



SUBMISSION

FEBRUARY 2026

Supplementary Submission for the Senate Committee on Environment and Communications: Environment Protection Reform Bill.

After the passing of the EPBC Bills, the Senate Standing Committee on Environment and Communications is now focusing their inquiry on the National Environmental Standards. The World Wide Fund for Nature-Australia (WWF-Australia) welcomes the opportunity to provide a supplementary submission on the Draft National Environmental Standard (Matters of National Environmental Significance) 2025 and Draft National Environmental Standard (Offsets) 2025 legislative instrument and policy paper to this committee.

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

Context

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

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

The Samuel Review found that under the current EPBC Act decision-making requirements are not focused on outcomes for Matters of National Environmental Significance (MNES) and allow considerable discretion by the Minister'.

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

In late 2025 the Australian Government passed amendments to the EPBC Act which included the power for the Minister to make National Environmental Standards and apply them to certain decision-making under the Act. WWF welcomed these reforms, particularly the inclusion of a non-regression clause in the standards-making framework. We also appreciate that two of the draft standards were available prior to the legislative reform bills being passed, and that the Minister for the Environment has committed to consulting on three more standards, including a First Nations Engagement Standard early in 2026.

This submission is in three parts. Part 1 provides a brief summary of key issues for each of the two Draft Standards. Part 2 covers our detailed comments and recommendations to improve the Draft MNES Standard. Part 3 provides our comments and specific changes recommended to improve the Draft Offsets Standard.

Part 1. Summary of key issues

Draft MNES Standard

The intent of the Standard to better protect habitat and include the mitigation hierarchy is positive. However, as drafted, it fails to provide the clear rules and outcome-based law central to the Samuel Review’s recommendations³. WWF firmly believes these are critical to protecting nature.

The most pressing issue is the lack of a clear measurable statement of outcome to be achieved.

Additional issues needing to be addressed:

- Less discretionary terms and more precise, directive language;
- Articulation of cumulative impacts;
- Compensation to result in absolute net gain (using a fixed baseline), applied to all residual impacts on protected matters;
- Inclusive governance with First Nations peoples to be embedded throughout all processes and actions guided by the Standard;
- The connection to national restoration and protection targets to improve the integrity, connectivity and climate-resilience of MNES at the landscape level; and
- The urgent need for a system of monitoring, reporting and evaluation to know whether outcomes are being met, including via regulatory performance.

WWF has provided detailed recommendations to address each of these issues.

Draft Offsets Standard

The principles in the Offsets Standard are generally sound, best practice and include Samuel's advice regarding ecological feasibility. With some amendments that we detailed in our submission, the Offsets Standard principles will likely lead to a significant improvement in the quality of offsets compared to current practice. We have suggested an additional principle to enhance community-led regenerative stewardship in the delivery of ecological outcomes and the need to embed respectful First Nations governance where this is relevant.

One significant exception to our support of the Offset Standard is the inclusion of a new option to pay a restoration contribution charge in lieu of delivering an actual offset. As currently proposed, this would undermine many of the key principles in the Standard and lead to poor, potentially perverse outcomes for nature. Given most proponents will likely choose restoration contributions, the Standard will be largely undermined because the Restoration Contribution Holder will not be bound to it.

To ensure the credibility and intent of these reforms in providing stronger protections for nature, there is a critical need for this discrepancy to be fixed. There are solutions to this problem that would still enable efficient sourcing of offsets, without putting our precious biodiversity further at risk.

Other key issues needing attention relate to:

- Use of discretionary language – we note that substitution of a few words will vastly improve enforceability;
- The lack of assurance arrangements: the Standard should detail how its performance will be assured through effective monitoring, evaluation and reporting of outcomes for all affected MNES; and
- Greater clarity in what will happen if the outcomes are not being met.

Part 2. Comments on the draft MNES Standard

The intent of the draft MNES Standard as set out in the objectives is positive and the inclusion of habitat and related concepts in the relevant protected matters objectives is welcomed. The inclusion of the mitigation hierarchy steps is also useful.

However, the MNES Standard as drafted fails by not providing a clear measurable statement of outcome to be achieved. As drafted it will not deliver on its intent to protect nature.

Summary of Recommendations

1. Include a legally enforceable measurable outcome in the Standard, as recommended by the Samuel review³. (p.3)
2. Rewrite the objectives and outcomes sections as precise, directive outcome-based statements that guide decisions, rather than describe the intent of the standard. Remove terms such as 'provide for' and 'contribute to'. (p.4)
3. Add an objective (or outcome) for protected matters to improve the integrity, connectivity and climate-resilience of MNES at the landscape level and assist the achievement of national restoration and protection targets. (p.5)

4. Remove outcome 3 'Decisions facilitate ecologically sustainable development' and include text as a principle. (p.5)
5. Remove discretionary language from Principle 1, including the terms 'appropriately consider' and 'if possible' and clarify that avoidance will need to be demonstrated (including in site selection), consistent with p. 12 of the Policy Paper. (p.5)
6. Include a requirement to consider the cumulative impacts of all projects. (p.6)
7. Require compensation to result in absolute net gain (using a fixed baseline), to be applied to all residual impacts on protected matters. (p.6)
8. Include a new principle that embeds inclusive governance with First Nations peoples throughout all processes and actions guided by the Standard, reinforcing Free Prior and Informed Consent and equitable benefit-sharing. (p.7)
9. Include a new principle to ensure all actions, decisions, plans and policies are consistent with statutory documents, instruments and international obligations. (p.7)
10. Include a new principle to ensure regulatory performance in achieving the outcomes will be regularly reported to ensure the Standards build community trust in decision-making. (p.8)
11. Set out the requirements for a system of monitoring, reporting and evaluation to demonstrate compliance with this national environmental standard. (p.8)

The MNES Standard Outcomes and Objectives

Overall, the MNES Standard is not enforceable as it does not include measurable outcomes, and the language is too discretionary. Below we provide alternative language and rationale for the needed changes.

Recommendation 1. Include a legally enforceable measurable outcome in the Standard, as recommended by the Samuel review.³

The draft MNES Standard currently falls short of what is needed to pivot to the "outcome-focused law" recommended by the Samuel Review. Samuel's recommended MNES Standard (appended to the final report) had a measurable outcome, as did the MNES Standard that was developed under the previous term of government that was last consulted on in March 2024. Measuring the performance of decisions against a clear outcome ensures cumulative impacts are considered – key rationale for the Samuel Review recommending the use of standards to constrain decision-making.

The draft standard Samuel proposed described the outcome as 'Matters of national environmental significance are protected and enhanced, and decision-making actively contributes to improvements in their conservation and management'.³ That outcome is measurable and clear. However, there are no measurable outcomes articulated in the draft 2025 MNES Standard and thus no mechanism to ensure decisions contribute to those outcomes. Suggested language that articulates a measurable outcome could include, for example:

- *Matters of national environmental significance are protected and decision-making actively contributes to their conservation and recovery.*
- *Decisions result in absolute net gain for all Matters of National Environmental Significance.*

Though elements of the outcomes may be outside of the direct control of individual approval decisions, this does not mean that they are external to the implementation of the Act. In keeping with the recommendations of the Samuel Review, the Standards should apply not only to approval decisions, but also to policies, conservation

planning, regional planning, and accreditation. Regardless of if the government wishes to apply the Standards to all activities (as recommended by the Samuel Review), or simply to prescribed decisions, measuring outcomes wholistically will increase the utility of the MNES Standard in determining whether an unacceptable impact is likely. That is, the Standard can be applied to test if a decision to approve a proposed development can still deliver the outcome of protecting and recovering MNES. Although conditions such as climate change will indeed affect the trajectory of many species and places, decisions by the regulator need to be sensitive to these and other cumulative pressures.

The complexity of interacting threats often makes it difficult to attribute ecological outcome changes to particular actions (e.g. approval decisions); however this does not make it any less important to measure these outcomes. In fact, the siloing of decision-making from the broader system has led to the EPBC Act's poor performance. Measuring outcomes in the context of wholistic pressures on each MNES will account for cumulative impacts on impacted MNES and ensure the Act delivers more ecologically sustainable development (ESD). This is why a measurable outcome is so critical – see recommendation 1 above – not just for assurance and enforcement, but to address cumulative impacts.

Recommendation 2. Rewrite the objectives and the outcomes sections as precise, directive outcome-based statements that guide decisions, rather than describe the intent of the standard. Remove terms such as 'provide for' and 'contribute to'.

Professor Samuel recently stated that:

The Standards, to be developed in 2026, must be granular in their detail, avoiding the use of discretionary or judgmental terms ... Such terms are replete in the current EPBC Act. The Standards must leave no doubt in the minds of development proponents, conservationists and regulators as to their meaning and application. To be otherwise drafted, invites inconsistent decisions, uncertainty and legal challenges.⁴

The 2025 MNES Standard, as currently drafted, invites this uncertainty.

Part 6 of the draft legislative instrument (page 4) states:

- (1) The outcomes which this Standard is intended to achieve are that decisions under the Act:
 - (a) provide for the protection, conservation, and, where necessary, restoration of protected matters;
 - (b) contribute to the promotion and enhancement of the diversity, abundance, resilience, and integrity of protected matters; and
 - (c) facilitate sustainable development.

There are two problems with the way this is drafted.

Firstly, the drafting describes what the intent of the Standard is but does not actually guide decisions. Hence the words in (1) above, i.e. "The outcomes which this Standard is intended to achieve are that decisions under the Act:....." deliver (a), (b) and (c) speak to the intent, whereas if this was changed to read simply "(1) Decisions under the Act:....." deliver (a), (b) and (c) this would actually guide decisions which is the whole purpose of the standard. The wording of the objectives is similarly vague and needs to be re-worded to actually guide decisions.

Secondly the qualifying phrases in (1) above 'provide for' and 'contribute to' (underlined above) introduce uncertainty. Without these phrases we can measure if MNES are protected, or if abundance is enhanced. However, it is unclear

how we would measure if the ‘outcome’ of ‘providing for the protection of’ or ‘contributing to the promotion and enhancement of the diversity’ of protected matters is being achieved.

To be legally enforceable the Standard requires the use of clear, directive language. Alternative language based on the draft instrument that is more precise for example would be:

- decisions under the Act ensure that MNES are protected and recovered.

Recommendation 3. Add an objective (or outcome) for protected matters to improve the integrity, connectivity and climate-resilience of MNES at the landscape level and assist the achievement of national restoration and protection targets.

Although many decisions under the Act will be related to individual projects, it is important that the outcomes set by this Standard, including specific objectives for protected matters, have regard to broader landscape objectives and targets. The Australian Government has set targets in its Strategy for Nature in response to Global Biodiversity Framework commitments, including for landscape restoration and protection of representative ecosystems on land and sea. Implementation of these targets will progressively include spatial and other plans to guide this work. The Standard needs to reflect this, so decisions, particularly those relating to bioregional or landscape scale actions (including accreditation processes) assist in the delivery of these targets and avoid undermining them.

Recommendation 4. Remove outcome 3 ‘Decisions facilitate ecologically sustainable development’ and include text as a principle.

The proposed outcome 3 ‘decisions facilitate ecologically sustainable development’ is not appropriate to include as an outcome as it is more about a process. It could be a useful principle but is not an outcome for a MNES.

In setting out the draft National Environment Standard for MNES Samuel stated that ‘The environmental outcomes articulated in the National Environmental Standards are the national intent for the protection and conservation of MNES’. The actual draft standard Samuel proposed described the outcome as ‘Matters of national environmental significance are protected and enhanced, and decision-making actively contributes to improvements in their conservation and management’. These are outcomes for MNES, whereas ecologically sustainable development is how we go about getting there.

The MNES Standard Principles

In this section we make six points regarding the principles section of the standard, each with a recommendation for improvement (Recommendations 4-9).

Principle 1 – Actions appropriately consider the application of the mitigation hierarchy.

Recommendation 5. Remove discretionary language from Principle 1, including the terms ‘appropriately consider’ and ‘if possible’ and clarify that avoidance will need to be demonstrated, consistent with p. 12 of the Policy Paper.

The words ‘appropriately consider’ should be removed from the draft Standard. It should be clear that the mitigation hierarchy must be demonstrably applied.

Avoidance is the first and most important step in the mitigation hierarchy. The Standard could be used to better operationalise avoidance. The Standards should more explicitly emphasise that avoidance starts with site selection (some sites are simply unsuitable for the intended use). Site selection needs to consider environmental impact, and poor site selection should not be a reason as to why avoidance is not possible. For example, the Standard could require that developments are ¹~~100%~~ - which could direct developers to Global Standards and Frameworks to assess site suitability and would provide extra incentives to avoid and minimise impacts. The standard should state that the financial cost of avoiding must not be considered an appropriate reason to move down the hierarchy.

We note that the definition of 'avoid' in the Policy Paper (page 12) is given as 'demonstrated measures taken to anticipate and prevent adverse significant impacts to protected matters'. WWF-Australia strongly supports the definition and support the proposed updating of regulations to outline the information needed to demonstrate that the mitigation hierarchy has been appropriately applied. The Standard should be clear that decision-makers require the provision of genuine and demonstrated steps taken to avoid and minimise impacts.

The term 'if possible' should be removed from Step 1 (page 4) of the Draft MNES Standard, to reduce the likelihood this will be simply a box-ticking exercise.

Principle 2 – Actions appropriately consider impacts to protected matters.

Recommendation 6. Include a requirement to consider the cumulative impacts of all projects.

The Standard should clarify that cumulative impacts must be considered for each project approval, as not all projects will be subject to landscape scale assessment. The Samuel Review was clear on this matter:

'For the purpose of the EPBC Act to be achieved, cumulative impacts on the environment need to be addressed'.

Whilst landscape scale planning was one of the Review's proposed solutions, this focussed on Regional Recovery Planning as the first step. Given that the Australian Government has not yet committed to developing Regional Recovery Plans it is premature to jump to greater use of Strategic Plans or accreditation, and the need to assess the cumulative impact of each project remains.

Assessment of cumulative impacts requires good data and a system that can adjust according to material changes in information. Environment Information Australia (EIA) (and the Department of Climate Change, Energy, the Environment and Water) must be adequately resourced to significantly improve the information available to proponents, decision makers and the public. As the Review noted 'The Department's systems for information analysis and sharing are antiquated ... Improved data and information will improve the efficiency of setting clear outcomes, effectively planning to deliver them, and regulating to achieve them'.

Likewise, conservation planning – including the assessment, listing and updating of threatened species and communities, the preparation and regular review of recovery plans (and protection statements), and the description and mapping of critical and irreplaceable habitat – must be much better resourced so that important scientific information can inform better assessment decisions that consider cumulative impact. Advances in modelling capability are not being used and should be harnessed to support this.

¹ Nature Positive is a global goal - the intended state of the world's biodiversity and ecosystems—as a result of effective implementation of the Global Biodiversity Framework. Nature-Positive therefore means halting and reversing Nature loss by 2030, measured from a baseline of 2020.

Principle 3 - Actions with residual significant impacts to protected matters are compensated.

Recommendation 7. Require compensation to result in absolute net gain (using a fixed baseline) to be applied to all residual impacts on protected matters.

The need for the mitigation hierarchy to be applied, starting with avoidance, should be re-emphasised here. Guidance to ensure that offsets are feasible and available for any impacts that are not able to be avoided or mitigated should also be emphasised.

The current definition of net gain will continue to facilitate the decline of protected matters, as it is predicated on a declining baseline. The definition should be of *absolute* net gain, which uses a fixed baseline, and can support actual recovery of protected matters over time. Additionally, if the reforms are to provide for a net gain that leaves the environment better off - a worthy aim promoted by the Minister for the Environment - this must be applied to all residual impacts on protected matters as a consequence of the development, not just significant residual impacts. The fact that impacts on protected matters will not be fully addressed is inconsistent with the objects of the Act and the principles of ESD.

Recommendation 8. Include a new principle that embeds inclusive governance with First Nations peoples throughout all processes and actions guided by the Standard, reinforcing Free Prior and Informed Consent and equitable benefit-sharing.

As part of *Principle 4: Appropriate evidence, first nations engagement and consultation*, the MNES Standard recognises the need to consult with First Nations people and provide opportunities to contribute their knowledge. The proposed First Nations engagement standard is likely to define how this engagement is to occur. However, this is too limited and needs to reflect the importance of inclusive governance more generally, which is broader than just consultation and respect for knowledge, and be clearly reflected in the MNES Standard. This needs to include consideration of benefit sharing and must embed Free Prior and Informed Consent as a fundamental requirement, irrespective of how that may be subsequently addressed in a First Nations Engagement standard.

Including it here will also ensure it is a requirement of all processes and actions guided by the Standard including accreditation arrangements, strategic assessments, conservation planning and specific decisions and actions taken under the EPBC Act. It also reflects the objects of the Act, including 'to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity'.

It should therefore be expanded beyond the text in principle 4 and elevated to its own principle.

Recommendation 9. Include a new principle to ensure all actions, decisions, plans and policies are consistent with statutory documents, instruments and international obligations.

An additional principle is required to ensure the outcomes and objectives of the Standard are achieved. The existing principles provide guidance but merely suggest that actions 'appropriately consider' impacts to protected matters (Principle 2). An additional principle must provide the clarity needed to set expectation and support uplifting the quality and consistency of decision-making.

Suggested wording for this additional principle is: *Principle XX - Actions, decisions, plans and policies are consistent with conservation advices, recovery plans, threat abatement plans and MNES management plans, and Australia's international obligations.*

Recommendation 10. Include a new principle to ensure regulatory performance in achieving the outcomes will be regularly reported, to build community trust in decision-making.

It is reasonable to expect the Standards to clearly articulate the actual outcomes that will be achieved through their regulatory use and how the Government will hold themselves to high standards of performance. Given the deficit of community trust in the implementation of the EPBC Act, an additional principle should be added to ensure that Standards will be used to build community trust in decision-making. This will require regular reporting of regulatory performance.

Suggested wording for this additional principle is: *Principle 7 – Regulatory performance in achieving the outcomes will be regularly reported to ensure the Standards build community trust in decision-making.*

Monitoring, reporting and evaluation

Recommendation 11. Set out the requirements for a system of monitoring, reporting and evaluation to demonstrate compliance with this national environmental standard.

A framework for measuring and publicly reporting against the environmental outcomes needs to be developed. It should include the ability to evaluate different mechanisms and protection arrangements to ensure that Standards are solving the problems they were designed to address. The Standard should articulate how reporting will occur, and who has responsibility for reporting. Currently neither the National Environmental Protection Agency (NEPA) nor EIA are required to collect information or report on the performance of the Standards. All detail regarding the monitoring, reporting and evaluation of the Standard should be included in the Standard itself.

The draft MNES Standard Appended to the Samuel Review (Appendix B1: Recommended National Environmental Standards for Matters of National Environmental Significance) includes a detailed descriptions of the monitoring and reporting element: 'A plan must be prepared and implemented to monitor and evaluate the outcomes of actions, decision, plans and policies for each MNES by all parties responsible for applying the National Environmental Standards for MNES'. Further details for what each monitoring and evaluation plan must cover are included. This provides a useful model to follow.

Accredited parties

We note that no mention is made of approval decisions made under accredited processes. The application of the standard must ensure that approval decisions made under an accredited process result in the outcomes intended to be achieved by the MNES Standard. The Samuel Review clearly stated:

Sound and durable accreditation processes are required to provide the Australian Parliament and community with confidence that accredited parties have the capacity and capability to meet the National Environmental Standards. The Review recommends that the accreditation process includes:

1) National Environmental Standards that define clear outcomes for matters of national environmental significance and for important processes, including:

a) National Environmental Standards established in law, binding decision-makers, including accredited parties. The decisions of parties operating or accredited under the EPBC Act cannot be inconsistent with the Standards.

2) Accreditation assessment that allows parties to transparently demonstrate that their systems meet National Environmental Standards and can be effectively audited'.

Conclusion

It is difficult to see how the MNES Standard, as currently drafted, will not repeat historic issues. Adoption of our recommendations will rectify these issues, improve the Standard and provide the clear rules and outcome-based law central to the Samuel Review's recommendations.

Part 3. Comments on the Draft Offsets Standard

Overarching Comments

Offset principles supported

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

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

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

Restoration Contributions risk promoting extinction and undermining the integrity of reforms

The Offsets Standard approach currently introduces a regression from current policy primarily because the principles do not apply to the Restoration Contribution Holder. The option to pay a restoration contribution charge in lieu of delivering an actual offset would undermine many of the key principles in the Standard and lead to poor, potentially perverse outcomes for nature. It is a very real risk to the integrity of not only the proposed Offsets approach but to the entirety of the Australian Government's EPBC reform agenda. The offsets framework has insufficient guardrails to rule out 'out-of-kind trading'. It is too flexible and high risk. We should learn from the New South Wales and Queensland use of offset funds, both of which have failed. In Queensland most developers opted to pay into a fund — yet very little of these offsets have been delivered. An independent review of the New South Wales offset payment scheme recommended it be phased out⁵.

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

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

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

The Standard itself must make it clear that restoration contributions must meet all principles in the Standard and result in measurable ecological outcomes that truly compensate for the approved impact. There are various ways this can be achieved without compromising the efficient sourcing of offsets (where required). It is our hope and recommendation that this is built into the program design to avoid perverse outcomes.

The Standard must be legally enforceable

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

Assurance detail should be in the Standard

The policy paper acknowledges that:

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

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

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

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

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

Comments on the Legislative Instrument

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

Definitions

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

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

Objects

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

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

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

Outcomes

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

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

- (a) offsets ~~are relevant and available to~~ compensate for the impact to the protected matter and support recovery or conservation;
- (b) offsets result in a measurable improvement [within an ecologically relevant timeframe] from the baseline at the time the relevant decision is made under the Act for protected matters; and
- (c) offsets [result in an absolute net gain for each affected matter and thereby] provide certainty that protected matters will be protected and enhanced.

Principles

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

Principle 1—Feasibility

- (1) An offset activity ~~should be~~ [is] capable of being commenced at the time the relevant decision is made under the Act.
- (2) The delivery of offsets activities ~~should~~ [must] be:
 - (a) feasible; and
 - (b) based on appropriate and suitable data and information which shows, with a high degree of certainty, that the offset activity will [deliver the specified outcome and] ~~likely~~ contribute to the recovery or conservation of the affected protected matter [and;
 - (c) is not inconsistent with a conservation planning instrument].
- (3) A high degree of certainty should be demonstrated through:
 - (a) existing substantiated expert knowledge* ~~or~~ [based on] peer reviewed science on how the offset activity will achieve offset objectives with a high confidence of success, taking into consideration the reasonably foreseeable future adverse impacts of climate change (including recommended actions in conservation planning documents); or
 - (b) independent verification of prior success for an analogous activity; or
 - (c) [in the case that neither (a) nor (b) is available and as long as it does not contradict (a), independent expert review and endorsement of the proposed offset activity and associated outcomes for the protected matter [by a recognised expert in that particular field or taxa], as well as comprehensive adaptive management plans.

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

Principle 2—Security

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

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

Principle 3—Direct and tangible

'Must' to replace 'should' throughout.

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

Principle 4—Measurable improvements

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

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

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

Principle 5—Additionality

'Must' to replace 'should' throughout.

Principle 6—Like-for-like

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

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

Principle 7—Relevant area

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

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

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

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

Principle 8—Offset commenced prior to impact

'Must' to replace 'should' throughout

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

Principle 9 — Community-inclusive restoration

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

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

Monitoring, reporting and evaluation

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

Comments on the Policy Paper

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

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

Proposed application of the Offsets Standard (page 3)

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

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

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

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

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

Objectives of the Offsets Standard (page 7)

Amend definitions to read:

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

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

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

Outcomes of the Standard (page 8)

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

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

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

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

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

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

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

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

Attachment A: Legislative setting for Offsets

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

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

Ability to discharge residual offset compensation obligations through offset contribution payments

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

Ability to make Regulations

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

Protection Statements

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

Ministerial Rulings

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

Attachment C: Application of Principles to the Restoration Contributions Holder

The Regulation should stipulate that the Holder must meet the requirements set out in the principles. We do not support 'exemptions or variations for the Holder when compared to proponent-delivered offset requirements' except in truly exceptional and constrained circumstances. The program design of the restoration contributions scheme needs to ensure that such exemptions and variations are unnecessary, while still enabling an efficient supply of offsets.

How the Standard will apply to the Holder

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

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

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

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

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

National Environmental Standards are the centrepiece of my recommended reforms. The activities of government should be consistent with the Standards, noting that an elected government should always retain the ability to exercise discretion in individual cases. Such discretion should be a rare exception, demonstrably justified in the public interest, with reasons and environmental implications transparently communicated³.

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

Conclusion

Given most proponents will likely choose restoration contributions, the Standard will be largely undermined because the Restoration Contribution Holder will not be bound to it. To ensure the credibility and intent of these reforms in providing stronger protections for nature, there is a critical need for this discrepancy to be fixed. There are solutions to this problem that still enable efficient sourcing of offsets, without putting our precious biodiversity further at risk.

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

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