or policy document will prescribe how a ‘required net gain’ will be determined for any protected matter. In the absence of a prescribed requirement, the minister (and any accredited decision-maker) will be free to condition any required net gain they consider appropriate. If this transpires, there will be no enforceable standard for Principle 4, ‘measurable improvements’.
- The ‘applicable maintenance period’ for calculating Restoration Contributions is yet to be finalised and will be consulted on separately.⁹ As suggested above, FOG considers ‘maintenance periods’ are incompatible with achieving good conservation outcomes. The greater the ‘maintenance period’ (relative to the ‘activity period’), the greater the issue.
- Information about the proposed ‘Protect and Conserve Method’ that *may* be made and *may* securely protect the outcomes of offsets-capable Nature Repair Market projects for a minimum of 100 years, was published just days before the due date for these comments. The design concept paper for the ENV method notes that the “detailed design of the commitment to protection characteristic – including indicators and the scoring system – is being developed in the context of the proposed Protect and Conserve method”¹⁰. There is still no detail, there are no indicators and no scoring system. As noted in other submissions on this topic, FOG accept

⁷ DCCEEW (2026) *Policy Position Paper: National Environmental Standard for Environmental Offsets* (Draft for discussion), p. 33

⁸ This is what has happened in NSW, and in the Pilbara (Attachment A). In NSW, Funds paid by developers to acquit offset obligations accumulated in the Biodiversity Conservation Fund because developers *overwhelmingly* chose to pay into the Fund instead of buying like-for-like credits. This led to a rapid build-up of unmet obligations, with the Biodiversity Conservation Trust receiving payments faster than it could source matching credits in a range of biodiversity types that are scarce and therefore difficult to offset.

⁹ DCCEEW n 7, p. 34

¹⁰ DCCEEW (October 2025) *Nature Repair Market Enhancing Native Vegetation method - proposed design*, <https://consult.dcceew.gov.au/env-methods-nature-repair-market>, p. 49, underline added.

inclusion in the protected area system will likely be set as a minimum; however, to be sure, the gold standard is protection *in perpetuity*, i.e., the mechanisms approved by the Minister for taxation purposes.¹¹

Recommendations

Below these recommendations we suggest changes to the exposure draft, in track changes, to achieve desirable outcomes, enhance clarity and promote consistency; **however**, the changes recommended are only a start because as drafted the Offset Standard relates to and is only intended to apply to ‘offset activities’ delivered by or for approval holders.

As noted in the Introduction, FOG’s support depends on the Offset Standard capturing all actions and measures taken to ‘adequately compensate’ for residual significant impacts on protected matters, including the ‘more strategic offsets’ to be delivered by the Restoration Contributions Holder.

FOG recommend that:

1. **progress on this Offset Standard is paused until overarching architecture is settled.**
At minimum, if Regulations and/or a policy document and/or an offset calculator are to prescribe how the required net gain will be determined, then:
 - a. this should happen
 - b. this exposure draft should be re-drafted and presented again to enable more-informed consultation on an informed draft.
2. the Offset Standard is re-drafted to broaden its scope, sufficient to provide enforceability over “more strategic offsets” to be delivered by the Restoration Contributions Holder. Consistent with track changes suggested on the exposure draft below (where changes recommended to text relate to ‘offset activities’ only), the re-drafted **Offset Standard must apply an equivalent standard to expenditure by the Restoration Contributions Holder:**
 - a. Projects delivered by the Restoration Contributions Holder should be like-for-like and delivered on secure tenure in a relevant area as close to the impact site(s) as possible.
 - b. If for any reason the like for like standard cannot be achieved, for expenditure on a strategic project to be approved by the Restoration Contributions Holder, the project must have (among other matters covered by other principles) a high (> 90 per cent) probability of achieving a measurable improvement for each protected matter damaged by a residual significant impact at an impact site.
 - c. Each such impact is to be accounted for separately on a single (nation-wide) publicly-accessible register.

On the pages to follow, track changes suggested to the exposure draft should be taken as applying to ‘offset activities’ delivered by or for approval holders, only (that is how the Offset Standard is drafted). Summarising the track changes, the key amendments FOG recommend are as follows:

3. Replace ‘**should**’ with ‘**must**’ (two instances). This will enhance compliance and promote consistent practice regardless of the jurisdiction carrying out the decision-making process.
4. Enhanced **accountability**. Edits suggested impose appropriate obligations on decision-makers.
5. Require a **suitably qualified expert** to be **independent**. This is to mitigate the current risk of industry employing their consultants and staff as ‘experts’. **Independent** has been defined as per a recent EPBC Act approval.¹² In addition, expertise is defined as relevant to the protected matter and the principle.

¹¹ See, in order: our submission on an earlier Protect and Conserve Method Discussion Paper, here: www.fog.org.au/Submissions/20251215.htm, recommendation 3; and footnote 2 in this submission.

¹² DCCEEW (15 May 2026) *Notification of approval decision Residential Development, Lot 4 RP45728, New Beith, Queensland (EPBC 2019/8398)*, https://epbcpublicportal.environment.gov.au/_entity/sharepointdocumentlocatio

6. **Definitions are added** for these terms:
 - a. approved mechanisms list;
 - b. compensation;
 - c. independent.
7. The objective is altered to remove reference to the provision of a framework.
The Offset Standard provides a standard.
8. The objective should invoke the newly-defined term, **compensation**. This is because, as drafted, the objective refers to ‘adequate’ compensation; however, that is the only mention in the Offset Standard of the word ‘adequate’, which is confusing.
9. The **outcomes to be achieved** by this Offset Standard **should be clarified**.
10. Sub-sections 7(2) and 7(4) should be removed as they **weaken** the protection of protected matters. These sub-sections provide that activities can satisfy the whole Standard if they meet only the principles in the Standard. This is not appropriate. Any assurance derived from the Offset Standard is undermined by these two sub-sections.
11. Evidentiary requirements should be strengthened:
 - a. The requirement for the decision-maker to have a ‘**high level of certainty**’ in decision-making is introduced into all principles. As drafted, the objective calls for “a high level of certainty that affected protected matters will be protected and enhanced” (sub-section 5(c)); however, throughout the principles, the standard as drafted requires a ‘high level of confidence’. Principle 1 of the 2025 draft said a “high degree of certainty” should be demonstrated that an offset is feasible through: specific, high quality, externally validated evidence pathways; independent expert review and endorsement of comprehensive adaptive management plans. On this principle, there is no justification for retreating from this strong standard. A “high degree of certainty” demands good knowledge and leaves little if any room for error. “Certainty” is objective and evidence driven.
 - b. The requirement that decision-makers to be satisfied “appropriate” evidence supports decisions is vague and needs strengthening. In its place, the evidentiary standard suggested is the demonstration of ‘scientifically valid’ (principles 1-4 and 6) and ‘legally valid’ evidence (principle 2), verified by written judgement or opinion prepared by more than one *independent* suitably qualified expert.
12. In sentences stating compensation “for damage that will or may be caused by impacts to an affected protected matter as a result of an action or class of actions” (or similar), the underlined words are removed. Decisions to require offsets have already been made based on an assessment that an impact will or is likely to occur.

Should any clarification or additional information be needed, please email advocacy@fog.org.au.

Yours sincerely

SIGNED

Jamie Pittock
President, Friends of Grasslands

9 June 2026

SIGNED

Dr Simon Copland
Chief Executive, Conservation Council ACT Region

9 June 2026

Attachment A: Problems with existing environmental offset programs delivering ‘strategic offsets’

Pilbara Environmental Offsets Fund (PEOF)

The Pilbara Environmental Offsets Fund (PEOF) combines money from individual offset payments required under both Part IV of the *Environmental Protection Act 1986* (WA) (EP Act) and contributions required under Part 9 or 10 of the EPBC Act.¹³

The “cost of delivering offsets in the Pilbara is significant”¹⁴; however, the problem is not a lack of money, it is finding land that can be dedicated to conservation. The aim of the PEOF is to expend funds on strategic projects; yet, “by the end of FY24, proponents [had] paid over \$15 million into PEOF, with total expenditure from PEOF expected to be \$3.9 million.”¹⁵ The “main challenge” has been security of tenure, i.e., “no land has been expressly set aside for offset activity.”¹⁶ The PEOF has been unable to expend money when, to compensate for permanent impacts, the PEOF program rules require a mere 20 years of secure tenure before an offset activity will be approved.¹⁷

NSW Biodiversity Conservation Fund (Fund)

As noted in footnote 8, funds paid by developers to acquit offset obligations have accumulated in the Biodiversity Conservation Fund (Fund) because developers *overwhelmingly* chose to pay into the Fund instead of buying like-for-like credits. This led to a rapid build-up of unmet obligations, with the Biodiversity Conservation Trust receiving payments faster than it could source matching credits in a range of biodiversity types that are scarce and therefore difficult to offset.

In 2023, an *Independent Review of the Biodiversity Conservation Act 2016* recommended a ‘review of the like-for-like credit rules to identify if they can be simplified to support effective operation of the market without compromising biodiversity outcomes.’¹⁸ The report noted:

There may be exceptional circumstances where discretion is needed to move away from core principles [such as the ‘like for like’ principle]. In these instances, there must be full transparency and public accountability for decisions. The outcomes of the scheme overall must be more transparent, with tracking and public reporting on the delivery of offset obligations.¹⁹

What followed was not subtle. Far from requiring transparency, the NSW Legislature imposed a time limit on the period the Biodiversity Conservation Trust (BCT) could hold new offset payments paid by developers into the Fund. This will force the BCT to apply variation provisions that side-step like-for-like requirements.

The latest NSW biodiversity market monitoring report explains the changes “are likely to lead to a further increase in the number of obligations being secured that are not on a like-for-like basis.”²⁰

¹³ Western Australia (online) *Program: Pilbara Environmental Offsets Fund*, www.wa.gov.au/service/environment/business-and-community-assistance/program-pilbara-environmental-offsets-fund

¹⁴ Impact Seed (2024) *Evaluation of the Pilbara Environmental Offsets Fund 2024*, www.wa.gov.au/system/files/2024-10/final-evaluation-of-the-peof.pdf, p. 23

¹⁵ Impact Seed n 14, p. 6

¹⁶ Impact Seed n 14, p. 18

¹⁷ Impact Seed n 14, p. 2

¹⁸ Henry, K., Keniry, J., Leishman, M., Mrdak, M (August 2023) *Independent Review of the Biodiversity Conservation Act 2016 – Final Report*, Report to State of NSW and the Department of Planning and Environment. www.parliament.nsw.gov.au/tp/files/186428/Independent%20Review%20of%20the%20Biodiversity%20Conservation%20Act%202016-Final.pdf, recommendation 32, p. 53

¹⁹ Henry et.al. n 18, p. 23

²⁰ Independent Pricing and Regulatory Tribunal (May 2026) *Draft Annual Report 2024-25 - Monitoring the NSW Biodiversity Credits Market - 4 May 2026*, www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Draft-Annual-Report-2024-25-Monitoring-the-NSW-Biodiversity-Credits-Market-4-May-2026.PDF, p. 9

COMMENT ON EXPOSURE DRAFT



EXPOSURE DRAFT

**National Environmental Standard
(Environmental Offsets) 2026**

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

Dated

Murray Watt **DRAFT ONLY—NOT FOR SIGNATURE**
Minister for the Environment and Water

National Environmental Standard (Environmental Offsets) 2026

COMMENT ON EXPOSURE DRAFT

Contents

1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Objective of this standard	3
6 Outcomes.....	3
7 Principles	3
8 Principle 1—Feasibility	4
9 Principle 2—Security.....	5
10 Principle 3—Direct and tangible.....	6
11 Principle 4—Measurable improvements	7
12 Principle 5—Additionality.....	7
13 Principle 6—Like-for-like.....	7
14 Principle 7—Relevant area	8
15 Principle 8—Offset commenced prior to impact.....	8

COMMENT ON EXPOSURE DRAFT

1 Name

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

2 Commencement

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

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

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

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

3 Authority

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

4 Definitions

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

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

COMMENT ON EXPOSURE DRAFT

In this standard:

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

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

approved mechanisms list means a list of legal mechanisms by which an offset site is legally protected.

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

compensation means to deliver the required net gain in a way that protects and conserves or restores the affected protected matter

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

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

independent means a person, or firm, who does not have any individual, financial*, employment* or family affiliation or any conflicting interests with the Action, the approval holder or the approval holder's staff, representatives, or associated persons. [* means 'Other than for the purpose of undertaking the role for which the person, or firm, is required'.]

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

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

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

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

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

Commented [MW1]: The need for this definition arises out of the lack of clarity in the Offset Standard's objective (s 5)

Commented [MW2]: This change (repeated in the definitions of 'indirect offset' and 'like for like outcome') reinforces the need to protect every offset site regardless of whether it is an averted loss or restoration offset site. This is not optional.

Commented [MW3]: This definition is taken from a recent approval, i.e., EPBC 2019/8398

COMMENT ON EXPOSURE DRAFT

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

suitably qualified expert means a person who has ~~appropriate~~ professional qualifications, knowledge, training, skills ~~or and~~ experience relevant to the ~~subject protected matter of and relevant principle~~ the offset activity.

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

5 Objective

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

6 Outcomes

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

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

7 Principles

- (1) For subsection 514YD(4) of the Act, the principles by which the objective and outcomes and objectives in section 5 and section 6 of this standard are to be achieved are the principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard.
- ~~(2) An offset activity intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on an affected protected matter will achieve the objective and outcomes in section 5 and 6 of this standard where that offset activity is consistent with the principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard.~~
- (3) The principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard only apply in relation to an offset activity that is intended to compensate for the damage ~~that will or may be~~ caused by a residual significant impact of an action or class of actions on an affected protected matter where the affected protected

COMMENT ON EXPOSURE DRAFT

matter is a matter protected by a provision of Part 3 that is a controlling provision for the action or an action in the class of actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Principle 1—Feasibility

(1) An offset activity must be feasible.

COMMENT ON EXPOSURE DRAFT

- (2) An offset activity will be feasible if there is a high level of ~~confidence~~certainty that the offset activity:
- (a) will contribute to the recovery or enhancement of the affected protected matter; and
 - (b) will, on its own or in combination with other offset activities or the payment of a restoration contribution charge, result in the required net gain for the affected protected matter; and
 - (c) will achieve the intended outcome in a reasonable and ecologically or culturally relevant timeframe, having regard to the damage to the protected matter from the residual significant impact.
- (3) The required high level of ~~certainty confidence~~ referred to in subsection (2) must be based on ~~appropriate scientifically valid~~ evidence.
- (4) ~~Appropriate~~ For the purpose of subsection 8(3), a decision-maker must be satisfied the ~~scientifically valid evidence includes relevant and specific evidence may include:~~
- (a) ~~evidence~~written judgment or opinion from ~~more than one independent~~ suitably qualified expert; ~~and/or~~
 - (b) existing peer reviewed, ~~currently accepted and published science; or~~
 - (c) ~~other evidence that demonstrates the matters in subsection (2).~~

Note: ~~The decision-maker must be satisfied judgement or opinion contrary to judgement or opinion in subsection 8(4)(a) are not relevant, specific or substantive.~~

9 Principle 2—Security

- (1) An offset activity must be securely protected.
- (2) An offset activity will be securely protected if there is an appropriate protection mechanism in place that provides a high level of ~~certainty confidence~~ that:
- (a) the required net gain will be delivered; and
 - (b) where the offset activity is a direct offset, the offset activity will be:
 - (i) maintained for the ~~applicable maintenance~~ period of the impact at the impact site; and
 - (ii) delivered on an offset site that is encumbered by a legal instrument executed using a legal protection mechanism that is listed on the *approved mechanisms list*.
- Note:* ~~An example of an offset activity that is a direct offset is the protection of land.~~
- (3) For the purposes of subsection 9(2)(b), the ~~required~~ high level of ~~certainty confidence~~ must be based on ~~appropriate scientifically and/or legally valid~~ evidence.
- (4) ~~Appropriate~~ For the purpose of subsection (3), a decision-maker must be satisfied the ~~scientifically and/or legally valid evidence may include relevant and specific:~~
- (a) ~~evidence~~written judgement or opinion from ~~more than one independent~~ suitably qualified expert; ~~and/or~~

COMMENT ON EXPOSURE DRAFT

- ~~(b) existing peer reviewed science or legal opinion; or~~
~~(c) other evidence that demonstrates the matters in subsection 9(2).~~

~~Note: The decision-maker must be satisfied judgement or opinion contrary to judgement or opinion in subsection 9(4)(a) are not relevant, specific or substantive.~~

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

- ~~(a) where the damage to the affected protected matter is short term or temporary — the 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.~~

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

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

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

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

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

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

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

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

- ~~(a) a mechanism that provides legal protections is not available or appropriate; and~~

- ~~(b) there is a low risk that other activities will prevent or compromise the offset activity being delivered or maintained for the applicable maintenance period.~~

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

~~Appropriate evidence 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 9(9).~~

COMMENT ON EXPOSURE DRAFT

- (H5) For offset activities that are indirect offsets—, the decision-maker must be satisfied the appropriate ~~protection mechanism may~~ evidence includes relevant and specific:
- (a) written judgement and opinion from more than one independent suitably qualified expert that the offset activity will indirectly protect, conserve or restore all the relevant protected matters; and
- (b) details about the relate to security of the funding or and the reliability of the expertise of the entity responsible to conduct for the offset activity; and
- (c) evidence that the offset activity is consistent with the priorities for restoration of the relevant protected matters set out in a conservation planning document.
- Note 1: An example of an indirect offset includes research or specialist work that will result in the improved protection and/or management of the affected protected matter.
- Note 2: The decision-maker must be satisfied judgement or opinion contrary to judgement or opinion in subsections 9(5)(a) are not relevant, specific or substantive.

10 Principle 3—Direct and tangible

- (1) An offset activity ~~should~~ must provide a direct and tangible benefit to the affected protected matter.
- (2) An offset activity will provide a direct and tangible benefit to the affected protected matter if there is a high level of ~~certainty confidence~~ that the offset activity both:
- (a) provides a ~~benefit measurable improvement~~ to the affected protected matter that is quantifiable ~~or qualitative~~ (see Principle 4 in s 11); and
- (ab) contributes to the recovery or conservation of the affected protected matter.
- (3) The required high level of ~~certainty confidence~~ referred to in subsection (2) must be based on ~~appropriate scientifically valid~~ evidence.
- (4) For the purpose of subsection 10(3), a decision-maker must be satisfied the Appropriate scientifically valid evidence may includes relevant and specific:
- (a) information confirming the offset activity is a direct offset unless a relevant conservation planning document specifies that an indirect offset is a higher priority activity for the benefit of the affected protected matter, and the indirect offset proposed to be undertaken is an example of the higher priority activity specified in the conservation planning document; and
- (b) written judgement and opinion evidence from amore than one independent suitably qualified expert; or and
- (bc) existing peer reviewed, currently accepted and published science; ~~or~~
- (c) ~~other evidence that demonstrates the matters in subsection (2).~~
- Note: The decision-maker must be satisfied judgement or opinion contrary to judgement or opinion in subsection 10(4)(a) are not relevant, specific or substantive.
- ~~(5) An offset activity must be a direct offset unless a relevant conservation planning document identifies an indirect offset as a higher priority measure for the affected protected matter.~~

COMMENT ON EXPOSURE DRAFT

11 Principle 4—Measurable improvements

- (1) ~~There must be a high level of confidence that an~~ offset activity ~~will~~ must deliver a measurable improvement ~~to~~ for the affected protected matter ~~relative to a baseline that reflects what would likely happen in the absence of the offset activity.~~
- (2) ~~The relevant~~ For the purpose of section 11(1), a baseline for the affected protected matter, ~~as referred to in subsection (1), is~~ to ~~must~~ be determined at the time of the decision to approve the taking of the action or class of actions, or the making of the bioregional plan (as relevant).
- (3) ~~The decision-maker must have a required~~ high level of ~~certainty~~ confidence ~~that an offset activity will deliver a measurable improvement for the affected protected matter relative to the baseline that reflects what would happen in the absence of the action.~~

The required high level of certainty referred to in this subsection ~~(1)~~ must be based on scientifically valid ~~appropriate~~ evidence of:-

- (a) what would happen to the baseline in the absence of the action; and
- (b) what would happen in the absence of the offset activity; and
- (c) achieving a measurable improvement for relevant protected matters relative to the baseline.

- (4) For the purpose of subsection 11(3), a decision-maker must be satisfied the scientifically valid ~~Appropriate~~ evidence ~~may~~ includes relevant and specific:
 - (a) written judgement and opinion evidence from ~~more than one independent~~ suitably qualified expert that confirms the offset activity will deliver a measurable improvement for the affected protected matter relative to a baseline that reflects what would happen in the absence of the action and the offset activity; or ~~and~~
 - (b) existing peer reviewed, currently accepted and published science; ~~or~~
 - (c) other evidence that demonstrates the matter in subsection (1).

Note: ~~The decision-maker must be satisfied judgement or opinion contrary to judgement or opinion in subsection 11(5)(a) are not relevant, specific or substantive.~~

- (5) For the purpose of subsection 11(4)(a), a decision-maker must:
 - (a) be satisfied that—should the action proceed—the offset activity will improve the conservation and/or restoration of the protected matter compared to the outcome for the protected matter had the action not been undertaken; and
 - (b) consider what would happen, over the foreseeable future, in the absence of the action at the impact site and the offset activity at the offset site, if the action at the impact site was to not proceed.

12 Principle 5—Additionality

- (1) An offset activity must ~~be likely to deliver~~ provide an additional benefit to the affected protected matter that would not have otherwise occurred.

COMMENT ON EXPOSURE DRAFT

- (2) An offset activity that is required to be undertaken by another law, or would otherwise have occurred in the absence of the action being taken, does not ~~deliver~~provide an additional benefit for the affected protected matter that would not have otherwise occurred.
- Offset activities that are required include, for example, activities required to be undertaken by local councils and by lease documents.
- (3) Despite subsection 12(2), an offset activity that is an approved State or Territory offset that applies in relation to the same action or class of actions and the same affected protected matter may, subject to these standards, meet the requirement in subsection 12(1).
- (4) Despite subsection 12(2), an offset activity that is registered as an advanced restoration action under regulations made for the purposes of section 170CAA of the Act is not precluded from delivering an additional benefit.
- (5) The decision-maker must have a high level likelihood of certainty that the offset activity will deliver~~ing~~provide an additional benefit.
- ~~(6) The required high level of certainty referred to in subsection 12(5) must be based on appropriate evidence.~~
- (6) For the purpose of subsection 12(6), the decision-maker must be satisfied the appropriate evidence may include relevant and specific:
- (a) ~~evidence from written judgement and opinion from more than one independent~~ suitably qualified expert; ~~or~~and
 - (b) existing peer reviewed, currently accepted and published science; ~~or~~
 - ~~(c) other evidence that demonstrates the matters in subsection 12(1).~~

Note: The decision-maker must be satisfied judgement or opinion contrary to judgement or opinion in subsection 12(7)(a) are not relevant, specific or substantive.

13 Principle 6—Like-for-like

- (1) An offset activity must compensate for the damage ~~that will or may be~~ caused by a residual significant impact of an action or class of actions on the affected protected matter by delivering a like-for-like outcome for that protected matter.
- (2) Despite subsection 13(1), an offset activity that does not deliver a like-for-like outcome will be permitted if ~~the decision maker is satisfied that both:~~
- (a) the offset activity will deliver a greater conservation benefit for the affected protected matter than if a like-for-like outcome was delivered; and
 - (b) the offset activity is consistent with the priorities for restoration of the affected protected matter set out in a conservation planning document.
- (3) The decision-maker must have a high level of certainty that an offset activity matter required in under subsection (2)(a) will deliver a greater conservation benefit for the affected protected matter.
- ~~(4) The required high level of certainty referred to in subsection 13(3) must be demonstrated by appropriate scientifically valid evidence.~~

COMMENT ON EXPOSURE DRAFT

- (5) ~~For the purpose of subsection 13(4), the decision-maker must be satisfied scientifically valid~~ Appropriate evidence may include relevant and specific:
- (a) quantitative modelling that demonstrates, with greater than 90 per cent probability, that the modelled ecological outcome will be achieved across the offset site; and
 - (b) written judgement and opinion, evidence from a more than one independent suitably qualified expert, that confirms the modelled ecological outcome will result in an improved ecological outcome overall; and
 - (bc) ~~existing peer reviewed science; and~~
 - (ed) the modelled ecological outcome will be realised within the same landscape unit; and
 - (e) the offset activity will be delivered on an offset site that is encumbered by a legal instrument executed using a legal protection mechanism that is listed on the *approved mechanisms list*.

14 Principle 7—Relevant area

- (1) ~~Where the offset activity is a direct offset, the~~ An offset activity must be located delivered on an area-offset site that is relevant to the affected protected matter.
- (2) ~~For the purpose of subsection 14(1), a~~ An offset activity will be located delivered on an area-offset site that is relevant to the affected protected matter if:
- (a) the offset activity is located in the same area in which the residual significant impact on the affected protected matter has or will occur; or
 - (b) where it is not reasonably practicable for subsection (2)(a) to be satisfied:
 - (i) the offset activity is located in an area that is ecologically or culturally relevant to the protected matter; and
 - (ii) the locating the offset activity in the area is likely to result in an equivalent or greater conservation outcome for the affected protected matter.
- (3) ~~For the purpose of subsection 14(2)(b)(i), an area is ecologically relevant if it is in the same sub-region, identified in the Interim Biogeographic Regionalisation for Australia (IBRA), as the impact site.~~
- Note: For the purposes of ~~paragraph subsection 14(2)(a)~~, the reference to the 'same area' is not limited to the site of the impact, but may also include ~~nearby-or surrounding abutting and adjacent~~ sites.
- (34) ~~The matters in subsection 14(2)(b), the decision-maker must have a high level of certainty that~~ be demonstrated by appropriate evidence
- (a) it is not reasonably practicable for the offset activity to be located in the same area in which the residual significant impact on the protected matters has or will occur; and
 - (b) the requirements of subsections 14(2)(b)(i) and 14(2)(b)(ii) are met.
- (45) ~~The required high level of certainty referred to in subsection 14(4) must be based on~~ A appropriate evidence.
- (6) ~~For the purpose of subsection 14(5), a decision-maker must be satisfied the appropriate evidence may include relevant and specific:~~

COMMENT ON EXPOSURE DRAFT

- (a) ~~written judgement and opinion evidence~~ from ~~a more than one~~ suitably qualified expert; ~~or~~ and
- (b) existing peer reviewed, currently accepted and published science; ~~or~~
- ~~(c) other evidence that demonstrates the matters in subsection (2)(b).~~

Note: ~~The decision-maker must be satisfied judgement or opinion contrary to judgement or opinion in subsection 13(5)(a) are not relevant, specific or substantive.~~

15 Principle 8—Offset commenced prior to impact

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

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

- (2) The decision-maker must be satisfied, with a high level of certainty, that the offset activity at subsection 15(1) will be secured and registered, and management of the offset activity will commence, before the residual significant impact occurs.

- ~~(3) The requirement in subsection 15(42) must be demonstrated by appropriate evidence.~~

- (3) For the purpose of subsection 15(3), Appropriate evidence may include:
 - (a) the requirements of Section 9 have been met; and
 - (b) the offset activity is included on a register of offsets established by a Commonwealth, State or Territory government; and
 - ~~(c) a proposed management plan approved by the decision-maker includes the~~ and ~~timeframe for securing, managing and registering the offset activity;~~ or
 - ~~(b) other evidence that demonstrates the matters in subsection (1).~~

- (4) Despite subsection (1), where the offset activity is a bioregional restoration action that is required under the bioregional plan to be delivered by a person other than the Restoration Contributions Holder, the offset activity must be secured and delivered in accordance with any timeframes set out in the relevant bioregional plan.

- (5) For the purposes of subsection 15(1), an offset activity is **registered** if the offset is included in a register of offsets established by a Commonwealth, State or Territory government.