



Australian Government

Department of Climate Change, Energy,
the Environment and Water

Draft Policy Position: National Environmental Standard for Environmental Offsets

This document provides an overview of the proposed policy positions for a National Environmental Standard for Environmental Offsets associated with reforms of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).





Background

The Samuel Review (Review) recommended the development of National Environmental Standards (Standards) that would form the centrepiece of national environmental law reforms.

The Review found that under the EPBC Act:

- Offsets often become the default rather than the last resort, meaning proponents too often go straight to offsets without fully exhausting avoidance and mitigation options.
- Many offsets are poorly designed or implemented, and in practice sometimes they result in an overall net loss rather than net gain for the environment. In many cases offsets are not secured or not delivered properly.
- Monitoring, compliance, and enforcement of offset conditions are weak. There is no transparency around the location, quality or quantity of approved offsets.

The Review's main recommendations related to offsets, focused on establishing clear, stronger standards for offsetting, and included (in summary):

- Replacing the EPBC Act's 2012 offsets policy with binding laws and development of a National Environmental Standard for Environmental Offsets, and that this standard work alongside a Standard for Matters of National Environmental Significance.
- Set out the mitigation hierarchy for the sequential consideration of avoidance, mitigation, and offsets.
- Offsets be used once appropriate and effective mitigation has been demonstrated.
- Offsets deliver restoration where possible, not just preservation of existing habitat, in areas of highest priority.
- Enabling robust advanced offsets to be created before an approval is granted.
- That a public register of offsets be established and that consideration be given to allowing proponents to pay offset obligations to an investment organisation.



Environmental Offsets

Under the current EPBC Act:

- offset requirements are set in policy, rather than as legislative requirements or standards.
- proponents need to provide information on any measures to offset their impacts, however there is no legal test in the EPBC Act for when or how impacts can be compensated or offset, or how much compensation is required.
- there is no legal requirement for the Minister to consider avoidance and mitigation measures before considering offset measures.
- there is no explicit power for the Minister to attach a condition to an approval to compensate for any damage to a protected matter, including where this has been caused by the action, through an offset activity, restoration contribution charge, or both.

These gaps create a high level of discretion and inconsistency in how offsets and compensation are considered and implemented in practice and contribute to uncertainty for proponents around how and when in the assessment and approval process these may be considered.

- The proposed EPBC Act reforms will provide for a regulatory hierarchy for offsetting including amendments to the legislation, the development of regulations, and development of an Offsets Standard, as well as supporting guidance and policy.

Further detail on the proposed legislative settings for offsets, including the proposed changes to the EPBC Act, the proposed settings to be reflected in EPBC Regulations and content for policy and guidance is provided at **Attachment A**.



Proposed application of the Offsets Standard

This Standard is intended to cover all matters protected, including MNES, in addition to other matters protected under Part 3 of the EPBC Act (protected matters), including the 'whole of the environment' for actions on Commonwealth land, and for actions taken by the Commonwealth and Commonwealth land overseas.

It is proposed that the Minister will only be able to approve an action if satisfied that doing so is not inconsistent with any relevant National Environmental Standard.

The Regulations will specify any decisions the National Environmental Standards, including the Offsets Standard, will specifically apply to.

For actions approved under Part 9, the MNES Standard will apply to the Minister's decision whether or not to approve an action, and what conditions to attach to an approval. This is the point at which the Minister must be satisfied that their decision to approve the action is not inconsistent with the standard. This decision will be based on a range of factors, including the finalised assessment documentation, design of the action, and any proposed conditions of the approval.

In practice, this means the Offsets Standard will be important in determining what conditions to attach to an approval. Conditions may be attached to manage residual significant impacts, so long as the Minister:

- is satisfied that all the mandatory requirements for approving the action in Part 9 of the EPBC Act have been met, and
- has considered whether the proponent has taken appropriate measures to avoid, mitigate or repair the significant impact to a protected matter.

For landscape-scale approaches, the Offsets Standard will apply to each class of actions (as a whole). The Minister must be satisfied that:

- the approval to undertake the class of actions, or the making of a bioregional plan, is not inconsistent with the Standard, and
- bioregional restoration measures will appropriately compensate for residual significant impacts to a protected matter.

For accreditation of state and territory processes under bilateral agreements, the Minister must be satisfied that:

- the accredited process is not inconsistent with the Standard, and
- for approval bilateral agreements - the approval decisions made under the accredited process will not be inconsistent with the Standard.

The Regulations will also prescribe which impacts to protected matters cannot be compensated. An example includes where this would be inconsistent with Australia's international obligations or where offsetting is known not to be possible. In these situations, impacts would need to be either avoided, mitigated or repaired consistent with the MNES Standard.

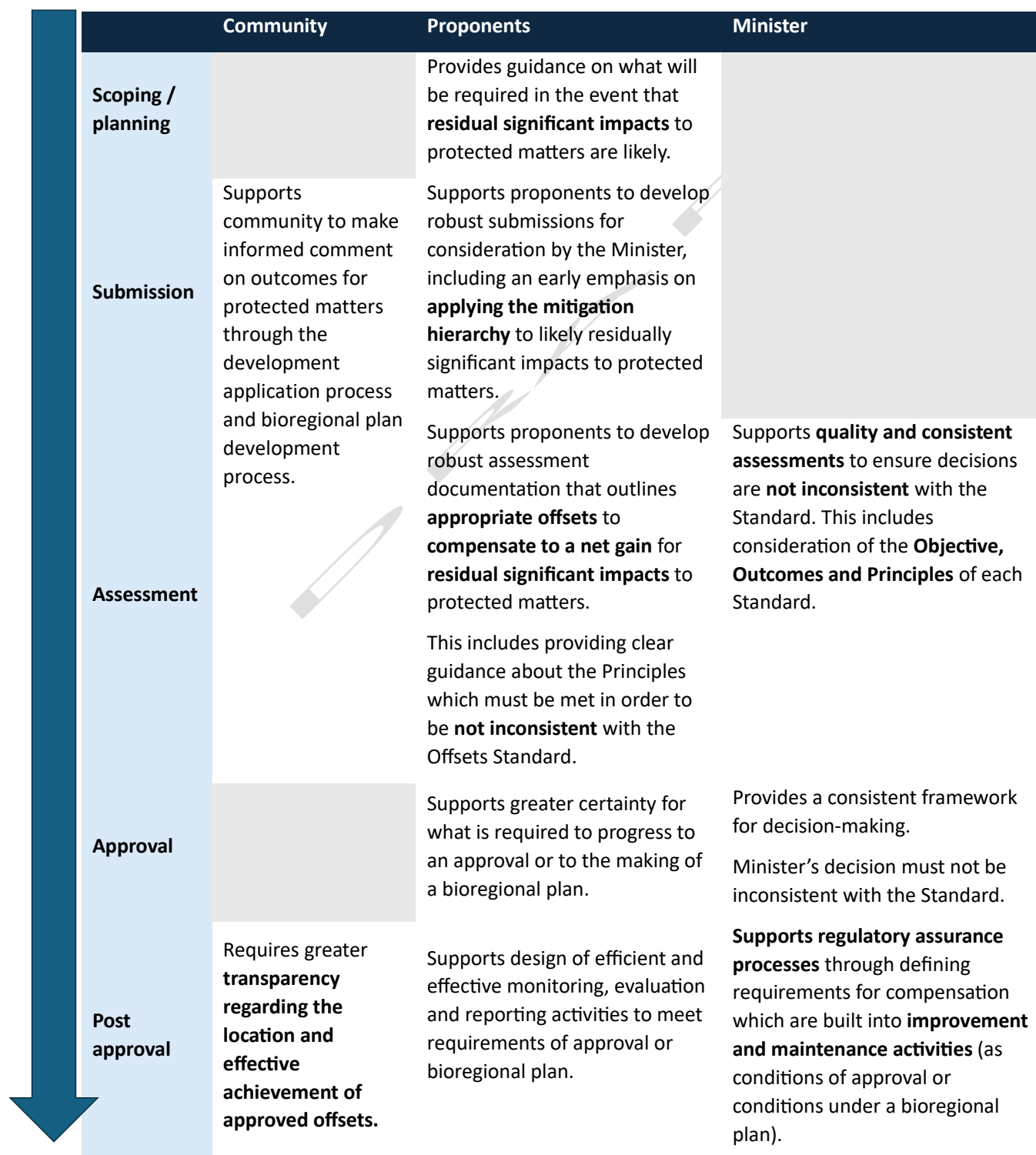
This means the Offsets Standard can only be considered by the Minister where the impact to a protected matter is not unacceptable and it can be compensated for under the EPBC Act and Regulations.



Anticipated use of the Standard by Proponents

It is anticipated that proponents will be guided by the Offsets Standard in practice when designing projects as it will support actions with residual significant impacts to meet EPBC Act requirements. This will provide certainty for proponents on what is required and increase the efficiency of EPBC Act assessments and approvals.

Figure 1: Expected use of the Offsets Standard by different stakeholders



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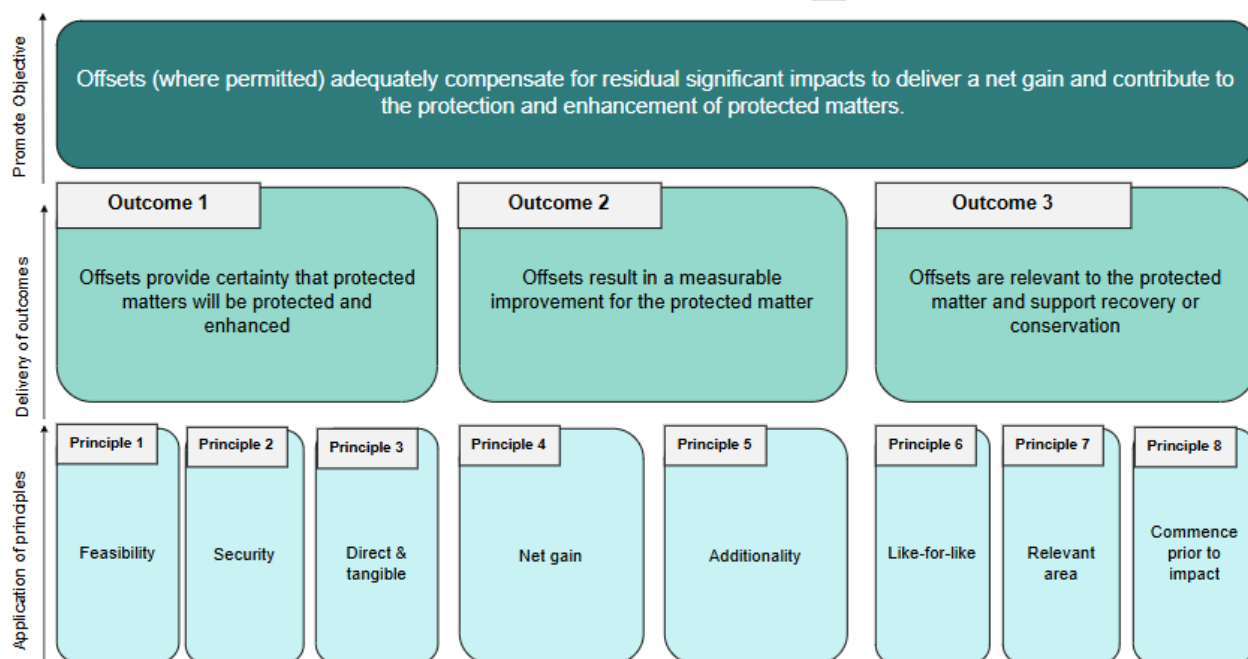
Key elements of the Offsets Standard

There are three key elements of the Offsets Standard: **Objective**, **Outcomes** and **Principles** (Figure 2).

- **Objective:** outlines the overall aim of the Standard and provides clear linkages to the Objects of the EPBC Act,
- **Outcomes:** are specific results that, when implemented, the Standard aims to achieve, and
- **Principles:** are requirements to be applied through the implementation of the Standard to facilitate the realisation of Outcomes to effectively promote the Objective of the Standard and, as a result, the Objects of the EPBC Act.

In addition, key definitions are to be included in the Standard when they are not already defined in the EPBC Act.

Figure 2: Key elements of the Offsets Standard



Summary of intent

The Offsets Standard intends to outline the Objectives, Outcomes and Principles that will guide decisions relating to the approval of offsets.



Content for the Standard

Application of the Standard

The Offsets Standard will apply:

- once likely impacts from the impacting action are known,
- where impacts are not unacceptable,
- where impacts are assessed as significant,
- where impacts can be feasibly compensated, and
- only after appropriate consideration of measures to protect, mitigate, and repair impacts to protected matters – through application of the **mitigation hierarchy**.

All **residual significant impacts** to protected matters are required to be compensated through an **offset**.

Definitions

Residual significant impacts: as defined in the EPBC Act [refer **Attachment B** for proposed definition].

Mitigation hierarchy: is a framework designed to minimise adverse significant impacts of actions on protected matters. The four sequential steps include avoid, mitigate, repair, and offset.

Offset: measures to compensate to a gain for residual significant impacts to protected matters. Offsets can be achieved through an **offset activity** or a payment to a **contribution scheme**.

Contribution scheme: a scheme established under the EPBC Act [e.g. **restoration contribution charge**] or endorsed or accredited by the Minister under the EPBC Act.

Offset activity: is a measure or activity to compensate for a residual significant impact. [It is not a payment to a **contributions scheme**]

Restoration contribution charge: is a monetary payment made into a **Restoration Contribution Special Account** to compensate for a residual significant impact to a protected matter [to be delivered by the **Restoration Contributions Holder**]. Once a restoration contribution is made, the residual compensation liability is acquitted and no further compliance and enforcement regarding the related offset applies.

Restoration contribution special account: a special account established by the Australian Government for the purposes of receiving and investing a **restoration contribution charge**.

Restoration Contributions Holder: the statutory office holder responsible for acquitting a restoration contribution received by the **Restoration Contribution Special Account**.



Objectives of the Offsets Standard

Summary of intent

This Standard is intended to cover decisions relating to offsets for all MNES, in addition to other matters protected under Part 3 of the EPBC Act (protected matters), including the ‘whole of the environment’ for actions on Commonwealth land, and for Commonwealth Actions with acceptable residual significant impacts where offsets are permitted and required to deliver a net gain.

Content for the Standard [policy]

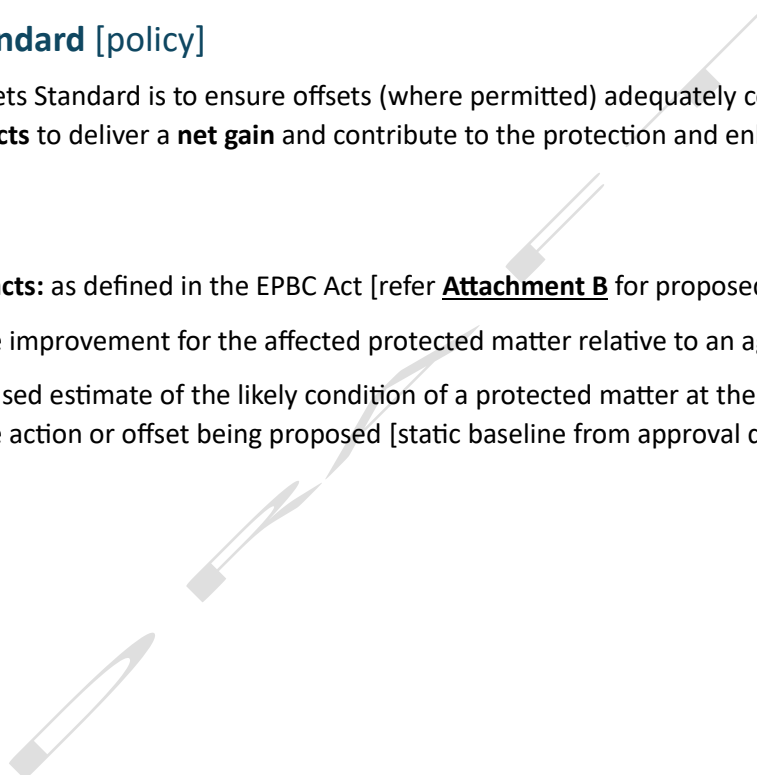
The objective of the Offsets Standard is to ensure offsets (where permitted) adequately compensate for **residual significant impacts** to deliver a **net gain** and contribute to the protection and enhancement of protected matters.

Definitions

Residual significant impacts: as defined in the EPBC Act [refer **Attachment B** for proposed definition].

Net gain: the measurable improvement for the affected protected matter relative to an agreed **baseline**.

Baseline: An evidence-based estimate of the likely condition of a protected matter at the point of approval and in the absence of the action or offset being proposed [static baseline from approval date].





Outcomes to be achieved through application of the Offsets Standard

Summary of intent

Outcomes for protected matters outline what is to be achieved through the application of the Standard to decisions made under the EPBC Act.

It is recognised that offsetting the residual significant impacts of sustainable development cannot protect and enhance EPBC Act protected matters alone. Rather, it is one part of a broader regulatory framework which is used to compensate for impacts through the development process. Offsets are best able to support recovery and conservation by focusing efforts on addressing existing threats which result in a decline in the condition and/or resilience to protected matters (e.g., land clearance, slow loss of condition as a result of weeds, more rapid loss as a result of predation by feral cats) and responding to emerging threats which result in a decline in condition and/or resilience to protected matters (e.g., climate resilience, new emerging diseases). The nature of relevant offsets will be dependent on the protected matter and its requirements.

The Offsets Standard must be able to achieve Outcomes through the decisions it applies to. The Outcomes therefore reflect the role of the EPBC Act assessment, approval and bilateral accreditation process in delivering Outcomes for protected matters. The Outcomes aim to promote the Standard's Objectives and the broader Objects of the EPBC Act.

Content of the Standard [policy]

Through the demonstrated application of the Principles outlined in this Standard, the following Outcomes for EPBC Act protected matters will be facilitated through decision-making:

- a) Offsets are relevant and available to compensate for the impact to the protected matter and support recovery or conservation.
- b) Offsets result in a **measurable improvement** [from the **baseline** at the point of approval] for protected matters.
- c) Offsets provide certainty that protected matters will be protected and enhanced.

Definitions

Measurable improvement: a tangible and quantifiable increase in condition for protected matters relevant to a current baseline.

Baseline: For definition refer to *Objectives of the Offsets Standard*.



Principles to be applied through the Offset Standard

Summary of intent

Principles outline what needs to be demonstrated through the application of the Offset Standard to facilitate the realisation of Outcomes for EPBC Act protected matters in order to effectively promote the objective of the Offsets Standard.

Further detail on the intended application of the Principles is outlined below, including how they are intended to be reflected in the regulatory hierarchy. Eight Principles have been identified for the Offsets Standard:

1. Feasibility
2. Security
3. Direct and tangible
4. Net gain
5. Additionality
6. Like-for-like
7. Relevant area
8. Offset Commenced prior to impact

The above Principles will be included in the Standard and details/guidance on how the Standard will operate in practice and what will need to be demonstrated to have applied the principles will be included in policy guidance.

While Principles have been designed to underpin outcomes, it is the collective application of the Principles that provides for realising the Outcomes of the Offsets Standard.

Content of the Standard [policy]

The following eight **Principles** will be applied through the implementation of the Offsets Standard to facilitate the realisation of **Outcomes** for EPBC Act protected matters and effectively promote the **Objective** of this Standard:

1. **Feasibility:** Compensation for the affected protected matter is appropriate and the impact is able to be compensated for at the time approval is sought or a bioregional plan is made.
2. **Security:** Offset activities are committed and the offsets site is protected and managed to prevent its loss and degradation.
3. **Direct and tangible:** Offsets provide a tangible benefit to the affected protected matter by directly contributing to its overall conservation outcome.
4. **Measurable improvements:** Offsets deliver a measurable improvement for the affected protected matter relative to an agreed baseline.
5. **Additionality:** Offsets deliver benefits that would not have occurred without the offset - they go beyond existing obligations, and protections.



6. **Like-for-like:** Offsets provide for a like-for-like outcome for the **affected protected matter** to compensate for residual significant impacts.
7. **Relevant area:** Offsets delivered in an area that is relevant to the affected protected matter and which will enhance the effectiveness of conservation efforts for the affected protected matter.
8. **Offset commenced prior to impact:** Offset is secured and actively managed at the offset site prior to the relevant impact starting at the impact site.

Definitions

Approved action: an action or class of actions which has been approved under the EPBC Act or specified as priority actions under a bioregional plan

Affected protected matter: is the protected matter on which a proposed action has been assessed as having a residual significant impact and for which an offset is required to compensate for those impacts for the **proposed action** to be an **acceptable action**.

Proposed action: an action or class of actions which has been referred under the EPBC Act which is proposed to be, or included in, a specified class of actions approval for a strategic assessment, or which is in the class of actions specified as priority actions under a bioregional plan.



Application of the Principles

Principle 1: Feasibility - Compensation for the affected protected matter is appropriate and the impact is able to be compensated for at the time approval is sought or a bioregional plan is made.

Policy intent

Feasibility is important for improving certainty because it ensures that offsets can deliver their intended outcomes. Feasibility supports early identification of constraints by Ministers and proponents, allowing for prompt adaptation and reducing the risk of failing offsets. This upfront assessment provides confidence that the offset will adequately compensate for residual significant impacts and support achievement of positive outcomes for affected protected matters.

An offset could be seen as not feasible when the values being impacted cannot be realistically replaced, restored or compensated for. For example, this may be due to:

- suitable areas are not available for protection or restoration,
- scarcity of matter being impacted,
- habitat features cannot be feasibly replicated in an ecologically relevant timeframe,
- values are location specific and cannot be substituted, such as World Heritage properties or Ramsar wetlands,
- the offset is unable to meet Principles in the Offsets Standard, or
- confidence in the proponent's ability to deliver an offset is low. This could be due to proposed cost, or the level of offset commitment could not be realistically achieved.

Content of the Standard [policy]

Offset activity is to be **feasible** and based on appropriate and suitable data and information and expert assessment such that there is a reasonable expectation that the offset will contribute to the recovery or conservation of the affected protected matter with **high certainty**.

Where an offset is assessed to be not feasible, this offset could not be used. An alternative offset is to be proposed, or residual significant impacts designed out of the action through further avoidance, mitigation or repair.

Definitions

Conservation planning documents: A statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of a protected matter, that is made under the EPBC Act or endorsed or accredited by the Minister.

Feasible: [as per dictionary meaning] – For guidance: that which is possible and likely to be achieved.



High certainty: A high level of confidence that the required **net gain** will be achieved and that the outcome of this gain will contribute to the recovery or conservation of the protected matter. For offsets this can be demonstrated by providing evidence that the action proposed will deliver the proposed outcomes for the affected protected matter, including:

- i. existing substantiated expert knowledge or peer reviewed science on how the **offset** will achieve offset objectives with a high confidence of success, and
- ii. taking into consideration the reasonably foreseeable future adverse impacts of climate change (including recommended actions in **conservation planning documents**); and/or
- iii. independent verification of prior success for an analogous activity; and/or
- iv. independent expert review and endorsement of the proposed **offset** and associated outcomes for the protected matter, as well as comprehensive adaptive management plans. This will be necessary for innovative **offsets**.

Net gain: For definition refer to *Objectives of the Offset Standard*.

Offset: For definition refer to *Key Elements of the Offset Standard*.



Principle 2: Security – Offset activities are committed and the offsets site is protected and managed to prevent its loss and degradation

Policy intent

Offset security mechanisms are critical to ensure that outcomes for affected protected matters can be successfully delivered and maintained over the activity and maintenance periods. Providing evidence of robust security mechanisms gives Ministers confidence that affected protected matters will be effectively protected and enhanced through the proposed offset.

In the context of offsets, secure means that the offset is legally, practically or administratively (in order of preference) protected such that there is high certainty that outcomes will be achieved and maintained. Security mechanisms provide assurance that offsets are not at risk of being degraded or lost, underpinning the integrity and effectiveness of leveraging offsets to protect and enhance protected matters.

Security measures must consider the available legal and regulatory protection options in the area where the offset will be delivered. Where possible, strong legal instruments such as covenants on land titles should be used to secure the offset. In cases where legal mechanisms are not available, alternative measures may be accepted if it is reasonable to expect a low risk of conflicting activities that could compromise offset outcomes.

Content of the Standard [policy]

Offset activities are committed and offset sites are **securely protected** such that there is a reasonable expectation that the projected gain will be delivered and maintained for the duration of the impact.

For indirect offsets, offset activities are committed and secured to provide **high certainty** the proposed outcome for affected protected matters will be delivered.

For direct offsets, arrangements are in place to ensure offset sites and activities are protected and managed to prevent loss and degradation of the offsets site:

- For the duration of the **activity period**,
- After the offset's outcome has been delivered, and
- During the offset site's **maintenance period**.

Definitions

Securely protected: Suitable protection mechanisms are, or will be, in place to ensure the projected gain will be delivered and will be maintained for the duration of the impact.

- A suitable protection mechanism must have regard to the available legal protection options in the bioregion where the impact occurs. Strong legal mechanisms should be preferred where these are available [e.g. covenants on the land where the offset activities will take place, including land acquired by the proponent or land owned by another third party, land purchased for addition to a protected area estate, the use of state-based offset schemes or projects/certificates under applicable statutory-based markets]. Where it can be demonstrated that these mechanisms are not available, alternative options can be considered where it is reasonable to expect there is a low risk of other activities occurring that may diminish the outcomes for the protected matter.



- Where the impact is permanent, there must be high confidence that the gain will be delivered and will be maintained.

Activity period: is defined as the timeframe from commencement of offset activities until the offset outcome is delivered. The activity period will vary from project to project and be dependent on projections made by the proponent.

- For threatened species, ecological communities and migratory species, the activity period will influence the feasibility of an offset and support the Minister in determining if the offset is ecologically feasible and can be delivered in an ecologically relevant timeframe for the affected protected matter.

Maintenance period: is defined as the timeframe that follows from the activity period, after the outcome has been delivered, and in which the outcome must be maintained (and is not linked to the security of the offset). The outcome must be maintained:

1. Where the impact is temporary, for a minimum of 25 years and until the outcome is self-sustaining, or
2. Where the impact is long-term or permanent, for 100 years or until the outcome is self-sustaining, whichever comes first.
 - In their application, proponents must estimate the maintenance period and provide evidence of real-life examples where self-sustaining outcomes were achieved within the proposed timeframe.
 - For those protected matters to which the compensatory obligation can be quantified, proponents may select the duration of the maintenance period, being these a 25, 50 or a 100-year period.
 - Where a lower maintenance period is selected, a greater quantum of offset will be required to account for a higher risk of the outcome declining and not reaching a self-sustaining status.
 - Where the outcome is proven to be self-sustaining prior to the end of any maintenance period selected, proponents may request the end of their liability and amendment to the agreed maintenance period.
 - The liability of the proponent ends once they can demonstrate with **high certainty** that the outcome is self-sustaining.



Principle 3: Direct and tangible - Offsets provide a quantifiable benefit to the affected protected matter by directly contributing to its overall recovery and conservation.

Policy intent

Offsets that provide a direct and tangible benefit to the affected protected matter increase certainty that the protected matter will be protected, enhanced, and that the offset can achieve its intended aims. By directly addressing the specific requirements of the protected matter, offsets offer clear, measurable improvements that contribute to the overall recovery or conservation of an affected protected matter.

Direct and tangible refers to offset activities that have a demonstrable and immediate link to the protected matter. Indirect offsets, such as research, are less likely to deliver tangible benefits, as they do not directly enhance the protected matter or compensate for the specific residual significant impact. However, where an indirect offset is identified as a priority action, it may be recognised as contributing to the certainty that subsequent direct offset activities will contribute to the protection and enhancement of the protected matter, thus providing quantifiable benefits.

Both direct and indirect offsets provide a direct and tangible benefit to protected matters:

- Direct offsets are mechanisms to minimise loss from existing threats [e.g., slow loss of values over time, change in land use where there is no positive obligation under the EPBC Act]. They can include securing and actively managing land and managing pest species, subject to the other principles (i.e. like-for-like).
- Indirect offsets are more likely to be mechanisms to minimise loss from new and emerging threats [e.g., disease, climate change]. When threats are emerging, required responses to result in a net gain are more likely to be novel, and scientific research and education may be considered more appropriate than other direct offsets.

Content of the Standard [policy]

To be direct and tangible, offsets will be relevant to the protected matter, provide quantifiable benefits, and contribute to the recovery or conservation of the affected protected matter with **high certainty**.

Offsets will be required to be **direct offsets** unless **conservation planning documents** identify an indirect offset [e.g. research project or public education] as a highest priority for the protected matter.

Definitions

High certainty: For definition refer to *Principle 1: Feasibility*.

Direct offset: Provides quantifiable and tangible conservation benefits to the affected protected matter by undertaking actions specifically designed to improve environmental or heritage outcomes in the immediate future. Actions may include (for example): planting, land restoration, removal of pressures, active threat management, ongoing management to sustain improved environmental or heritage outcomes and captive breeding or propagation programs.



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

Policy intent

Actions, or classes of actions (as a whole), which will result in residual significant impacts to protected matters will need to demonstrate they can deliver a measurable improvement for the affected protected matter relative to an agreed baseline, reflecting what would occur in the absence of the offset activity.

It is important that net gain exceeds this baseline to adequately compensate for the direct loss of values and any indirect losses. This also ensures each individual project is held responsible for compensation and therefore results in a real opportunity for a measurable improvement for affected protected matters to be realised relevant to the baseline.

Regulations will include information on how net gain can be demonstrated at the project and landscape scale.

Offset activities could in part include secure protection of a site that is at a clear and imminent risk of impact (what are known as ‘averted loss’ actions).

Clear and imminent risk of impact is when there is a known [activity/action] that will directly result in a significant impact to a protected matter and there are no further regulatory mechanisms to prevent or manage the potential impact(s). This may include circumstances where there is an exemption from further regulation under the [EPBC Act] and the impact would not be regulated by other state or territory laws. If the impact would itself be the subject of regulation under the [EPBC Act], this is not a clear and imminent threat.

Content of the Standard [policy]

Offset activities deliver measurable improvements to the condition of the affected protected matter relative to a **baseline** that reflects what would have happened in the absence of the proposed offset activity. This will require offset activities to restore and manage the protected matter.

Definitions

Baseline: For definition refer to *Key Elements of the Offset Standard*.

Secure protection: This means a legal mechanism is in place to provide the security (e.g. contract in place with management action provider; or, an applicable market project has been registered; or, a covenant is in place over purchased land).

Offset: For definition refer to *Key Elements of the Offset Standard*.



Principle 5: Additionality - Offsets deliver benefits that would not have occurred without the offset - they go beyond existing obligations, and protections.

Policy intent

Additionality is a fundamental principle for offsets because it ensures that offset actions produce quantifiable conservation outcomes that would not have occurred otherwise. Without additionality, offsets may simply formalise activities that would have happened anyway, failing to compensate for residual significant impacts and allowing ongoing decline of protected matters.

Key considerations for additionality include whether there is an existing positive obligation to actively manage, improve and/or maintain protected matters. For example, this would consider:

- Where there is an existing positive obligation by land managers to improve and maintain protected matters (e.g., where an existing state, territory or Commonwealth law requires active management activities to improve and maintain protected matters which will be affected).
- Where there is an existing obligation to not have a significant impact on a protected matter without an approval (or a decision that an approval is not required) (e.g., where protected matters may be adversely impacted by a change in land use and will require consideration under the EPBC Act if the adverse impact may be, or is likely to be, a significant impact).

Where there is no existing positive obligation (i.e., the obligation is to not harm, rather than actively manage to improve and maintain protected matters) the proposed activity may be considered an offset.

In recognition of the conservation and administrative benefits of leveraging existing State or Territory offset schemes and arrangements, the principle of additionality would be considered to be met when State and Territory partnerships were relied on to fulfil compensation obligations.

Registered advanced offset activities will have already met the additionality test at the point that they were secured and managed.

Content of the Standard [policy]

Offsets are to be additional to existing actions, investment and regulatory obligations, except where the **offset** is (or will be) an approved state or territory **offset** for the same action that meets the requirements of this standard or is a **registered advanced offset**.

Definitions

Offset: For definition refer to *Key Elements of the Offset Standard*.

Registered advanced offset: An **offset** that has been registered in accordance with the EPBC Act and Regulations for this purpose and has commenced prior to the approval of an action to reduce the time lag from the impact. A registered advanced offset may be considered by the Minister against the requirements of this Standard in making their decision.



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

Policy intent

Like-for-like refers to the offset replacing, restoring, or protecting the same kind of environmental feature, or habitat that was impacted, ensuring comparable ecological values and functions are maintained.

To support recovery and conservation in relation to the affected protected matter offsets need to provide a like-for-like outcome to compensate for residual significant impacts. Offsets should focus on restoring the habitat and/or functions impacted by the action to support the retention of values in the landscape and adequately compensate for any residual significant impacts.

Like-for-like offsetting should be supported by evidence and in the first instance prioritise the recovery or conservation of the affected protected matter. Where strict equivalence cannot be readily achieved, proposed offsets for an affected protected matter should demonstrate a clear alignment with the attributes and functions being impacted. If this is not possible offsets should then refer to priority actions set out in conservation planning documents.

In no instances will trading offsets across different protected matters be considered as a suitable offset.

Content of the Standard [policy]

Offsets deliver **like-for-like** outcomes that prioritise the recovery or conservation of the affected protected matter. Where this cannot be achieved, offsets should be consistent with the priorities for the affected protected matter identified in **conservation planning documents** and any relevant bioregional guidance plan or bioregional plan.

Definitions

Conservation planning documents: For definition refer to *Principle 1: Feasibility*

Like-for-like: ‘Like-for-like’ means residual significant impacts to a specific protected matter are compensated by an **offset** that benefits the same specific attribute of the specific protected matter that is impacted.

Offset: For definition refer to *Key Elements of the Offset Standard*.



Principle 7: Relevant area – Offsets delivered in an area that is relevant to the affected protected matter and which will enhance the effectiveness of conservation efforts for the affected protected matter.

Policy intent

Offsets should be delivered in an area that is ecologically and socially relevant to the affected protected matter to ensure they deliver meaningful outcomes. Locating offsets in a relevant area is a key assurance mechanism for both ecological and social equity.

- *Ecological equity*: Offsets placed within the same landscape or bioregion as the impact helps ensure that protected matter sub-populations and critical ecological functions are maintained or restored locally. This supports the persistence, connectivity and resilience of affected protected matters within the area.
- *Social equity*: Implementing offsets in relevant areas ensures that local stakeholders retain access to, and benefit from, the protected matter, minimising the loss of social values within the area.

Content of the Standard [policy]

Offset activities are to be situated in an area relevant to the affected protected matter:

- **offsets** are located within the same **bioregion** as the impact, or, where this is not reasonably practicable, be located within an alternative, ecologically relevant **bioregion** or ecologically relevant area as close to the offset site as possible, that will offer the same or better outcome for the protected matter;
- for all protected matters, prioritise an area within the same state/territory as the impact.

Definitions

Bioregion: As described in the Interim Biogeographic Regionalisation for Australia (IBRA).

Offset: For definition refer to *Key Elements of the Offset Standard*.



Principle 8: Offset commenced prior to impact – Offset is secured and actively managed at the offset site prior to the relevant impact starting at the impact site.

Policy intent

Offsets need to be secured and actively managed at the offset site prior to the relevant impact starting at the impact site. This ensures obligations to offset residual significant impacts to the protected matter have commenced prior to impacts on that protected matter commencing. This includes commencement of direct and indirect impacts.

An action or class of actions could propose to stage the securing of offsets with the corresponding relevant staging of impacts to protected matters.

For restoration contributions, the payment must be made into the restoration contributions special account prior to the relevant impact commencing.

In practice, the Minister will consider whether an offset is feasible prior to a decision, however, the offset does not need to be secured prior to a decision being made. Conditions will require the offset be in place prior to the impact commencing.

Content of the Standard [policy]

An offset will have **commenced** at the offset site prior to the relevant impact(s) from the approved action or classes of action at the impact site.

When the offset requires a payment into a fund, the payment will have been made prior to the impact at the impact site.

For bioregional plans, offsets must be delivered according to the timing set out in the plan.

In circumstances where a project will be delivered in distinct stages over an extended time period, an **offset** may be identified for each stage of the development, and must commence prior to the impact(s) from the relevant stage.

Definitions

Commenced: Offsets and **secure protection** mechanisms are demonstrably underway. For **direct offset activities**, this requires the commencement of on-ground activities (e.g. fencing areas that will be planted, commencing weed management). For definition of **secure protection**, refer to *Principle 4: Net gain*.

Offset: For definition refer to *Key Elements of the Offset Standard*.



Attachment A: Legislative setting for Offsets

Reformed EPBC Act

A number of proposed changes to the EPBC Act are relevant to the Offsets Standard.

Approval only if not inconsistent with the Offsets Standard

It is proposed that the Minister will only be able to approve an action or class of actions, or to make a bioregional guidance plan or a bioregional plan if satisfied that doing so is not inconsistent with any prescribed National Environmental Standard.

Approval only if no unacceptable impacts

It is proposed that the Minister will only be able to approve an action or class of actions if satisfied that it will not have, or be likely to have, an unacceptable impact on a protected matter. The only exception is in the rare circumstance of the action being in the national interest and impacts are unavoidable. The Minister will also only be able to make a bioregional plan if satisfied that it would not result in, or be likely to result in, an unacceptable impact. Relevant to the Offsets Standard, an unacceptable impact cannot be made acceptable (and therefore be approved) through the delivery of an offset. That is, an offset cannot make unacceptable impacts acceptable.

Addition of conditions

The EPBC Act currently allows for conditions to be added if the Minister considers it necessary or convenient for protecting, or for repairing or mitigating damage to, an EPBC Act protected matter for which the approval has effect.

The proposed amendments extend the Minister's power to attach conditions to an approval to specifically include a condition to compensate for any damage to a protected matter that has, may or will be caused by the impact from the action. Compensation conditions may require the proponent of the action to provide an offset.

In setting a condition to compensate, the Minister will be required to first consider whether the impacts from the action have been appropriately minimised (e.g., through appropriate siting and design of the proposed development). Equivalent requirements will apply to the inclusion of bioregional restoration measures in bioregional plans.

Ability to discharge residual offset compensation obligations through offset contribution payments

The EPBC Act will be modified to introduce a new financial compensation option for proponents with residual offset compensation obligations. The associated legislative architecture will be outlined in the Regulations and is expected to include:

- Establishing special account and its functions.
- Establishing statutory officeholder (Restoration Contributions Holder), its functions and reporting requirements.
- Establishing a statutory Restoration Contributions Advisory Committee and its functions.
- Requirements for spending offset payments on offsets, including when alternative offsets are permitted and consultation with the Advisory Committee.



A new Charge Imposition Bill is also proposed to be developed to allow for restoration contribution payments to be charged. The special account will also be able to receive bioregional plan restoration contributions and fees paid by developers who register to operate in a bioregional plan development zone.

Requirement to fully compensate to a 'net gain' any residual significant impacts

It is proposed the EPBC Act will require a proponent to compensate all residual significant impacts of an action. The intention is that all residual significant impacts will need to be fully compensated to a net gain through an offset.

The EPBC will define residual significant impacts as:

An impact that an action will have or is likely to have on a matter protected by a provision of Part 3 is a *residual significant impact* on the matter if all of the following apply:

- a) the impact is significant;
- b) the impact will not be avoided, mitigated or repaired in the course of taking the action;
- c) the impact will not be avoided, mitigated or repaired in the course of complying with conditions to be attached to the approval of the taking of the actions.

Approval for action with residual significant impact must pass the net gain test

Actions or classes of actions that have residual significant impacts on an affected protected matter will be able to be approved only if the Minister is satisfied that the approval will pass the 'net gain' test.

The net gain test can take into account conditions which are added to the approval. The approval passes the net gain test when either or both of the below condition is attached to the approval **and** compliance with that condition results in a net gain:

- compensate for damage to the protected matter;
- offsets payment to the Holder.

Similarly, before making a bioregional plan, the Minister must also be satisfied that the bioregional plan will, or is likely to, result in a net gain for impacted protected matters. It is proposed the regulations will prescribe what net gain looks like for each protected matter.

Net gain and compensation will not apply to people or communities aspect of the whole of the environment

The net gain test and related compensation requirements are not proposed to apply to people or communities for impacts of an action where the Whole of the Environment is the protected matter.

Advanced offsets

Amendments to the EPBC Act will enable a person, including a project proponent, to register an offset separately and in advance of an application for approval of an action.

Details on how these will operate will be in Regulations. Refer to **Attachment D** for further details.

Ability to make Regulations

It is proposed that Minister will be able to make subordinate legislation for the purpose of compensating impacts to protected matters. This could include regulations to prescribe the amount of net gain required to offset any loss in biodiversity, provide for any exemptions from the net gain test (where appropriate) and



any other requirements relating to net gain or offsets. In the absence of regulations, the Minister retains discretion over what constitutes a net gain.

Protection Statements

It is proposed that the EPBC Act will allow the Minister to make Protection Statements to bridge the gap between the science embedded in conservation documents and the key information that must be considered to inform a regulatory decision.

Once issued, the Minister must not act inconsistently with a Protection Statement including for approval decisions. Recovery plans and conservation advices will continue to play an important role in providing contextual information to support protection statements and the Minister may still have regard to those documents for relevant approval decisions.

A protection statement will not affect the requirement for decisions to not be inconsistent with National Environmental Standards.

Regulations

The Regulations will be updated to specify which Standards, or parts of the Standards, apply to different EPBC Act decisions. The Regulations will also prescribe which impacts to protected matters cannot be compensated.

Note that development of Regulations will require further consultation.

Guidance and policy

A range of publicly accessible policy guidance will be available for offsets. These are anticipated to include:

Offsets Calculator

The offsets calculator is a tool to determine compensation obligation associated with a residual significant impact, assess the suitability of an offset proposals and calculate Restoration Contributions. It will evaluate time horizons, risk of loss, changes in habitat or vegetation quality over time, and confidence in input data to estimate the proportion of the residual significant impact that would be offset.

When the calculated offsets do not adequately compensate for the residual significant impact to achieve net gain, proponents may need to adjust or enhance their offset proposals, which could include making a restoration contribution.

The detailed calculation methodology will be publicly available, allowing proponents and stakeholders to understand how offset outcomes are assessed. Additional or modified metrics may be incorporated over time.

Cost Recovery Implementation Statement of Offset Payments

The Cost Recovery Implementation Statement (CRIS) will outline how the Australian Government recovers the costs associated with environmental assessments under the EPBC Act. Offset Payments will be managed within the Commonwealth Charging Framework, with administrative costs included in the charge, ensuring the full costs of implementing, monitoring and managing offsets are covered.

This approach provides transparency and predictability for proponents, allowing them to understand and plan for offset costs in advance, while supporting the effective and accountable delivery of outcomes.

Special Account and Statutory Officeholder Policy

OFFICIAL Sensitive



Under the EPBC Act, offset payments collected will be held in a Special Account specifically designated to manage and deliver offset actions. Proponents contribute to the Special Account through offset payments, which are used to deliver offsets as outlined in strategic offset management plans.

The statutory officeholder is responsible for managing the Special Account and ensuring that payments are used for their intended purposes, including the implementation, monitoring, and long-term management of offsets in accordance with the strategic offset management plans.

Ministerial Rulings

The Minister may make a ruling on the use of offsets and offset payments when offset measures are known not to be ecologically feasible, ensuring funds are directed towards outcomes for protected matters.

Ministerial Guidance

The Minister may provide guidance on the functions of advisory committees, clarifying their role in advising on offset design, implementation, and monitoring to ensure effective and transparent delivery of offsets.



Attachment B: EPBC Act definitions

The following definitions are currently included, or are proposed to be included, in the EPBC Act.

Residual significant impact of an action:

- 1) An impact that an action will have or is likely to have on a matter protected by a provision of Part 3 is a *residual significant impact* on the matter if all of the following apply:
 - a) the impact is significant;
 - b) the impact will not be avoided, mitigated or repaired in the course of taking the action;
 - c) the impact will not be avoided, mitigated or repaired in the course of complying with conditions to be attached to the approval of the taking of the actions.

Residual significant impact of a class of actions

- 2) An impact that a class of actions as a whole will have or is likely to have on a matter protected by a provision of Part 3 is a residual significant impact on the matter if all of the following apply:
 - a) the impact is significant;
 - b) the impact will not be avoided, mitigated or repaired in the course of taking the actions in the class;
 - c) the impact will not be avoided, mitigated or repaired in the course of complying with conditions to be attached to the approval of the taking of the class of actions.



Attachment C: Application of Principles to the Restoration Contributions Holder

Background

The EPBC Act will be modified to introduce a new financial compensation option for proponents with residual offset compensation obligations. The associated legislative architecture will be outlined in the Regulations and is expected to include:

- Establishing a special account and its functions.
- Establishing statutory officeholder (**Restoration Contributions Holder; Holder**), its functions and reporting requirements.
- Establishing a statutory Restoration Contributions Advisory Committee and its functions.
- Requirements for spending offset payments on offsets, including when alternative offsets are permitted and consultation with the Advisory Committee.

Additional guidance for offsets

The Regulations may also include detailed requirements for offsets for protected matters, including those quantified in the offsets and contributions calculator tool (i.e. the measure proposed is ecologically feasible and leads to a restoration outcome). This may include additional information on:

- Additional functions of the Holder
- Additional matters the Holder must have regard to in the expenditure of offset payments on offsets. This may include exemptions or variations for the Holder when compared to proponent-delivered offset requirements. This is considered important to be able to deliver on the strategic intent of Holder delivered offsets.
- Details of advanced offset requirements.
- Additional detail to be included in the offsets register.

Details relating to charging of Offset payments, including when the charge is due and payable, collection, recovery, refund, penalties associated with not paying, record keeping etc.

How the Standard will apply to the Holder

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

The Restoration Contributions Holder would not, however, be required to not act inconsistently with the Offsets Standard when making these decisions. This is consistent with the provisions in the EPBC Act which will specifically allow for the Restoration Contributions Holder to depart from the like-for-like principle where delivering a like-for-like offset is not feasible.



Table 1 outlines the policy settings required to provide flexibility to the Holder in the application of the Offsets Standard

Principle in the Draft Offset Standard	Policy proposal to support flexibility for the Holder
1. Feasibility: Compensation for the affected protected matter is appropriate and the impact is able to be compensated for at the time approval is sought or a bioregional plan is made.	It is likely the Holder will take on delivery of offsets for which information on affected protected matters is scarce, and/or where innovation is needed. <i>Where the Holder identifies there is a strategic reason for progressing an offset where the feasibility of the offset is less certain, the Holder will seek the endorsement from the Contributions Advisory Committee prior to progressing.</i>
2. Security: The offsets site is protected and managed to prevent its loss and degradation.	<i>The maintenance period for a Restoration Contribution will be required to be static</i> to enable the offsets calculator to operate (i.e., a variable maintenance period based on the duration of the approved action will be unable to be hardwired into the calculator). The applicable maintenance period for Restoration Contributions is yet to be finalised and will be consulted on separately.
3. Direct and tangible: Offsets provide a tangible benefit to the affected protected matter by directly contributing to its overall conservation outcome.	Where research is not identified as the highest priority for the affected protected matter, but would address a lack of information available, and inform delivery of a offsets, the Holder may use funds to deliver on research, development and extension activities (indirect offsets) prior to delivering a direct offset. <i>This means the Holder would not be constrained from delivering research only where it is identified as the highest priority in an environmental instrument.</i> The Holder will still be constrained to demonstrate that the indirect offset delivers a direct and tangible benefit to the impacted protected matter.
4. Net gain: Offsets deliver a measurable improvement for the affected protected matter relative to an agreed baseline.	Restoration contribution costs will be calculated (at the time of approval) to provide confidence that net gain can be achieved for the affected protected matter with the funds provided. This means the required net gain will have been accounted for through the charging of the restoration contribution and will not need to be demonstrated to be met by the Holder a second time. <i>As such, no additional flexibility for the Holder is required for this Principle.</i>
5. Additionality: Offsets deliver benefits that would not have occurred without the offset - they go beyond existing obligations, and protections.	Offset activities delivered by the Holder are to be additional to existing actions, investment and regulatory obligations. <i>No additional flexibility for the Holder will be required for this Principle.</i>



Principle in the Draft Offset Standard	Policy proposal to support flexibility for the Holder
6. Like-for-like: Offsets provide for a like-for-like outcome for the affected protected matter to compensate for residual significant impacts.	<i>The Holder will apply the principle of like-for-like where possible and have regard to [but not be bound by] the Offset Standard in doing so.</i> This flexibility is required to reduce the risk that the Holder cannot expend Restoration Contributions if strict like-for-like offsets are not available within the required time period for acquitting funds. This is considered appropriate as it allows the Holder to focus on maintaining or enhancing the biological integrity and resilience of the ecosystem, rather than replicating the specific attributes of the affected protected matter.
7. Relevant area: Offsets delivered in an area that is relevant to the affected protected matter and which will enhance the effectiveness of conservation efforts for the affected protected matter.	<i>To facilitate the aim to deliver broad strategic outcomes for EPBC Act protected matters, the relevant area for the Holder may be considered to be outside of the Bioregion.</i> This may be influenced by: • A focus on enhancing the biological integrity of an ecosystem that supports more than one protected matter, and/or A strong ecological reason or a higher priority area nationally that could provide a better conservation outcome for the protected matter.
8. Commencement prior to impact: Offset is secured and actively managed at the offset site prior to the action starting at the impact site.	Residual significant impacts will need to be compensated for prior to an impact at the action site. When this is done through a Restoration Contribution, the payment will be required to be received in the Restoration Contribution Special Account prior to the impact occurring. <i>The power to establish timeframe requirements for the Holder to secure and deliver an offset (once restoration contributions are received) will be in the primary legislation.</i>



Attachment D: Advanced restoration actions

Background

Amendments to the EPBC Act will enable a person, including a project proponent, to register an offset separately and in advance of any application for approval of an action. The Minister will be able to agree or refuse a proposed offset and would be required to publish advanced offset details on a public register.

The details for how advanced restoration actions (offsets) will operate will be set out in regulations and be subject to further development and consultation.

However, key proposed setting for advanced offsets include:

- Regulations will specify the requirements for application, acquittal, variation, revocation, suspension and transfer of advanced offsets.
- The agreement and registration process would be voluntary.
- The Minister would be required to be satisfied that an offset, including an agreed advanced offset, was consistent with applicable standards when deciding on conditions for project approval.
- Agreement owners would be able to acquit their advanced offset at any time, on application, and details would be updated in the register.

The regulations will also make provisions relating to:

- the monitoring of a registered advanced restoration action
- reporting or record-keeping requirements for a registered advanced restoration action.

Meeting the Offsets Standard

Advanced offsets would be assessed against the Standards, but meeting the Standards would not be required to agree and register an advanced offset. This would be done in association with a proposed action satisfying its offsetting obligations.

The advanced offset could be acquitted at any point in time post registration, however its advanced offset 'value' (e.g. number of hectares for a protected matter or confidence in a proposed offset result or projected result for a protected matter) would only correspond to the restoration outcome achieved since registration.

The advanced offset agreement would not pre-empt the approval decision of an action and the mandatory decision-making requirements remain applicable to that decision point.

Nature Based markets

Regulations will provide for acquittal of an advanced offset, and update to the register, to allow the owner to seek recognition under other market-based mechanisms and capitalise on their investment (e.g. State/Territory offset scheme), or other activity.

It would not be up to the Minister to validate whether an advanced offset could meet the requirements of any other market-based mechanism.

If a proponent wanted to use the advance offset registration system and apply under the Nature Repair Market, the proponent would be responsible to ensure that the proposed activities meet the requirements of both schemes.