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

# The proposed EPBC Regulations (tranche 2)

13 October 2026

The Conservation Council ACT Region (Council) is the peak body for environment and climate groups in the ACT Region. We represent close to 50 member groups, bringing together a united voice on environment and climate issues to Government, business and community.

Since 1981 we have been at the centre of the region's most important wins for wildlife, bushland, climate and communities. As a hub for the ACT Region's environment and climate movement and a not-for-profit, non government organisation, we run campaigns, promote and upskill local groups, undertake research, advocate passionately, and engage and inform our community.

**For further information please contact:**

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Thank you for the opportunity to comment on the Exposure Draft *Environment Protection and Biodiversity Conservation Amendment (2026 Measures No. 2) Regulations 2026* (**proposed Regulations**).

The ACT Region holds significant remnants of two threatened ecological communities: Natural Temperate Grassland of the South Eastern Highlands, and White Box–Yellow Box–Blakely's Red Gum Grassy Woodland and Derived Native Grassland (both critically endangered). Only a small fraction of each remains, and much of what remains is fragmented, degraded and under pressure from urban growth and infrastructure. The threatened species these communities support, including the Canberra Grassland Earless Dragon, *Tympanocryptis lineata*, also critically endangered, have little habitat left to lose. For protected species this close to extinction, the loss of even one individual is highly significant. There is no margin for compensation that arrives late, falls short or comes to an end.

The 2025 amendments to the EPBC Act require residual significant impacts on protected matters to be compensated to achieve a net gain. The proposed Regulations are where that requirement is either made to work or lost. Our assessment is that, as drafted, they will do little to improve the protection or management of these communities. In particular, the proposed Regulations:

- allow restoration to commence up to four years after a restoration contribution charge is paid, and allow active management for permanent impacts to stop at the end of a brief 'activity period' – we say adequate compensation for permanent loss of any protected matter ecosystems would be like-for-like restoration endowed for management *in perpetuity*;
- require the Restoration Contributions Holder (**RCH**) only to 'have regard' to the Offset Standard, weakening like-for-like compensation for the matters harmed;
- leave the net gain test undefined, even for critically endangered ecological communities;
- prescribe management plans with no milestones, no specific, measurable, achievable, reasonable and timebound (SMART) commitments, no on-ground evaluation and no duty to correct when outcomes are missed (Table 1); and
- allow advanced restoration actions to be registered with little scrutiny and no long-term protection.

Without change, paying a charge will discharge a developer's obligations while the outcome for the affected species or community will remain uncertain and largely unenforceable. Without amendment, the description of this scheme as 'pay to destroy' will be apt.

Our priority recommendations are that the Regulations:

- prescribe how the net gain test applies, at least for critically endangered ecological communities;
- require ongoing management for as long as an approved residual significant impact lasts;
- require the charge to be paid before a residual significant impact begins, with restoration to follow without delay;
- require the RCH to 'not act inconsistently with' the Offset Standard; and
- apply a single minimum standard to every type of management plan.

We ask that Part 12D not be finalised until the related instruments have been consulted on.

Our full recommendations follow. We would welcome the opportunity to discuss them with you.

**Table 1: proposed Regulation requirements by management plan type, against management framework criteria**

| Criterion | Advanced restoration action[1] | Restoration contribution charge[2] | Bioregional restoration action[3] | Exemption charge[4] |
|---|---|---|---|---|
| Clear objectives, with measurable outcomes | **Partial** – in application, not plan[5] | **No** – outcomes set by Act; Regs add no measures[6] | **Partial** – linked to plan objectives, not measurable[7] | **Partial** – outcomes need not be measurable |
| Milestones no more than 5 years apart, each with measurable outcomes to be achieved by that milestone | **No** | **No** | **No** | **No** |
| Every commitment required to be SMART | **No** | **No** | **No** | **No** |
| Comprehensive on-ground evaluation, at each milestone, of whether each outcome was achieved | **No** – monitoring framework only[8] | **No** – Act duty only; no milestones[9] | **Partial** – compensatory actions only[10] | **Partial** – no milestones |
| A missed outcome triggers corrective measures capable of ensuring the next milestone's outcomes are achieved | **No**[11] | **No**[12] | **No** | **No** |
| Defined roles, responsibilities, accountability and governance | **No** | **Partial** – third-party deliverer only[13] | **Partial** – third-party deliverer only[14] | **Partial** – third-party deliverer only[15] |
| Risk assessment and mitigation | **Partial** – in application, not plan[16] | **Act**[17] | **Yes**[18] | **Yes**[19] |
| Monitoring, reporting and adaptive management | **Partial** – monitoring framework only | **Act** | **Partial** – net gain schedule for compensatory actions only | **Yes** |
| Independent audit | **No** | **No** | **No** | **No** |
| Plan review schedule or triggers, and version control | **No** | **No** | **No** | **No** |
| Implementation measures: how, where, when and by whom | **No** | **No** – action described (Act), not delivery | **Yes**[20] | **Partial** – describes action, not delivery |
| Management for as long as the impact lasts | **No** – obligations end when action is used[21] | **Partial** – durability criteria only[22] | **No** – no durability criteria[23] | **Partial** – durability criteria only[24] |

Proposed Regulation requirements: **Yes**; **Partial** = partly required, or required outside plan; or **No**. **Act** = already required by the Act (not rated)

[1] Part 6C of the proposed Regulations, made for s 170CAA of the Act. The plan need only specify a monitoring framework (reg 6C.04(2)(e)) and be "appropriate" (reg 6C.05(2)(b)).
[2] Regs 12D.14–12D.15. Most plan content is set by s 177DD(3) of the Act; the Regulations may prescribe more under s 177DD(3)(m) but add only third-party and durability details.
[3] Regs 12D.16–12D.17, made for s 177DE of the Act; further content may be prescribed under s 177DE(3).
[4] Reg 12D.18. The Act (s 177DF) only allows the Regulations to require a plan; reg 12D.18(2)–(3) is the requirement and content.
[5] Reg 6C.04(2)(d) requires the application, not the plan, to state the expected improvement against a baseline.
[6] Act, s 177DD(3) requires the intended outcomes to be stated; reg 12D.15 doesn't require they are measurable.
[7] Reg 12D.17(2)(k).
[8] Reg 6C.04(2)(e). Monitoring, record-keeping and annual reporting duties sit outside the plan: regs 6C.12–6C.14.
[9] Act (s 177DD(4)): RCH to monitor progress and evaluate outcomes; Regulations don't require evaluation against milestones.
[10] A net gain monitoring schedule is required only for actions intended to compensate: reg 12D.17(3); compare reg 12D.17(4).
[11] The Minister may vary, suspend or revoke the registration (regs 6C.09–6C.10), but nothing requires corrective measures.
[12] Regs 12D.14–12D.17 impose no duty on the RCH to correct when monitoring shows net gain is off track.
[13] Reg 12D.15(a).
[14] Reg 12D.17(2)(l).
[15] Reg 12D.18(3)(k).
[16] Regs 6C.04(2)(d) and 6C.06(3)–(4).
[17] Act, s 177DD(3).
[18] Reg 12D.17(2).
[19] Reg 12D.18(3).
[20] Reg 12D.17(2)(c).
[21] Monitoring, record-keeping and reporting duties cease once the action is used to satisfy an approval condition: regs 6C.12(3), 6C.13(2) and 6C.14(4).
[22] Reg 12D.15(b). On durability, see Box 1.
[23] Even though direct bioregional actions must maintain outcomes for the applicable maintenance period: regs 12D.08(2)(f) and 12D.11(2)(d).
[24] Reg 12D.18(3)(j).

# List of recommendations

## Streamlining Single Project Approvals

1. Retain the information requirements we support.[25]
2. Clarify that, whenever a proponent says a mitigation measure(s) will avoid a significant impact[26], that statement is supported by evidence.[27]
3. Require cadastral detail for the location of the project area[28], and a consistent measurement metric(s) for the "size" of each activity.[29]
4. Align the requirements for all referrals and EIS proposing compensation such that each must state the impact-site quality score used and how, when and by whom it was assessed.[30]
5. Ensure compensation measures and offset activities are disclosed at an appropriate level of detail[31] before an action can be assessed by streamlined assessment.
6. Limit information withheld[32] to what is genuinely confidential or sensitive, and require the referral to state what was withheld and why.
7. Should an EIS require an updated map[33], it must comprehensively incorporate all elements mandatory for the referral-stage map.[34]
8. Require that all EIS make clear the environmental outcomes that are intended to be achieved by the mitigation and repair measures the proponent commits to deliver, and how those outcomes will be achieved.[35]
9. Reinstate the requirement[36] that all EIS include a consolidated list of mitigation and repair measures, specifying who is responsible for each.
10. Regulations should require information, including but not limited to the action summary and footprint map, be updated on the NEPA website when specific notices are published under specific sections of the Act. This will ensure the NEPA website reflects proposals as they stand (or stood) at key times. Earlier versions should remain publicly available, and each update should clearly identify what has changed and when. This would allow the public, and decision-makers, to see how a proposal has evolved over the course of the referral, assessment and approval process.

## Recognising 'advanced restoration actions'

11. The Regulations should require the Minister to be satisfied at registration that each advanced restoration action is not inconsistent with the *National Environmental Standard (Environmental Offsets) 2026*, including its tests for security, additionality and measurability, and to record on the Advanced Offset Register the gain available to be credited if the action is later accepted as an offset.

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[25] items 6.01–6.02, 7.01, 8.01, 11.02(c), 11.03, 14.01 and 15.01 of Schedule 2 and item 7 of Schedule 4
[26] the type of claim described at item 6.02(a)
[27] the evidence required by item 6.01
[28] item 4.01(b)(i)
[29] item 4.01(d)(i)
[30] align item 11.02(d) of Schedule 2 with item 4A.01(b) of Schedule 4
[31] the level of detail required by item 11.02
[32] information can be withheld under regulation 4.03(2)
[33] Schedule 4, item 3.01(g) requires updated maps if proposals have been refined after the referral
[34] Schedule 2, item 5.05 sets out a comprehensive list of what must be shown in a map
[35] be clearer: make the Note to item 4.01 a requirement
[36] in Schedule 4, item 4.01(a)

a. Add a test for overlap with other schemes, and a rule against claiming the same gain under more than one scheme.
b. Add a registration test that the gain claimed is not already required by an offset condition, covenant or other legal obligation, or already funded from public money, for the same protected matter on the same site.
c. Require the Minister to be satisfied at registration that the site is securely protected (see s 9 of the Offset Standard).
d. Require the management plan lodged at registration to set out how monitoring will continue for the action's whole timeframe, including who will be responsible for it if the action is later accepted as an offset for an approved action.[37]

12. To make clear the remaining value of an unused advanced offset, require the value 'retired' against each approved action, and its value allocation to/across the relevant approval/s, to be recorded on the Advanced Offset Register.
13. Align Part 6C with Consultation Paper 3, so the Advanced Offset Register is updated within 10 business days and shows spatial information.
14. Identify all approval pathways in which an advanced restoration action can be used within Part 6C, rather than leaving them to administrative arrangements.[38]
15. On the Advanced Offset Register, indicate and link to where registered advanced offset site records are found once the sites transition to be post-approval offset sites.
16. Confirm via the Regulations in Part 6C that the baseline for an advanced restoration action is the condition of the site when the work began, supported by evidence, and include a clarifying rule for actions that have not yet begun.

## The Restoration Contributions Scheme

17. Do not finalise Part 12D until the regulations under the Restoration Charge Imposition Act and s 521B of the Act, and the s 134AA declaration, have been consulted on. Failing that, publish a timetable for them and commit to reviewing the Regulations for Part 12B of the Act within 24 months of commencement.
18. Prescribe how the net gain test is to be applied for each class of protected matter, and at minimum for critically endangered ecological communities, rather than leaving it to case-by-case determination.
19. Replace the durability test and the 'applicable maintenance period' with a requirement for ongoing management for as long as the impact lasts, at least for ecosystems (such as grassy ecosystems) that cannot become self-sustaining. In any event, define when an action is 'delivered' and align the period with the assumptions used to price the charge.
20. Require the charge to be paid before the residual significant impact begins, either in the regulations made for s 521B or in every approval condition, and keep the delay before restoration works commence as short as practicable.
21. Strengthen the controls on the RCH's discretion: require the RCH not to act inconsistently with the Offset Standard[39], rather than merely to have regard to it; and limit, and require published reasons and Restoration Contributions Advisory Committee advice for, the delivery of Commonwealth-specified bioregional actions in other locations and the use of alternative bioregional actions.[40]

[37] see regs 6C.04(2)(e) and 6C.06(3)(d)
[38] reg 6C.08 applies to Part 9 only.
[39] reg 12D.03
[40] regs 12D.06 and 12D.08

22. Ring-fence money intended to deliver net gain so that it is not pooled with exemption charge or 'protect-or-conserve money'[41].
23. Require exemption charge spending to be on the affected matters and bioregion unless the RCH publishes reasons, and list persons exempt from the charge in the regulations made for the purposes of s 13(3) of the Restoration Charge Imposition Act.
24. Require indirect restoration actions to have specific, measurable, achievable, reasonable and time-bound outcomes (for species, measured by population, occupancy or habitat use), and require Restoration Contributions Advisory Committee advice to be obtained and published before spending or commencement.
25. Apply the requirements of relevant regulations[42] to actions funded in whole or part by top-up amounts[43], and require that interest-derived top-up amounts be applied only to actions that meet these requirements.
26. Apply the common minimum management planning standard we recommend in "Issues with management plan prescriptions" to every type of management plan[44], and ensure the RCH is required to take and publish corrective action, notify the Minister and re-spend if outcomes are not achieved.
27. Require management plans, the RCH Register and the RCH's annual report to record and report delivery against the calculator inputs, calculator version and cost components, in the same units and with actual spending by component.[45]
28. Improve the RCH Register and RCH's annual report requirements: state whether each action is direct or indirect, and the conservation planning document relied on; set a time limit for RCH Register updates; record exemption charge dates, amounts spent and unallocated amounts in the RCH Register; extend reg 12D.22 to s 177DB spending and record the source of the money; show unspent contingency and reserves, top-up receipts and spending, and unrecovered amounts in the annual report; and publish unpaid charges past their due date.
29. Publish management plans and Restoration Contributions Advisory Committee advice before spending or commencement, with reasons for each alternative restoration action. Align the review of the calculator methodology (two years after launch) with the review of the Regulations, and publish actual delivery costs against the amounts charged.
30. Simplify reg 12D.02(b)(ii).

## Issues with management plan prescriptions

31. Establish a single, minimum management planning standard applicable across all management plan types, drawing on the principles and content requirements in the EMP Guidelines. At a minimum, every management plan should be required to include:
    a. clearly defined objectives and intended environmental outcomes;
    b. measurable performance indicators and success criteria, including the ongoing management needed to maintain outcomes and, if the Regulations keep a durability test, durability criteria;
    c. defined responsibilities, accountability and governance arrangements;
    d. risk assessment and mitigation measures;

[41] s 177AH(2)
[42] regs 12D.01, 12D.02 and 12D.04
[43] reg 12D.13
[44] including to management plans made for every s 177DA activity and s 177DB action
[45] regs 12D.15 and 12D.17–12D.23 refer

e. monitoring, evaluation and reporting requirements;
f. corrective-action triggers and response procedures;
g. audit requirements;
h. review and adaptive management mechanisms, including a review schedule or triggers;
i. version control and plan revision procedures;
j. implementation measures, including relevant mapping and spatial information where appropriate; and
k. for plans funded by a restoration contribution charge: a copy of the Restoration Contributions Calculator (showing scores) used, the inputs and restoration obligation on which the charge was based, the cost breakdown, and delivery reported against them in the same units.[46]

32. Require bioregional plans to include the same criteria for ongoing management and, if a durability test is kept, durability criteria.
33. Clarify whether r 12D.17(3) applies to all measures under s 177AH(1) of the Act, including those that only mitigate or repair damage.
34. Require a management plan for activities funded by top-up amounts under s 177DA and for each restoration action funded by top-up amounts under s 177DB.
35. Require the RCH to take and publish corrective action, with notice to the Minister, and to re-spend if the required outcomes are not achieved.[47]
36. Prescribe minimum content requirements for advanced restoration action management plans, rather than relying solely on the 'appropriateness test' in r 6C.05(2)(b).
37. Require plans for restoration actions funded through a restoration contribution charge to include measurable ecological performance standards and independent audit requirements.
38. Define when an indirect restoration action commences.
39. Make clear how an advanced restoration action management plan continues to apply once the action is used to satisfy an approval condition.

[46] For restoration contribution charge, bioregional and exemption charge plans, the Regulations can add these matters under ss 177DD(3)(m), 177DE(3) and 177DF(2)(a) of the Act respectively.
[47] regs 12D.14–12D.17

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## Introduction

In this submission, "**proposed Regulations**" means the *Exposure Draft Environment Protection and Biodiversity Conservation Amendment (2026 Measures No. 2) Regulations 2026*, which are the subject of this consultation. "**Regulations**" means the *Environment Protection and Biodiversity Conservation Regulations 2025*, as in force and as will be amended from time to time, including by the proposed Regulations. "Regulations" in lower case ("regulations") is used in a general sense, including for regulations made under statutes other than the *Environment Protection and Biodiversity Conservation Act 1999* (**Act**) and regulations yet to be made. Unless we say otherwise, a reference to a Part, Schedule, regulation ("reg") or item is to the Regulations as they would be amended by the proposed Regulations. The full list of abbreviations is set out below.

### Abbreviations

| | |
|---|---|
| **Act** | means the *Environment Protection and Biodiversity Conservation Act 1999*[48], as amended from time to time |
| **Advanced Offset Register** | means a public register of advanced restoration actions required under reg 6C.03 of the proposed Regulations |
| **Charging Method Paper** | means the *Consultation Paper: Proposed Methodology for Calculating Restoration Contributions Charges* (Sept 2026)[49] |
| **Department** | means the Australian Government Department administering the Act, currently the Department of Climate Change, Energy, the Environment and Water |
| **EMP Guidelines** | means the **Department's** *Environmental Management Plan Guidelines*[50] |
| **Minister** | means Australia's Federal Environment Minister, or CEO of the National Environment Protection Authority, or an accredited approver, under a statutory conferral of power or under a delegation |
| **2012 Offset Policy** | means the *Environment Protection and Biodiversity Conservation Act Environmental Offsets Policy* (2012)[51] |
| **Offset Standard** | means the *National Environmental Standard (Environmental Offsets) 2026*[52] |
| **proposed Regulations** | means the *Exposure Draft Environment Protection and Biodiversity Conservation Amendment (2026 Measures No. 2) Regulations 2026* |
| **RCH** | means the Restoration Contributions Holder established by s 177CL in Part 12B of the **Act** |
| **RCH Register** | means the Register the **RCH** keeps under s 177DH of the **Act** |
| **Regulations** | means the *Environment Protection and Biodiversity Conservation Regulations 2025*[53], as amended from time to time |
| **Restoration Charge Imposition Act** | means the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025*[54] as amended from time to time |

[48] https://www.legislation.gov.au/C2004A00485/latest/text
[49] https://consult.dcceew.gov.au/restoration-contributions-calculator-methodology
[50] www.dcceew.gov.au/sites/default/files/documents/environmental-management-plan-guidelines.pdf
[51] https://www.nationalepa.gov.au/sites/default/files/documents/offsets-policy.pdf
[52] https://www.legislation.gov.au/F2026L01093/asmade/text
[53] https://www.legislation.gov.au/F2025L01584/latest/text
[54] https://www.legislation.gov.au/C2025A00067/asmade/text

## Streamlining Single Project Approvals

We support clear information requirements for referrals and Environmental Impact Statements. We note other information is also needed at other times.

Our comments on the information requirements in the proposed Regulations are as follows:

### Information needed in every referral

In Schedule 2 at:

a. Item 4.01(b)(i), "the location of the project area" – the requirement as drafted is vague, leaving very open the way a location can be specified. Some level of cadastral information must be provided. The requirement that has existed to date provides an example *with reference to cadastral detail*. The requirement should be improved not relaxed.

b. Item 4.01(d)(i), "the approximate size of each activity" should be specified consistently with a suitable measurement metric, e.g., the approximate size *in hectares or square kilometres* etc

c. Item 6.01-02 – strongly support requiring detail about the likely effectiveness of mitigation measures.

   If a proponent claims mitigations will be highly effective and thereby "reduce the relevant impact such that it is not a significant impact" (item 6.02(a)), we contend this claim must be supported by "evidence in the form of reports or technical advice on the feasibility and effectiveness of the proposed measures" (item 6.01). This point should be clarified.

d. Item 7.01 - strongly support requiring information about the reliability of information provided, and uncertainties etc. This is a good improvement.

e. Item 8.01 – strongly support requiring all the specified information for every alternative proposal.

f. Item 11.02(c) - strongly support requiring that the referral specify the "proposed measures to monitor, report and evaluate the impact" of an action a proponent thinks will or is likely to have a significant impact.

g. Item 11.02(d) – compared to Item 4A.01(b) in Schedule 4, this paragraph is missing the phrase "if the proposed compensation measures were implemented", or similar.

h. Item 11.02(d)-(e) – information on offsets - Consultation Paper 1 discusses "shifting the requirement to provide information on the benefits such as offsets to the assessment documentation."[55]

   Proponents only refer proposals under Part 7 of the EPBC Act because they consider their action will, is likely to, or may have a significant impact on a matter protected. Item 9.01 applies Part 2 of Schedule 2 (including item 11.02) only where the person has stated, under Item 3.02(a)(iii), a preference for streamlined assessment. Because a streamlined assessment gives the public only one opportunity to comment, at referral, the proposed offsets and other compensation measures **must** be disclosed then, whoever proposes that pathway.

   Alternatively, the Minister (or CEO of the National EPA, or an accredited approver; herein '**Minister**') should be prevented from choosing streamlined assessment unless the referral discloses compensation measures and offset activities at the level of detail found in item 11.02. Information withheld under regulation 4.03(2) should be limited to

[55] Consultation Paper 1, section 2.3.1

what is genuinely confidential or sensitive, and the referral should state what was withheld and why.

i. Items 11.02 – where compensation is proposed, the referral should state the impact-site quality score used and how, when and by whom it was assessed. That score is the key input to both the offset calculation and any restoration contribution charge, so the public should be able to test it at the point where they can comment.
j. Item 11.03 - strongly support requiring that the referral must include information about the processes to be implemented to monitor, report and evaluate the effectiveness of measures mentioned in item 6.01
k. Item 14.01 – strongly support requiring all the specified information
l. Item 15.01 – strongly support requiring all the specified information for every alternative proposal.

### Information needed in every EIS

In Schedule 4 at:

a. Item 3.01(g) – this sub-regulation should specify that the updated map (if any) must include all the things specified as required in Item 5.05 in Schedule 2
b. Item 4A.01 – same as 'Information needed in every referral', at point i
c. Item 4.01(a) – strongly oppose not requiring (as occurs for mitigations now in the existing Item 4.01(f) of Schedule 4) a consolidated list of mitigation and repair measures proposed to be undertaken to mitigate and repair the impacts of the action, including who is responsible to undertake each such measure

   We are concerned the Note at the end of Item 4.01 will not be sufficient to achieve its intended outcome. We support strengthening by including the requirement in the Regulations for clarity, i.e., every EIS must be required to make clear the environmental outcomes that are intended to be achieved by the measures, and how those outcomes will be achieved.
d. Item 7 - strongly support requiring information about the reliability of information provided, and uncertainties etc.

### Other information requirements needed in the Regulations

Each time the public is invited to comment on a referral, a summary of the proposed action and a scalable map of the development footprint are published on the NEPA website. These are a snapshot only; to date, they have not been updated when a proposal changes.

Proposals do change, both before and after controlled action decisions, and not always through formal variations. We are aware of instances where proposed actions, and their development footprints, have changed without formal variation. Reductions in footprint are welcome, but they are seldom formally notified. As a result, the public record no longer reflects what is proposed.

We argue this should change. The Act already allows the Regulations to require that published summaries and maps be updated. The obvious points to do so are the notices the Act already requires to be published at each stage of referral, assessment and approval. For example:

a. s 77(1)(b): notice of the controlled action decision. The Regulations could require that any changes made to the proposal up to that decision be shown on the NEPA website.
b. ss 95(2) and 103(4)(b): notices inviting public comment on draft assessment documents. The Regulations could require that any changes up to that point be shown.

c. s 104(4)(b): notice soon after the Minister receives an assessment report or recommendation report. The Regulations could require that any changes up to that point be shown.

*Recommendations*

1. Retain the information requirements we support.[56]
2. Clarify that, whenever a proponent says a mitigation measure(s) will avoid a significant impact[57], that statement is supported by evidence.[58]
3. Require cadastral detail for the location of the project area[59], and a consistent measurement metric(s) for the "size" of each activity.[60]
4. Align the requirements for all referrals and EIS proposing compensation such that each must state the impact-site quality score used and how, when and by whom it was assessed.[61]
5. Ensure compensation measures and offset activities are disclosed at an appropriate level of detail[62] before an action can be assessed by streamlined assessment.
6. Limit information withheld[63] to what is genuinely confidential or sensitive, and require the referral to state what was withheld and why.
7. Should an EIS require an updated map[64], it must comprehensively incorporate all elements mandatory for the referral-stage map.[65]
8. Require that all EIS make clear the environmental outcomes that are intended to be achieved by the mitigation and repair measures the proponent commits to deliver, and how those outcomes will be achieved.[66]
9. Reinstate the requirement[67] that all EIS include a consolidated list of mitigation and repair measures, specifying who is responsible for each.
10. Regulations should require information, including but not limited to the action summary and footprint map, be updated on the NEPA website when specific notices are published under specific sections of the Act. This will ensure the NEPA website reflects proposals as they stand (or stood) at key times. Earlier versions should remain publicly available, and each update should clearly identify what has changed and when. This would allow the public, and decision-makers, to see how a proposal has evolved over the course of the referral, assessment and approval process.

## Recognising 'advanced restoration actions'

The notion of firming up requirements for recognising and registering advanced environmental offsets is sound. Restoring habitat at a restoration site *before* an area of value is damaged at an impact site will generally deliver better results than offsetting afterwards. A public register of

[56] items 6.01–6.02, 7.01, 8.01, 11.02(c), 11.03, 14.01 and 15.01 of Schedule 2 and item 7 of Schedule 4
[57] the type of claim described at item 6.02(a)
[58] the evidence required by item 6.01
[59] item 4.01(b)(i)
[60] item 4.01(d)(i)
[61] align item 11.02(d) of Schedule 2 with item 4A.01(b) of Schedule 4
[62] the level of detail required by item 11.02
[63] information can be withheld under regulation 4.03(2)
[64] Schedule 4, item 3.01(g) requires updated maps if proposals have been refined after the referral
[65] Schedule 2, item 5.05 sets out a comprehensive list of what must be shown in a map
[66] be clearer: make the Note to item 4.01 a requirement
[67] in Schedule 4, item 4.01(a)

advanced restoration actions required under reg 6C.03 (**Advanced Offset Register**) will bring transparency lacking in the implementation of the *Policy statement: Advanced environmental offsets under the [EPBC Act]* (2017).

Our concerns relate to how Part 6C of the proposed Regulations is built.

## Registration checks

The screen at registration is too thin. The Minister need only be satisfied that the action is likely to improve a protected matter, that the management plan “is appropriate”, that the action is not inconsistent with a protection statement and is not directed at a matter prescribed under s 134(3AC) of the Act.

The tests in the *National Environmental Standard (Environmental Offsets) 2026* (**Offset Standard**) (like-for-like, nearby, secure, additional, measurable) are left to the later approval decision. Consultation Paper 3 says the relevant parts of the Offset Standard must be met at registration, but Part 6C of the proposed Regulations does not require the Minister to be satisfied of them, although applicants must describe how securely the site is protected (reg 6C.06(3)(e)).-

Registration is likely to prompt proponents to invest in a registered action. Part 6C does not require the Minister to be satisfied of the Offset Standard tests that do not depend on a particular impact (secure, additional, measurable). Leaving them to approval risks undue pressure on decision-makers to accept an offset after investment has been made. Those tests, and the gain available to be credited, should be assessed and recorded at registration. To the extent the action is later accepted as an offset for an approved action, the decision-maker would then start from that record, and only the impact-specific tests (like-for-like, nearby) would remain to be applied.

## The starting point for measuring gain

The starting point for measuring gain is unclear. The Offset Standard measures an advanced offset's improvement from the condition of the site "at the time the offset activity commenced". But Part 6C can register an action that has not started, so there may be no start date to measure from. Proposed regulation 6C.05(2)(a) says only that the baseline is "the relevant baseline included in the application", and Consultation Paper 3 says it is the baseline "provided at registration". For work that began years before registration, those could differ from the baseline at the start.

Because the baseline decides how much gain is credited, the Regulations should say plainly which baseline applies, and what applies to an action not yet started.

## Double-counting across schemes and obligations is not prevented

Reg 6C.08(a) stops an action being used twice to satisfy Part 9 conditions, but double-counting across schemes and obligations is not prevented. Proposed regulation 6C.05(2) lists four matters the Minister must be satisfied of before registering, and additionality is not among them. By inference additionality is tested only at approval, through s 12 of the Offset Standard (Principle 5), and s 12(4)–(5) of the Offset Standard softens additionality requirements for advanced and previously managed sites. Proposed regulation 6C.04(2)(f) requires only disclosure of parallel registrations, such as in the Nature Repair Market or in a state scheme, and section 3.3.10 of Consultation Paper 3 says the Minister won't check eligibility under those schemes. By this approach, double counting is a real risk. Public benefit could be sold twice.

A related risk is that sites already subject to an offset condition, a covenant or publicly funded management *may be* registered, or sold to the Restoration Contributions Holder (**RCH**), for the same benefit.

### No long-term protection

No long-term protection. We note the registration of an advanced offset site does not prevent nor reduce any registered site's risk of loss. Applicants must describe how securely the site is protected[68], but the Minister need not be satisfied of it, and there is no durability test. Monitoring, record-keeping and reporting duties under Part 6C also end once the action is, or is being, used to satisfy a Part 9 condition, or if registration is revoked.[69]

### Other concerns with the proposed Advanced restoration action construct

Slower public information. Consultation Paper 3 promises updates to the Advanced Offset Register within 10 business days. Proposed regs 6C.06(1) and 6C.07 allow 20.

Gaps in the Register of advanced restoration actions: The Register need not show spatial data of the remaining unused offset, despite Consultation Paper 3 saying that it will (pp. 18-19); we argue that the Register must show spatial data of any remaining unused offset.

Narrow scope. The proposed Regulations cover Part 9 approvals only. Extending it to other pathways is left to "administrative arrangements", which are not law. This is vague and needs firming up.

*Recommendations*

11. The Regulations should require the Minister to be satisfied at registration that each advanced restoration action is not inconsistent with the *National Environmental Standard (Environmental Offsets) 2026*, including its tests for security, additionality and measurability, and to record on the Advanced Offset Register the gain available to be credited if the action is later accepted as an offset.
    a. Add a test for overlap with other schemes, and a rule against claiming the same gain under more than one scheme.
    b. Add a registration test that the gain claimed is not already required by an offset condition, covenant or other legal obligation, or already funded from public money, for the same protected matter on the same site.
    c. Require the Minister to be satisfied at registration that the site is securely protected (see s 9 of the Offset Standard).
    d. Require the management plan lodged at registration to set out how monitoring will continue for the action's whole timeframe, including who will be responsible for it if the action is later accepted as an offset for an approved action.[70]
12. To make clear the remaining value of an unused advanced offset, require the value 'retired' against each approved action, and its value allocation to/across the relevant approval/s, to be recorded on the Advanced Offset Register.
13. Align Part 6C with Consultation Paper 3, so the Advanced Offset Register is updated within 10 business days and shows spatial information.

[68] reg 6C.06(3)(e)
[69] regs 6C.12(3), 6C.13(2) and 6C.10
[70] see regs 6C.04(2)(e) and 6C.06(3)(d)

14. Identify all approval pathways in which an advanced restoration action can be used within Part 6C, rather than leaving them to administrative arrangements.[71]
15. On the Advanced Offset Register, indicate and link to where registered advanced offset site records are found once the sites transition to be post-approval offset sites.
16. Confirm via the Regulations in Part 6C that the baseline for an advanced restoration action is the condition of the site when the work began, supported by evidence, and include a clarifying rule for actions that have not yet begun.

## The Restoration Contributions Scheme

Our concerns about the Restoration Contributions Scheme, as prescribed in the proposed Regulations, are as follows.

### Sequencing – the scheme cannot be assessed as a whole

The Department's *Consultation Paper: Proposed Methodology for Calculating Restoration Contributions Charges* (Sept 2026) (**Charging Method Paper**)[72] lists decisions still to be consulted on "later in 2026":

a. regulations under the *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025* (**Restoration Charge Imposition Act**), which will prescribe the charging arrangements, alongside regulations under s 521B of the Act
b. the declaration to be made under s 134AA declaring the protected matters to which a restoration charge cannot be attached.

Consultation on the proposed Regulations we are commenting on now closes on 13 Oct 2026, and the reforms are proposed to commence on 1 December 2026. Several concerns below (the time lag, the spending of top-up amounts, and which matters can be compensated by payment) cannot be resolved without all these decisions.

We ask that Part 12D not be finalised until those instruments have been consulted on or, failing that, that the Department publish a timetable for them and commit to a review of the Regulations for Part 12D within 24 months of commencement.

### Net gain test

We understand the net gain test relates to the residual significant impact an approved action has, will have, or is likely to have, on a protected matter. We further understand the Act as amended allows the Regulations to prescribe what net gain must be for protected matters.[73]

Where residual significant impacts on protected matters are expected, the Regulations should specify how the net gain test is to be applied, rather than leaving this to the Minister to determine on a case-by-case basis.

We recommend the Regulations prescribe, for each class of protected matter (and at minimum for critically endangered ecological communities), the specific, measurable parameters against which a net gain claim is to be tested.

[71] reg 6C.08 applies to Part 9 only.
[72] accessible here: https://consult.dcceew.gov.au/restoration-contributions-calculator-methodology
[73] Future EPBC Act, s 527K(1)(b)(i)

## ‘Durability’ and ‘applicable maintenance periods’

The proposed Regulations introduce the concept of restoration action ‘durability’: a definition has been proposed for the word ‘durable’, the word is used in the proposed definition of ‘applicable maintenance period’, and two types of management plans must include:

a. “criteria for assessing whether the intended outcome or outcomes resulting from the restoration action have become durable.”[74]
b. “criteria for assessing whether the outcome of the restoration action has become durable.”[75]

We have expressed our concerns previously about this notion of ‘durability’; in relation to grassy ecosystems at least, the thought that an ecological outcome might endure without ongoing management activity lacks credibility (Box 1). Our view has not changed.

On the definition of ‘durable’: without ongoing management, grassy ecosystems are not “capable of withstanding external pressures” and, in our experience, decline in condition. The outcome of the offset activity does not become “self-sustaining.”[76] The assertion implicit in the definition that an outcome from a restoration action will at some point “be reasonably expected to last a long time” without ongoing management does not reflect how grassy ecosystems behave.

The proposed definition of ‘applicable maintenance period’ is similarly flawed. In a temporal sense, the suggestion compensation for permanent loss is achieved with anything less than permanent gain is not credible. We have made this point before (Box 1).

The Charging Method Paper illustrates the problem. Its case studies assume restoration activities start two years after payment, 20 years of active restoration, 50 years of maintenance and a 40-year reversal-risk period, and the paper describes a minimum of 25 years “after the active management period”. The proposed definition of ‘applicable maintenance period’ starts when an action “has been delivered”, and regs 12D.01 and 12D.02 allow up to 3 or 4 years to commence.

We ask that regulations are made that will make clear when an action is ‘delivered’ for the purposes of the definition, to align these figures, and to explain how a charge priced on 50 years of maintenance will fund an obligation that may run for up to 100 years. For grassy ecosystems, whose loss is permanent, the Charging Method Paper assumptions price just 50 years of gain.

[74] Reg 12D.15(b), Restoration contribution charge—matters specified for management plans
[75] Reg 12D.18(3)(j), Exemption charge—management plans
[76] DCCEEW (2026) *UPDATED Draft Policy Position Paper: National Environmental Standard for Environmental Offsets*, https://storage.googleapis.com/files-au-climate/climate-au/p/prj3c651deace7f562c53750/page/20260506_Policy_Position_Paper_National_Environmental_Standard_for_Environmental_Offsets.pdf, p. 16

**Box 1: The proposed Regulations compared to the *EPBC Act Environmental Offsets Policy* (2012)**

If made the Regulations proposed will confirm, for any project approved after 1 Dec 2026, that two principles central to the *EPBC Act Environmental Offsets Policy* (**2012 Offset Policy**) will *no longer apply*.

a. We note first that another long-standing principle in the 2012 Offset Policy has already been rendered obsolete. The 2012 Offset Policy states offsets "should be tailored specifically to the attribute of the protected matter that is impacted in order to deliver a conservation gain."[77] The Offset Standard eased the path for developers and facilitated loss when it was approved stating "an offset activity that does not deliver a like-for-like result will be permitted."[78]

The two long-standing principles gutted in the proposed Regulations are that offset sites should be protected:

b. for the period of the impact at the impact site—
   - The precise wording in the 2012 Offset Policy is "Offsets should compensate for an impact for the full duration of the impact"[79], or alternatively, "the tenure of the offset [site] should be secured for at least the same duration as the impact on the protected matter arising from the action, not necessarily the action itself".[80]
   - The proposed Regulations define the "applicable maintenance period" of any restoration action as ending upon durability (but not less than 25 years after delivery) or, at the latest, 100 years after delivery.[81]
   - We have explained before that for grassy ecosystems 'durability' in the sense intended is unachievable. We explained 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."[82]
   - Nothing in the Act as amended sets or dictates the duration of a maintenance period, and nothing limits how long one could be. To be clear, it is the definition in these proposed Regulations that kills off this long-standing principle.

c. either before, or at the same point in time as, an impact from an action[83]—
   - Proposed regulation Reg 12D.02(a) states an alternative restoration action "will commence no later than 4 years *after* the amount of restoration contribution charge is paid."[84] Payment is intended to precede approved residual significant impacts (see our comments above). It is for this reason we consider the phrase 'pay to destroy' aptly describes this restoration contribution scheme.
   - The Act as amended is silent on timing, which leaves open the *possibility* of a time lag. The draft regulations add an outer limit to a delay that the Act doesn't require. Once again, it is these proposed Regulations that kill off *this* long-standing principle.

[77] 2012 Offsets Policy, p. 17
[78] *National Environmental Standard (Environmental Offsets) 2026*, s 13(3)
[79] 2012 Offsets Policy, p. 8
[80] 2012 Offsets Policy, p. 18
[81] Definition proposed for addition to the Dictionary, see amendment 80
[82] Friends of Grasslands Inc & Council (9 June 2026) *Comment on the exposure draft of the National Environmental Standard for Environmental Offsets*, https://www.fog.org.au/Submissions/20260609a.htm
[83] 2012 Offsets Policy, p. 23
[84] proposed Reg 12D.02(a), italic added

## When can approved residual impact commence?

We understand charges are meant to be paid before the residual significant impact begins, but we cannot find confirmation of this in the Act or proposed Regulations. We ask that the Department confirm where this requirement sits, and ensure it is prescribed in the charge payment arrangements or required in every approval condition.

This is important. If payment must come first, the lag to the commencement of restoration works is 'only' the three or four years after payment. However, from what we have seen, payment may not be required first; if it need not, then the lag also includes any gap between residual significant impact and payment. Consistent with the concerns expressed in Box 1, we would prefer there be no time lag at all.

The Charging Method Paper says that regulations under s 521B of the Act will deal with "administrative and machinery matters related to collection of restoration charges" and will be consulted on later in 2026. We ask that those regulations, or every approval condition that requires payment, require the charge to be paid before the residual significant impact begins.

## Accountability after payment

Once a charge is paid, the Charging Method Paper says no further compliance and enforcement applies. In this submission, the consequences for management plans are addressed below under the heading "Issues with management plan prescriptions".

## Pooling – will net gains be compromised?

Consultation Paper 3 says Regulations are required to let the RCH pool restoration contributions "with other restoration charges". The proposed Regulations have no such prescription. Pooling with exemption charge or 'protect-or-conserve' (s 177AH(2)) money would dilute net gain compensation. We ask that money intended to deliver net gain be ring-fenced, so compensation money funds compensation.

## Transparency issues

We have noticed several transparency issues. We did not find in the proposed Regulations any time limit on publishing updates to the Register kept under s 177DH of the Act (**RCH Register**; we note for contrast that a time limit of 20 business days applies for publishing updates to the Advanced Offset Register, Reg 6C.07). We ask that management plans and Restoration Contributions Advisory Committee advice be published before spending on or commencement of restoration actions (all forms), along with reasons for each alternative restoration action, and a review of the Regulations made for Part 12B of the Act 24 months after commencement.

The Charging Method Paper proposes reviewing the calculator methodology two years after launch. The two reviews should be aligned, and should publish actual delivery costs against the amounts charged.

## Specific concerns about the Restoration Contributions Scheme

Our specific concerns with the RCS are:

a. Reg 12D.01 – we are concerned the proposed regulation is vague in relation to the duration of the requirement to implement any indirect restoration action. The outcomes to be achieved from indirect restoration actions need to be specific, measurable, achievable, reasonable and *timebound*. If ongoing action is needed to maintain the

benefits of an indirect restoration action, this must be specified in the statement of outcomes to be achieved. For actions said to compensate for impacts on a species, the outcome should be measured by gain in population, occupancy or habitat use at the site, not by threat reduction alone.

b. Reg 12D.01(c) – we are concerned because, for some regional ecosystem types, "maintenance periods" are not appropriate and should not exist – see Box 1 and our general comments on this issue (above).
c. Reg 12D.01-02 – we are concerned about the time lag between the commencement of residual significant impact and the ecological benefit of restoration actions. Placing a limit on the timeframe for commencing general and alternative restoration actions will ensure funds do not accumulate; however, it will inevitably result in compromise to like-for-like requirements. We have mentioned both concerns before (Box 1).
d. Reg 12D.01-02 – Net gain is hard to show for indirect actions. We recommend the Regulations require the RCH to obtain and publish Restoration Contributions Advisory Committee advice before spending or commencement.
e. Reg 12D.02(b)(ii) – this prescription is overly convoluted; it needs to be simplified.
f. Reg 12D.03 – we strongly oppose this weak construct which requires the RCH to do no more than "have regard" for the Offset Standard. The argument the RCH needs flexibility to reduce the risk that the RCH cannot expend restoration contributions where suitable strict like-for-like offsets are unavailable is unacceptable. The absence of a suitable metric for managing this compromise is also a problem. We recommend the Regulations require that the RCH 'not act inconsistent with' the Offset Standard.
g. Reg 12D.04 – The Act enables the Minister to impose conditions on national interest exemptions (s 157M). In these cases, any condition imposed can only protect, repair or mitigate (s 157M(2)), so the charge is the only form of compensation. Spending of exemption charges need not relate to the matters the exemption affected (s 177CY(2)). We ask that the Regulations require spending on the affected matters and bioregion unless the RCH publishes reasons, and for persons exempt from the charge to be listed in the regulations made for the purposes of s 13(3) of the Restoration Charge Imposition Act.
h. Reg 12D.04 – gives the RCH similar flexibility to spend on matters that may not deliver like-for-like outcomes for matters protected. The same criticisms as above apply here. We recommend listing Recovery and Threat Abatement plans as matters to which the RCH must (at the very least) have regard in spending decisions (Reg 12D.04(3)(b)).
i. Reg 12D.06 and 12D.08 - the RCH can deliver an action a bioregional plan requires of the Commonwealth if it considers that appropriate, *or deliver that action in another location the plan specifies*. Nothing limits how much bioregional money may go to alternative bioregional actions. The only limit is the RCH's satisfaction that a general action is not feasible or would not give the best outcome, advice from the Restoration Contributions Advisory Committee (to which the RCH need only "have regard"), and written notice to the Minister (regs 12D.08(3) and 12D.09). That is too weak a control on departures from like-for-like.
j. Reg 12D.13 – Regs 12D.01, 12D.02 and 12D.04 all tie the three- or four-year commencement and maintenance requirements to the charge being paid. Reg 12D.13 should state that the same requirements apply when an action is funded in whole or in part by top-up amounts.
k. Reg 12D.13 – the combination of the Act and proposed Regulations give the RCH almost unlimited discretion to spend top-up amounts on any of a wide range of protected

matters.[85] Interest earned on charges becomes a top-up amount[86]; this will be a substantial amount of money. The RCH "must have regard to" any advice he or she *chooses* to obtain from the Restoration Contributions Advisory Committee[87], the Offset Standard[88], other documents and sources[89], and finally, "any other matter"[90]. Issues related to management plans for top-up spending are addressed in "Issues with management plan prescriptions".

l. Regs 12D.14–12D.17 – corrective action by the RCH when monitoring shows net gain is off track: see "Issues with management plan prescriptions".
m. Reg 12D.17 – durability criteria appear to be missing from management plans for bioregional restoration actions: see "Issues with management plan prescriptions".
n. Regs 12D.15, 12D.17, 12D.18 and 12D.19–12D.21 – plans, the RCH Register and the annual report should record and report delivery against the calculator inputs: see "Issues with management plan prescriptions".
o. Regs 12D.19–12D.22 - should require each RCH Register entry to state whether a restoration action is direct or indirect. For indirect actions the RCH Register should identify the conservation planning document relied on and the specific, measurable, achievable, reasonable and timebound outcome sought, and it should be updated with monitoring results.
p. Reg 12D.21 – no reason is provided for the weak controls proposed on the RCH's spending of exemption charges. The following should be recorded in the RCH Register (not only the Annual Report): the dates exemption charges are imposed and paid; the amount spent and allocated per action; and any amount unallocated.
q. Reg 12D.22 – should be extended to s 177DB spending and require each entry to record the source of the money: appropriation, gift, interest or other receipt.
r. Regs 12D.22–12D.23 – contingency and reserves. The Charging Method Paper says the reversal contingency (about one third of the charge in the koala case study) "will not be returned to proponents" if no reversal occurs, and the charge also includes a management reserve and an administration component. The annual report should show unspent contingency and reserves by matter and bioregion and how they were used, and these amounts should be ring-fenced for the matter for which they were collected. The paper also says the "full projected costs" of delivery will be recovered through the charges. If so, top-up amounts should be used only to bridge timing, and any shortfall should be reported rather than silently covered.
s. Payment arrangements (see also the regulations under s 521B of the Act) – the RCH's duties arise when charges are imposed, not paid (s 177CS(1)). We recommend the RCH be required to notify the Minister and publish any unpaid charge past its due date, and for top-up *not* to cover a shortfall without recovery.
t. Reg 12D.23 – should require the annual report to show: top-up receipts by source, top-up spending by purpose, and amounts spent ahead of a charge that remain unrecovered. Where interest derives from charges, the Regulations should require these top-up amounts to be applied to restoration actions that meet delivery standards that apply to other restoration actions including Regs 12D.01, 12D.02 and 12D.04.

[85] Act, s 177DA(1)
[86] Act s 177DK(g), s 528
[87] Act, s 177DA(2)
[88] Reg 12D.13(a)
[89] Reg 12D.13(b)(i–iv)
[90] Reg 12D.13(b)(v)

*Recommendations*

17. Do not finalise Part 12D until the regulations under the Restoration Charge Imposition Act and s 521B of the Act, and the s 134AA declaration, have been consulted on. Failing that, publish a timetable for them and commit to reviewing the Regulations for Part 12B of the Act within 24 months of commencement.
18. Prescribe how the net gain test is to be applied for each class of protected matter, and at minimum for critically endangered ecological communities, rather than leaving it to case-by-case determination.
19. Replace the durability test and the 'applicable maintenance period' with a requirement for ongoing management for as long as the impact lasts, at least for ecosystems (such as grassy ecosystems) that cannot become self-sustaining. In any event, define when an action is 'delivered' and align the period with the assumptions used to price the charge.
20. Require the charge to be paid before the residual significant impact begins, either in the regulations made for s 521B or in every approval condition, and keep the delay before restoration works commence as short as practicable.
21. Strengthen the controls on the RCH's discretion: require the RCH not to act inconsistently with the Offset Standard[91], rather than merely to have regard to it; and limit, and require published reasons and Restoration Contributions Advisory Committee advice for, the delivery of Commonwealth-specified bioregional actions in other locations and the use of alternative bioregional actions.[92]
22. Ring-fence money intended to deliver net gain so that it is not pooled with exemption charge or 'protect-or-conserve money'[93].
23. Require exemption charge spending to be on the affected matters and bioregion unless the RCH publishes reasons, and list persons exempt from the charge in the regulations made for the purposes of s 13(3) of the Restoration Charge Imposition Act.
24. Require indirect restoration actions to have specific, measurable, achievable, reasonable and time-bound outcomes (for species, measured by population, occupancy or habitat use), and require Restoration Contributions Advisory Committee advice to be obtained and published before spending or commencement.
25. Apply the requirements of relevant regulations[94] to actions funded in whole or part by top-up amounts[95], and require that interest-derived top-up amounts be applied only to actions that meet these requirements.
26. Apply the common minimum management planning standard we recommend in "Issues with management plan prescriptions" to every type of management plan[96], and ensure the RCH is required take and publish corrective action, notify the Minister and re-spend if outcomes are not achieved.
27. Require management plans, the RCH Register and the RCH's annual report to record and report delivery against the calculator inputs, calculator version and cost components, in the same units and with actual spending by component.[97]

[91] reg 12D.03
[92] regs 12D.06 and 12D.08
[93] s 177AH(2)
[94] regs 12D.01, 12D.02 and 12D.04
[95] reg 12D.13
[96] including to management plans made for every s 177DA activity and s 177DB action
[97] regs 12D.15 and 12D.17–12D.23 refer

28. Improve the RCH Register and RCH's annual report requirements: state whether each action is direct or indirect, and the conservation planning document relied on; set a time limit for RCH Register updates; record exemption charge dates, amounts spent and unallocated amounts in the RCH Register; extend reg 12D.22 to s 177DB spending and record the source of the money; show unspent contingency and reserves, top-up receipts and spending, and unrecovered amounts in the annual report; and publish unpaid charges past their due date.
29. Publish management plans and Restoration Contributions Advisory Committee advice before spending or commencement, with reasons for each alternative restoration action. Align the review of the calculator methodology (two years after launch) with the review of the Regulations, and publish actual delivery costs against the amounts charged.
30. Simplify reg 12D.02(b)(ii).

## Issues with management plan prescriptions

The proposed Regulations, together with their enabling and related provisions in the Act, as amended, propose the making of the first four of these five available management plan types:

- advanced restoration actions[98];
- restoration actions funded through restoration contribution charge[99];
- bioregional restoration actions funded by bioregional plan registration charges, bioregional plan restoration contributions or top-up amounts[100];
- restoration actions funded through exemption charge[101]; and
- activities funded by top-up amounts.[102]

The requirements in the proposed Regulations establish useful matters concerning intended outcomes, risk identification, monitoring and adaptive management and, for two of the four plan types, durability criteria. However, they are less rigorous than the Department's guidance on environmental management plans, i.e., the *Environmental Management Plan Guidelines* (**EMP Guidelines**). The guidelines are the Department's existing guidance for plans persons taking actions under Chapter 4 of the Act.

Our central concern is that the proposed Regulations focus on describing the restoration action, risks and its intended outcomes, with monitoring and adaptive management schedules, but they do not consistently require the elements that turn a plan into a management system capable of ensuring delivery of environmental outcomes over the long term.

Rather than describe each plan type in detail, Table 1 rates what the proposed Regulations require of each plan type against the minimum elements of a management framework. Note that, for activities funded by top-up amounts, the proposed Regulations require no plan.[103] Given this, none of the criteria are met. No column has been included in Table 1 to reflect this.

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[98] Part 6C of the proposed Regulations
[99] Section 177DD of the Act and regs 12D.14-12D.15
[100] Section 177DE of the Act and regs 12D.16-12D.17
[101] Section 177DF of the Act and reg 12D.18
[102] Section 177DF only allows the regulations to require a plan. The requirement comes from reg 12D.18(2). That is different from ss 177DD and 177DE, where the Act itself requires a plan. If the regulation changed, this requirement may disappear.
[103] Section 177DG of the Act allows the Regulations to require a plan for each activity funded by top-up amounts under s 177DA; the proposed Regulations do not.

The Act is taken as given: where the Act itself already requires an element, the cell is marked 'Act' and is not rated. The Act allows the Regulations to require a plan, or to prescribe further plan content, for every plan type,[104] so every gap shown is one the Regulations could close.

Direct restoration actions must maintain their outcomes for up to 100 years,[105] so each plan must work as a management system, not merely describe an action. The criteria in the first column of Table 1, and the reason each is included, are:

- **Objectives and measurable outcomes** – without them, no-one can tell whether a plan has succeeded.
- **Milestones no more than 5 years apart** – regular checkpoints allow failure to be found and fixed within the life of the plan, not decades later.
- **SMART commitments** – a commitment that is not specific, measurable, achievable, reasonable and timebound cannot be audited or enforced.
- **On-ground evaluation at each milestone** – evidence from the site, not desktop reporting, shows whether outcomes were achieved.
- **Corrective measures triggered by a missed outcome** – a missed outcome must be recovered by the next milestone, not just recorded.
- **Roles, responsibilities and governance** – each commitment needs someone accountable for delivering it.
- **Risk assessment and mitigation** – threats, including climate change, must be anticipated before they cause failure.
- **Monitoring, reporting and adaptive management** – these supply the data that evaluation and correction rely on.
- **Independent audit** – delivery should be checked by someone other than the party delivering it.
- **Plan review and version control** – these keep the plan current and every change traceable.
- **Implementation measures** – the plan must say how, where, when and by whom the action will be delivered.
- **Management for as long as the impact lasts** – where loss is permanent, as it is for grassy ecosystems, gain must be too (Box 1).

## Cross-cutting issues

*Less rigorous than the EMP Guidelines.* The EMP Guidelines treat a management plan as a system covering objectives, responsibilities, risk assessment, management measures, monitoring, corrective actions, auditing and review. Many of these elements are absent or only partly represented in the proposed requirements. The effect is that the Regulations require the preparation of "management plans" without consistently requiring the components typically expected of them.

*Inconsistency between plan types.* Durability criteria are required for restoration contribution charge and exemption charge plans but not for bioregional plans. Plans must name a third-party deliverer in each RCH plan type, but no plan type requires defined accountability within the RCH.

[104] Act, s 170CAA (advanced restoration actions), s 177DD(3)(m) (restoration contribution charge), s 177DE(3) (bioregional restoration actions), ss 177DF and 177DF(2)(a) (exemption charge) and s 177DG (activities funded by top-up amounts).

[105] Dictionary, definition of applicable maintenance period (at least 25 and up to 100 years after the action is delivered): proposed amendment 80.

*Activities funded by top-up amounts.* The Act allows regulations to require a management plan for each activity funded by top-up amounts under s 177DA (s 177DG), but the proposed Regulations do not do so. Those activities may therefore proceed with no plan. The Regulations should require a management plan for each activity funded by top-up amounts. The same should apply to any restoration action funded by top-up amounts under s 177DB.

*When a plan must be completed.* Each RCH plan must be completed before the restoration action "commences" (r 12D.14, 12D.16 and 12D.18(4)). The Dictionary defines when an action commences only for direct restoration actions. There is no defined deadline for completing a plan for an indirect restoration action.

*No enforcement after payment.* The Charging Method Paper says that, once a restoration contribution is paid, “the residual compensation liability is acquitted and no further compliance and enforcement regarding the related offset applies”. For restoration contribution charge plans, the management plan, the RCH Register and the RCH’s Annual Report are therefore the only safeguards for the outcome, which makes the missing corrective-action, audit and review requirements more serious.

*Duty to correct and re-spend.* Section 177DD(4) of the Act requires the RCH to monitor progress and evaluate outcomes, but regs 12D.14–12D.17 do not require the RCH to take corrective action when monitoring shows that net gain is off track. The Regulations should require the RCH to take and publish corrective action, give notice to the Minister, and re-spend if the required outcomes are not achieved.

*Link to the Restoration Contributions Calculator.* The Charging Method Paper builds each charge from standardised inputs (impact-site quality, restoration action category, assumed starting and final quality, time to benefit and confidence, giving a restoration obligation in quality-adjusted hectares), and from cost components (delivery, search and access, administration, a management reserve and a reversal contingency). Nothing in the proposed Regulations requires plans to record those inputs or to report delivery against them, so no-one can check that what is delivered matches what was paid for. The Regulations should require charge-funded plans to record them, using ss 177DD(3)(m) and 177DE(3) of the Act. The RCH Register (regs 12D.19–12D.21) and the Annual Report (reg 12D.23) should then report delivery against those inputs in the same units, with actual spending by component.

*Recommendations*

31. Establish a single, minimum management planning standard applicable across all management plan types, drawing on the principles and content requirements in the EMP Guidelines. At a minimum, every management plan should be required to include:
    a. clearly defined objectives and intended environmental outcomes;
    b. measurable performance indicators and success criteria, including the ongoing management needed to maintain outcomes and, if the Regulations keep a durability test, durability criteria;
    c. defined responsibilities, accountability and governance arrangements;
    d. risk assessment and mitigation measures;
    e. monitoring, evaluation and reporting requirements;
    f. corrective-action triggers and response procedures;
    g. audit requirements;
    h. review and adaptive management mechanisms, including a review schedule or triggers;

i. version control and plan revision procedures;
j. implementation measures, including relevant mapping and spatial information where appropriate; and
k. for plans funded by a restoration contribution charge: a copy of the Restoration Contributions Calculator (showing scores) used, the inputs and restoration obligation on which the charge was based, the cost breakdown, and delivery reported against them in the same units.[106]

32. Require bioregional plans to include the same criteria for ongoing management and, if a durability test is kept, durability criteria.
33. Clarify whether r 12D.17(3) applies to all measures under s 177AH(1) of the Act, including those that only mitigate or repair damage.
34. Require a management plan for activities funded by top-up amounts under s 177DA and for each restoration action funded by top-up amounts under s 177DB.
35. Require the RCH to take and publish corrective action, with notice to the Minister, and to re-spend if the required outcomes are not achieved.[107]
36. Prescribe minimum content requirements for advanced restoration action management plans, rather than relying solely on the 'appropriateness test' in r 6C.05(2)(b).
37. Require plans for restoration actions funded through a restoration contribution charge to include measurable ecological performance standards and independent audit requirements.
38. Define when an indirect restoration action commences.
39. Make clear how an advanced restoration action management plan continues to apply once the action is used to satisfy an approval condition.

[106] For restoration contribution charge, bioregional and exemption charge plans, the Regulations can add these matters under ss 177DD(3)(m), 177DE(3) and 177DF(2)(a) of the Act respectively.
[107] regs 12D.14–12D.17