

Submission to consultation on

National Environmental Standards for Environmental Offsets

Prepared by Environmental Justice Australia

30 January 2026

On 28 November 2025, the reforms to *the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* were passed, which, among other things, provide the Environment Minister with the power to make National Environmental Standards (**Standards**). The Standards are intended to be the “centrepiece”¹ of the reforms – legally enforceable regulations that set the boundaries for decision-making to deliver the protections needed for matters of national environmental significance.² We welcome the creation of Standards, as a critical element of the EPBC Act reform required to enact meaningful change.³

Biodiversity offsets are notoriously complex, risky and difficult to implement in practice.⁴ It is therefore crucial that the *National Environmental Standard (Environmental Offsets) 2025 (Offsets Standard)* be drafted with sufficient ambition and clarity to prevent the EPBC Act offsets scheme from failing.

At present the Offsets Standard does not meet the requirements of the EPBC Act and is insufficient to address the risks associated with biodiversity offsetting. It will not afford real environmental protection and would cause the government to fail to meet its stated objectives for these reforms.

The Offsets Standard must be amended in six essential areas:

1. [The Offsets Standard must be amended to promote the objects of the EPBC Act and be not inconsistent with Australia’s obligations under international treaties](#)
2. [The Offsets Standard must be outcomes-based, clear and enforceable](#)
3. [The Offsets Standard must set out appropriate safeguards on restoration contributions and the Restoration Contribution Holder must be bound by principles](#)
4. [The Offsets Standard must be introduced alongside regulations recognising matters that cannot be offset](#)
5. [The Offsets Standard should apply to all relevant decisions, and require proponent compliance](#)
6. [The Offsets Standard objectives, outcomes and principles should be strengthened and improved](#)

We note and refer also to our Submission to the Senate Standing Committees on Environment and Communications in response to the Inquiry into the *Environment Protection Reform Bill 2025* and six related bills dated 13 November 2025 and Submission to consultation on National

¹ Samuel, G 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October (**Samuel Review**) p 2.

² Explanatory Memorandum, Environment Protection Reform Bill 2025 (Cth) (**Explanatory Memorandum**) p 2.

³ Explanatory Memorandum p 2.

⁴ Gibbons, P., Macintosh, A., Constable, A. L., Hayashi, K., *Outcomes from 10 years of biodiversity offsetting, Global Change Biology*, (2017). <https://doi.org/10.1111/gcb.13977>

Environmental Standards for Matters of National Environmental Significance dated 30 January 2026.

About Environmental Justice Australia

Environmental Justice Australia is a public interest environmental law practice, based in Melbourne and undertaking work across our areas of expertise throughout Australia. We provide legal advice and support to the community on public interest environmental issues, advocate for better environmental laws, and provide legal education to the community on environment matters. We act primarily for community organisations, Traditional Owners groups and NGOs on matters concerning environment and natural resources law and policy.

We acknowledge the Awabakal, Bunurong, Gadigal, Larrakia, melukerdee, Ngambri, Ngunnawal, punnilerpanner, Wadawurrung and Wurundjeri peoples, the Traditional Owners of the lands on which the Environmental Justice Australia team lives and where our office is located. We pay our respects to Elders past and present, and recognise that sovereignty has never been ceded. This land always was and always will be Aboriginal and Torres Strait Islander land. Environmental justice is inseparable from First Nations justice.

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1 Standards must promote the objects of the EPBC Act and not be inconsistent with Australia's obligations under international treaties

While theoretically a tool to limit environmental decline, in practice, biodiversity offset frameworks are notoriously risky and difficult to implement.⁵ The Samuel Review found that the current Environmental Offsets Policy 'contributes to environmental decline rather than active restoration'⁶ including because, as noted by the Draft Offsets Policy Position,⁷ offsets are often the default rather than the last resort; are poorly designed or implemented; and are subject to weak monitoring, compliance, and enforcement of offset conditions.⁸ The Samuel Review recommended that the offsets framework be reformed to ensure that offsets are ecologically feasible and deliver genuine protection and restoration in areas of highest priority.⁹

Section 514YD(2) provides that before making a national environmental standard, the Minister must be satisfied that the standard would promote the objects of the EPBC Act, and would not be inconsistent with Australia's obligations under the international agreements specified in subsection 520(3). The international agreements specified in 520(3) include the Convention on Biological

⁵ Gibbons, P., Macintosh, A., Constable, A. L., Hayashi, K. *Outcomes from 10 years of biodiversity offsetting, Global Change Biology*, (2017). <https://doi.org/10.1111/gcb.13977>

⁶ Samuel Review p 138.

⁷ Department of Climate Change, Energy, the Environment and Water, *Draft Policy Position: National Environmental Standard for Environmental Offsets (Draft Offsets Policy Position)* (Available from <https://consult.dcceew.gov.au/natl-environmental-standards-mnes>)

⁸ Draft Offsets Policy Position p 2.

⁹ Samuel Review p 140.

Diversity;¹⁰ the UN Framework Convention on Climate Change;¹¹ World Heritage Convention;¹² and the Ramsar Convention.¹³

The objects of the EPBC Act include to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; to promote the conservation of biodiversity; and to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity (section 3). The Samuel Review found that the objects of the EPBC Act, particularly ecologically sustainable development are not being achieved.¹⁴

Given the findings of the Samuel Review, and risks associated with biodiversity offsets as a practice, the Offsets Standard is not sufficiently outcomes-based, clear and enforceable and does not place appropriate safeguards on the use of restoration contributions for the Minister to be satisfied that it will not facilitate managed biodiversity decline, by way of offsets, contrary to the objects of the EPBC Act.

The Standard as drafted does not identify or recognise matters that cannot be offset. To fulfill obligations under the Convention on Biological Diversity (Article 8) the Standard must be introduced alongside regulations or declarations of matters that cannot be offset, including endangered and critically endangered species and ecological communities, as detailed at recommendation 4 below. It should also implement international good practice for biodiversity offsetting, principles of which are detailed below at recommendation 6.

Recommendation 1: The Offsets Standard must meet internationally recognised scientific standards and contain appropriate safeguards including by adoption of Recommendations 2-6 below for the Minister to be satisfied that it promotes the objects of the EPBC Act and is not inconsistent with Australia's obligations under international treaties.

2 Offsets Standard must be outcomes-based, clear and enforceable

The Samuel Review found that a fundamental shortcoming of the EPBC Act is that it does not provide sufficient constraints on discretion, and this considerable and unfettered discretion in decision making has resulted in poor environmental outcomes.¹⁵ The Samuel Review recommended the development of granular and measurable¹⁶ standards which outline clear outcomes and provide clear and consistent rules for decision-making.¹⁷

The Offsets Standard, as currently drafted **is not appropriately clear, outcomes-based and granular to ensure consistency of decision-making**. The current drafting risks increasing the uncertainty criticised by the Samuel Review and undermining the policy rationale

¹⁰ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

¹¹ *United Nations Framework Convention on Climate Change*, opened for signature 4 June 1992, 1771 UNTS 107 (entered into force 21 March 1994).

¹² *Convention Concerning the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).

¹³ *Convention on Wetlands of International Importance especially as Waterfowl Habitat*, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975) ('Ramsar Convention').

¹⁴ Samuel Review p 43.

¹⁵ Samuel Review pp 43, 48.

¹⁶ Samuel Review p 53.

¹⁷ Samuel Review p 52.

behind the Standards because it is process-driven, unclear and discretionary. The Offsets Standard should be amended to resolve this as a matter of priority, including in the following ways:

- **Discretionary and qualifying language should be amended to be clear and defined.** Words and phrases such as “may”, “if possible” and “where necessary” reduce certainty and clarity. This drafting should be amended to achieve the policy purposes of the Standards. Clear, enforceable language (e.g. “must”) should be used.
- **The Standards should specify outcomes rather than process.** As drafted, the Offsets Standard is focused on process rather than outcomes. For example, Section 5 states that the object of the Offsets standard is to provide a ‘framework’, rather than stating what the outcome of that framework is intended to be. The Standard should be drafted to require specific measurable outcomes.
- **Standards should include parameters within which an outcome or objective is to be achieved, and processes or actions to be followed or taken in achieving an outcome or objective.** Section 514YD(4)(b) creates a power for the Minister to include within the Standard parameters within, or principles by which, an outcome or objective is to be achieved processes or actions to be followed or taken in achieving an outcome or objective. Given the risks associated with the Offsets Standard to the operation of the EPBC Act, it is appropriate that the Minister include specific parameters, processes and actions in accordance with s 514YD(4)(b).
- **Monitoring, reporting and enforcement measures** should be included. As recommended in the Samuel Review this should include provisions for time-bound milestones that clearly identify the required absolute increases of approved indicators; outline corrective courses of action that will be taken where increases in the indicators or milestones have not been achieved; and set out who will fund, manage, monitor and report on the ongoing outcomes of the offset area, including indicators and milestones.¹⁸

Recommendation 2:

The Offsets Standard must be amended to:

- substitute discretionary and qualifying language with clear and enforceable drafting.
- include defined outcomes and parameters within which an outcome or objective is to be achieved, and processes or actions to be followed or taken in achieving an outcome or objective; and
- provide for key reporting, monitoring and enforcement measures, including a formalised register which includes full details of all offset approval conditions.

3 Offsets Standard must set out appropriate safeguards on restoration contributions and the Restoration Contribution Holder must be bound by principles

The importance of safeguards is particularly significant given the option for proponents to pay a ‘restoration contribution charge’ instead of securing actual direct offsets. The current drafting risks allowing offsets to be approved without guarantee that genuine offsets will be delivered or real environmental outcomes will be achieved because proponents instead pay ‘restoration contributions’ into an offset fund.

¹⁸ Samuel Review p 140.

In New South Wales, a similar scheme has been criticised for collecting money that could not be spent because no suitable offset exists. Without strong safeguards, this model risks becoming a pay-to-destroy system that normalises nature loss instead of preventing it. Having previously had a similar scheme, NSW is now overhauling their offsets laws following findings that this scheme was easily gamed and largely ineffective. The ability for developers to pay into the offsets fund compromised the scheme because money was continuously paid into the fund without sufficient offsets being able to be sourced.¹⁹

As drafted, the Offsets Standard does not contain the appropriate safeguards to avert biodiversity decline under the new offsets framework. It is particularly concerning that the Restoration Contributions Holder does not need to fully comply with all principles contained in the Offsets Standard.²⁰ Since most proponents are likely to opt for restoration contributions, the Standard will be largely ineffective, as the Restoration Contribution Holder is not bound by its principles. This raises the risk that contributions could be collected but not invested in accordance with the Standard, with no clear mechanism for enforcement. For example, the fund-holder would not need to secure like-for-like outcomes. This would allow damage to one type of habitat to be offset by investment in a totally different ecosystem, weakening the purpose of the offsets scheme. It is essential that the Restoration Contributions Holder is bound by the principles in the Standard.

Recommendation 3: The Restoration Contribution Holder must be bound by the principles in the Standard, without exception. The Standard should contain stronger upfront restrictions on the use of restoration contribution charges, including a requirement to confirm, before approval, whether a suitable like-for-like offset is genuinely available.

4 Offsets Standard must be introduced alongside regulations recognising matters that cannot be offset

The standard fails to acknowledge that some protected matters, such as endangered and critically endangered species and ecological communities, may be at such risk that impacts cannot be offset. There is a power for the Minister to make a declaration for matters which cannot be offset – this declaration should be made concurrently with the Offsets Standard.

The Standard should also clarify circumstances where offsets are not permitted. The Draft Offsets Policy Position provides that the Regulations will prescribe which impacts to protected matters cannot be compensated, an example being where an offset would be inconsistent with Australia's international obligations or where offsetting is known not to be possible.²¹ New section 134AA will allow the Minister to make declarations to protected matters that are not able to be offset via a restoration contribution payment. It is appropriate that the Offsets Standard be introduced alongside such regulations identifying matters that cannot be offset.

Recommendation 4: The Offsets Standard must recognise matters that cannot be offset, including by being introduced concurrently with regulations or a declaration under s 134AA specifying matters, including endangered or critically endangered species and ecological communities cannot be offset via a restoration contribution payment.

¹⁹ Department of Planning and Environment (NSW), *Final Report: Independent Review of the Biodiversity Conservation Act 2016*, August 2023, p 3; Legislative Council Portfolio Committee No. 7 – Planning and Environment, Parliament of NSW, *Integrity of the NSW Biodiversity Offsets Scheme* (Report 16, November 2022).

²⁰ Draft Offsets Policy Position pp 26-28.

²¹ Draft Offsets Policy Position p 3.

5 Offsets Standard should apply to all relevant decisions, and require proponent compliance

The Offset Standard should apply to all relevant decisions. Section 514YK of the EPBC Act provides for regulations to prescribe the application of any National Environmental Standard, and the way it is to be applied. The standard should apply to actions, plans and policies, as recommended by the Samuel Review.

The proposed application in the Draft Offsets Policy Position (pages 2-3) includes that the Minister only be able to approve an action if satisfied that doing so is not inconsistent with any prescribed National Environmental Standard; that actions approved by state or territory decision-makers under approval bilateral agreements may also only be approved if the Minister is satisfied that doing so is not inconsistent with any prescribed Standard. This proposed language should be amended to be “consistent with” to align with new s 136A.

The Standard should bind proponents to ensure that approval holders comply with the Standard. As drafted 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”.²² Regulations should require that proponents are actually bound by, and are required to comply with, the Offset Standard, as these are often the entities that actually in control of the implementation of offset conditions in practice.

Recommendation 5: The Offsets Standard should apply to all relevant decisions, including requiring that proponents comply with the Standard.

6 Offsets Standard objectives, outcomes and principles

We welcome the inclusion of the eight principles proposed in the draft Offsets Standard. These are an important starting point in setting out the foundations for the new Offsets scheme.

The principles do not, however, include internationally accepted foundational principles of biodiversity offset schemes. The principles should be amended to include principles directed at the following:

- Stakeholder participation: In areas affected by the project and by the biodiversity offset, the effective participation of stakeholders should be ensured in decision-making about biodiversity offsets, including their evaluation, selection, design, implementation and monitoring.²³
- Equity: A biodiversity offset should be designed and implemented in an equitable manner, which means the sharing among stakeholders of the rights and responsibilities, risks and rewards associated with a project and offset in a fair and balanced way.²⁴ We note that the Samuel Review recommended prioritising, as a matter of urgency, the National Environmental Standard for Indigenous engagement and participation in decision-making.²⁵

²² Draft Offsets Policy Position p 5.

²³ Business and Biodiversity Offsets Programme (BBOP), *When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets* (2009) 16 (Table 1, Principle 6) <<https://link.springer.com/article/10.1007/s00267-020-01415-0/tables/1>>

²⁴ Business and Biodiversity Offsets Programme (BBOP), *When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets* (2009) 16 (Table 1, Principle 7) <<https://link.springer.com/article/10.1007/s00267-020-01415-0/tables/1>> See also Tupala, A.-K., Huttunen, S., & Halme, P. (2022). Social impacts of biodiversity offsetting: A review. *Biological Conservation*, 267, 109431. <https://doi.org/10.1016/j.biocon.2021.109431>

²⁵ Samuel Review Appendix B2.

Participatory principles should be drafted to cross reference to the upcoming First Nations Standard, including obligations of free prior and informed consent.

- **Transparency:** The design and implementation of a biodiversity offset, and communication of its results to the public, should be undertaken in a transparent and timely manner.²⁶ This principle should be consistent with any upcoming Community Consultation Standard and Data and Information Standard.
- **Science and traditional knowledge:** The design and implementation of a biodiversity offset should be a documented process informed by sound science, including an appropriate consideration of traditional knowledge.²⁷ The Samuel Review noted that offsets must be supported by relevant robust scientific evidence that considers the appropriateness and feasibility of the offset.²⁸

In addition to adding internationally accepted principles, the current drafting must be strengthened. The language of all principles needs to be tightened to ensure that they are clear, outcomes-based and enforceable. For example, the word “should” should be replaced with “must” in all the principles as drafted.

- **Objectives:** Section 5 should be amended to provide a measurable, outcomes based objective. As drafted, the object is to “provide a framework” rather than any measurable outcome in the environment.
- **Outcomes:** Section 6 should be amended to be outcome, rather than process based substituting the focus on “decisions under the Act” with outcomes under the EPBC Act. Equivocal and qualifying language such as “intended to achieve” and “where necessary” should be removed. As discussed below regarding Principle 4, measurable improvement should be from an absolute baseline.
- **Principle 1—Feasibility:** The language of principle 1 should be strengthened including to remove qualifying language “will likely contribute” (s 8(2)(b)) and including a definition of “feasible”. We note the Samuel Review provided a definition of “ecologically feasible” and “achievable” which could be adopted.
- **Principle 2—Security:** Long-term biodiversity outcomes require legally secure and well-funded offset arrangements. The principle as drafted provides insufficient minimum standards for legal protection, and should be amended to provide legally enforceable protection. In addition, internationally accepted good practice requires a principle of permanence (i.e. that the offset be maintained in perpetuity).²⁹
- **Principle 3—Direct and tangible:** Section 10(3) provides for indirect offsets where identified as a higher priority in a conservation planning document. Indirect Offsets should be limited, as they are under the current EPBC Act environmental offsets policy which requires 90% of offsets to be direct offsets,³⁰ because there are risks and they do not deliver direct and tangible benefits.
- **Principle 4—Measurable improvements** should be from a baseline from an appropriate point in time with available data rather than at the point of time of the relevant decision, to

²⁶ Business and Biodiversity Offsets Programme (BBOP), *When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets* (2009) 16 (Table 1, Principle 9)

<<https://link.springer.com/article/10.1007/s00267-020-01415-0/tables/1>>

²⁷ Business and Biodiversity Offsets Programme (BBOP), *When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets* (2009) 16 (Table 1, Principle 10)

<<https://link.springer.com/article/10.1007/s00267-020-01415-0/tables/1>>

²⁸ Samuel review P 140.

²⁹ Business and Biodiversity Offsets Programme (BBOP), *When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets* (2009) 16 (Table 1)

<<https://link.springer.com/article/10.1007/s00267-020-01415-0/tables/1>>

³⁰ Department of Sustainability, Environment, Water, Population and Communities, *EPBC Act Environmental Offsets Policy* (2012) <https://www.dcceew.gov.au/sites/default/files/documents/offsets-policy_2.pdf>

avoid the problem of declining baselines as is the trend in the Australian environment. Baselines reveal implicit assumptions about the future of biodiversity - if the rate of decline of the crediting baseline is steep, biodiversity offsets can exacerbate biodiversity decline.³¹ For this reason, we recommend using a baseline for example using data from Australia's State of the Environment Report.

- **Principle 5—Additionality:** The principle of additionality is essential to effective biodiversity offsetting. This principle should, however, be elaborated with further guidance and more specificity for what is required. For example, some of the granular information in the Draft Offsets Policy Position could be incorporated directly into Principle 5.
- **Principle 6—Like-for-like:** As detailed above, we are concerned that this provision builds in exceptions to this important principle. It is essential that there be no exceptions to the like-for-like principle, including by the Restorations Contribution Holder and s 13(2) should be removed accordingly.
- **Principle 8—Offset commenced prior to impact:** This principle should be tightened to ensure the offset has been properly secured, for example by including a condition of approval that works not be commenced until an offset has been properly secured.

Recommendation 6: the objectives, outcomes and principles should be strengthened in accordance with the above.

³¹ Martine Maron, Joseph W. Bull, Megan C. Evans and Ascelin Gordon, 'Locking in Loss: Baselines of Decline in Australian Biodiversity Offset Policies' (2015) 192 *Biological Conservation* 504-512 <<https://www.sciencedirect.com/science/article/abs/pii/S0006320715002128#:~:text=Abstract,maintenance%20of%20that%20declining%20trajectory>>.