

# Submission on National Environment Standards

Matters of National Environmental  
Significance and Environmental Offsets

January 2026

## Contents

1.	Introduction.....	2
2.	Key recommendations.....	3
3.	Updates required post legislative passage.....	5
4.	Comments on the MNES Standard.....	7
4.1	Framing of objectives and outcomes.....	7
4.2	Principles.....	8
5.	Comment on Environmental Offsets Standard.....	10
5.1	Details of net gain.....	10
5.2	Consistency of language.....	11
5.3	Principles.....	11

# 1. Introduction

The Business Council of Australia (BCA) welcomes the development of National Environmental Standards for the newly reformed Environment Protection and Biodiversity Conservation (EPBC) Act, and appreciates the opportunity to provide comment on the first two Standards.

The BCA's membership covers a broad range of sectors across the economy, including many that have a direct involvement in EPBC assessment and approvals processes. This includes mining and resources, energy and electricity, housing, construction and construction materials, technology and telecommunications, infrastructure, banking and finance, and consulting and law.

In the BCA's view it is essential that the Standards are practical, science-based, and capable of delivering measurable improvement in environmental outcomes, while supporting ecologically sustainable development. They should reflect research driven insights, industry experience, and collaborative approaches that deliver ecological outcomes while allowing for the economic viability of projects.

The Standards are intended to provide the framework to deliver clear, strong environmental protection requirements, improved certainty for proponents on what their projects are being assessed against, and to facilitate the accreditation of state and territory assessment and approval systems.

This submission has been written to provide constructive feedback and recommendations to improve the clarity and workability of both the draft Standard on Matters of National Environmental Significance (MNES), and the draft Standard on Environmental Offsets (Offsets). While both policy papers and exposure draft of the legal instruments have been released, this submission focuses on the legal instruments given they are what is intended for application.

The BCA's desire is that the Standards deliver on their intended purpose of underpinning and uplifting the operation of the EPBC Act and providing clear requirements for those operating and making decisions under the Act. Getting them right will be essential to the success of the revised Act, to both the environmental outcomes and the productivity benefits that the reforms are intended to achieve.

## 2. Key recommendations

1. The draft Standards need to be updated following the passage of the legislation reflecting the changed framing, net gain, and accreditation.
2. A key priority for business is the accreditation of the states and territories. The Standards are an enabler of that. States and territories should have priority input to ensure the Standards are crafted in a way that will enable accreditation to occur expeditiously.
3. There should be early visibility and consultation on the related guidance and other regulation, including the revised offset calculator, in parallel to the draft Standards consultation. There should be a further consultation round undertaken with this full package, so updated draft Standards and regulation and other regulatory instruments are able to be considered together.
4. Objectives set out in the MNES Standard should be clearly specified as the broad objectives for the nation and not expected to be met by individual project actions. An appropriate requirement for project actions (post application of the mitigation hierarchy) is that they should not be detrimental to achieving an outcome. The objectives and outcomes should adopt established terminology wherever possible.
5. Amend the reference to critical human water needs to be clear this relates to existing or clearly and credibly planned future uses, rather than hypothetical uses, and to allow for alternative water sources to be provided where they can appropriately satisfy critical human need requirements.
6. The MNES Standard's principles need to be appropriately drafted, with reference to 'reasonably practicable' tests in terms of what is being required, rather than being left as absolutes.
7. The application of the mitigation hierarchy should be drafted in a way that appropriately considers rather than excludes rehabilitation, and is compatible with existing hierarchy implementation at state and territory level.
8. Additional clarity on the application of the principles contained in the MNES Standard, including through reference to other standards under development or with further guidelines, is necessary.
9. Building on the 'measurable improvements' content in the Offsets Standard, regulations should be developed to further detail net gain requirements.
10. While acknowledging the need to ensure feasibility of offsets, there should be clarity that this is not a requirement for offsets to be in place prior to approval, as to do otherwise would be inconsistent with how business investment decisions are made. To allow for consideration of available scientific certainty around a specific protected matter, the requirement for a 'high degree of certainty' should be replaced with a 'reasonable expectation of certainty'. There should be consideration of flexibility for the requirements of formal expert endorsement where this is not practical in particular circumstances.
11. There should be some limited flexibility for decision makers to allow the appropriate use of indirect offsets, where there is new or emerging scientific information, or where no relevant conservation planning document exists. Resourcing should be made available to support the update of conservation planning documents so that they are current and reflect the latest scientific evidence and can effectively support the use of indirect offsets.

12. Timeframes around maintenance periods need to be revised, as mandated timeframes (25- or 100-years) currently in the draft will not be appropriate or implementable in all contexts. Guidelines should also be developed on what constitutes offset security where it is not possible to secure underlying tenure or purchase land.
13. Net gain, or measurable improvements, should be applied at project level rather than to impacts to individual protected matters (noting that no net loss should still be applicable individually). Where relevant, net gain should be based on improving on a dynamic baseline, rather than a point in time.
14. Provide clear wording to indicate that there is no additionality requirement for offset payments to accredited state/territory funds for the same residual impact. Ensure that additionality requirements do not unintentionally exclude advanced offsets.
15. Provide flexibility for decision makers where 'like-for-like' offsets are not feasible to consider similar offset outcomes. Amend the requirements for offsets in relevant areas to allow for decision makers to consider offsets delivered outside the immediate bioregion where they can be demonstrated as being superior outcomes for the protected matter. Recognise the use of restoration contributions may mean these principles are not met if an alternative restoration action is selected by the restoration contributions holder.
16. The commencement requirement should be redrafted to allow appropriate flexibility around deferred offset conditions, noting the Samuel Review put forward the requirement for securing (rather than commencing) offsets before impact, and delivering them with minimum delay. Payment timing for Restoration Contribution Charges should consider how subsequent reductions in impact are handled.

### 3. Updates required post legislative passage

While this submission will look at individual elements of the draft Standards and put forward appropriate changes, there are a few broader points that should be considered for the next iteration of these Standards documents:

- The legislation that passed the Parliament amended language so that the Minister now must consider whether an action is “consistent” with the Standards documents, rather than considering whether an action is “not inconsistent”. There is a need to review the drafts to ensure this change is reflected in how the documents are written.
- The Minister has flagged that the Offset Standard will be used to provide detail on the ‘net gain’ requirements. At present, this is largely absent from the draft document. The BCA is of the view that separate regulation may be a better avenue to provide this detail. Irrespective, it will be essential to see what this entails and that it is consulted on before it is finalised.
- Given the central importance for business of the accreditation of states and territories (as well as other regulators such as NOPSEMA), and that the Standards provide the framework against which states and territories are tested for accreditation, there needs to be a conscious approach to preparing the Standards that has this objective in mind.

#### **Recommendation 1.**

The draft Standards need to be updated following the passage of the legislation reflecting the changed framing, net gain, and accreditation.

#### **Recommendation 2.**

A key priority for business is the accreditation of the states and territories. The Standards are an enabler of that. States and territories should have priority input to ensure the Standards are crafted in a way that will enable accreditation to occur expeditiously.

#### 3.1.1 Administrative guidance and other regulation

The draft Standards will need to be supported by significant administrative guidance and potentially other regulatory instruments. This will be necessary for both assessors and proponents, to facilitate the practical and consistent implementation of the Standards. This includes offset calculators, guidelines to assist with interpretation, and regulation that provides more detailed definition of elements such as net gain.

Ideally, draft administrative guidance and regulation will be developed and circulated with the next round of draft Standards, to enable proponents and the community to fully understand their intended operation and likely effect. They should be the subject of consultation with business and the community.

#### **Recommendation 3.**

There should be early visibility and consultation on the related guidance and other regulation, including the revised offset calculator, in parallel to the draft Standards consultation. There should be a further consultation round undertaken with this full package, so updated draft Standards and regulation and other regulatory instruments are able to be considered together.

### 3.1.2 NOPSEMA framework

The amendments to the EPBC Act recently made by the Parliament will allow for actions to be approved under a NOPSEMA management or authorisation framework, replacing the current strategic assessment.

The activation of this framework is best placed to occur after the full set of proposed Standards are in effect, so that there is no regulatory confusion or inefficiency that would be created by multiple processes. It will be important to ensure that the principles in the Standards can be appropriately adapted to offshore development, which can be significantly different from onshore, particularly in relation to offsets.

## 4. Comments on the MNES Standard

### 4.1 Framing of objectives and outcomes

The objectives table sets out high level objectives for each category of protected matter covered by the EPBC Act, and has been written in a way that sets the desirable environmental outcomes sought to be achieved over the long term. This is appropriate as language for the nation or the government in terms of the aspiration and intention of a combined set of work, but does not necessarily work if applied to a singular project action. For example, a project may negatively impact an area of habitat while (with offsetting) still deliver a net positive outcome; but it is unclear whether this would be consistent with the objectives as currently drafted.

Given the change to language in terms of ensuring 'consistency' with the Standard, it should be made clear that there is not an expectation that an individual project action is expected to deliver on the objectives as listed. Rather, these are objectives intended to be delivered by the laws more broadly, inclusive of actions by government and other stakeholders. It would also not be reasonable to expect a state/territory to have responsibility for objectives/outcomes outside their remit (i.e. in another jurisdiction).

It would be appropriate however that an individual project action being assessed, factoring in the full mitigation hierarchy as applied including offsets/restoration payments, should not be materially detrimental to achieving the stated objective.

The objectives as written introduce new and undefined terminology, for example, "diversity, abundance, resilience, and integrity". For consistency and clarity for both proponents and decision makers, it would be preferable that established terminology is used wherever possible, and that any newly introduced terms are clearly defined.

The outcomes in the Standard refer to the provision of "the protection ... of protected matters". For specificity sake and to align with the legislative intent spelt out in the EPBC Act, this should be amended to refer to 'protection from significant impacts'.

#### **Recommendation 4.**

Objectives set out in the MNES Standard should be clearly specified as the broad objectives for the nation and not expected to be met by individual project actions. An appropriate requirement for project actions (post application of the mitigation hierarchy) is that they should not be detrimental to achieving an outcome. The objectives and outcomes should adopt established terminology wherever possible.

#### 4.1.1 Water resources

The BCA notes that the Samuel Review recommended specifically targeting the water trigger to impacts on cross-border water resources, to remove duplication with state and territory regulation. The Government has not adopted this approach.

The objectives in the Standard for the protection of water resources speaks to the reliability and supply of water to support critical human water needs. It would be appropriate that in relation to this specific item, it is made clear that it is referencing existing or clearly and credibly planned future critical human water needs, rather than a hypothetical water need that does not as yet exist or is not formally anticipated.

Further, depending on circumstance, there needs to be the flexibility for acceptable alternative water sourcing that may be made available that will satisfy critical human need requirements.

### Recommendation 5.

Amend the reference to critical human water needs to be clear this relates to existing or clearly and credibly planned future uses, rather than hypothetical uses, and to allow for alternative water sources to be provided where they can appropriately satisfy critical human need requirements.

## 4.2 Principles

The Standard references four principles that are intended to give action to its outcomes and objectives. The Standard includes the objective and outcome to facilitate ecologically sustainable development, however this is lacking from the principles proposed. The principles should be appropriately caveated in their construction, so that they are not artificially setting unachievable benchmarks. Making this adjustment is important to allow the Standard to satisfy the stated objective and outcome related to ecologically sustainable development.

One way of doing this is to incorporate the concept of “reasonably practicable” (drawing on the concept of reducing risk to ‘as low as reasonably practicable’, typically used in safety legislation) throughout, rather than absolute language or referencing if something is “possible”. This change is not intended to weaken environmental protection, but instead to introduce proportionality factoring in likelihood. To give an example as to why the BCA believes this change is important, it will be ‘possible’ for virtually any impact to be avoided, provided there are no constraints like cost or practicality, or with the cancellation of the project. That is presumably not the intention of the principles; otherwise as written no project would pass the first hurdle. This is the same issue faced by safety systems (e.g. ceasing an activity like allowing cars on roads completely removes the risk of car accidents, but is not an appropriate outcome), which have adopted ‘reasonably practicable’ as the appropriate test for addressing and mitigating risk.

Some of these include:

- ~~“If possible~~ Where reasonably practicable, impacts to protected matters should be avoided by taking measures to anticipate and prevent significant impacts to protected matters before these impacts occur.”
- “Where significant impacts to protected matters cannot be reasonably avoided, the impact should be mitigated through a demonstrated process of identifying and implementing reasonable measures to reduce significant impacts on protected matters.”
- “Following the application of any appropriate avoidance and mitigation measures, any repairable impacts on protected matters should be repaired as soon as possible reasonably practicable as close to its original condition as reasonably possible.”
- “Within reasonable and practicable limitations, actions should be supported by appropriate and suitable:
  - (a) data and information;
  - (b) consultation with Aboriginal and Torres Strait Islander people and contribution of their knowledge; and
  - (c) consultation with other interested parties (as outlined in the Standard on Community Consultation)”

To further articulate what is typically required in considering what is ‘reasonably practicable’, Safe Work Australia guidelines provide some context that is useful for consideration. They state consideration includes likelihood of the risk/hazard occurring, degree of harm if it occurs, what ought to reasonably be known about the risk/hazard and ways of eliminating/mitigating it, and availability and suitability of ways to eliminate it. After assessing the above, considering the proportionality of the economic cost of eliminating or addressing the risk/hazard, including whether the cost is grossly disproportionate.

## Recommendation 6.

The MNES Standard's principles need to be appropriately drafted, with reference to 'reasonably practicable' tests in terms of what is being required, rather than being left as absolutes.

### 4.2.1 Application of the mitigation hierarchy

The first principle relates to the application of the mitigation hierarchy.

The BCA notes that step three, repair, specifically excludes rehabilitation activities at the conclusion of the project action, and also excludes progressive rehabilitation that occurs as a project progresses: "Rehabilitation activities at the conclusion of an action are not considered to be repairs."

A blanket approach that simply rules out the consideration of rehabilitation as part of the repair outcome (where the project still overall delivers a relative improvement to the baseline) is inappropriate, as does ruling out progressive rehabilitation which should be encouraged to occur during the project life cycle.

For example, when constructing a pipeline right of way, an area may be disturbed creating an impact to habitat. However, construction processes mean that the disturbance is limited in time as the right of way is then backfilled and rehabilitated within a short period of time. It is not reasonable that these rehabilitation activities should not be considered as repair, yet a plain reading of the legal instrument may do just that. The description and definition of repair used in the policy paper in this respect are not necessarily consistent with what is included in the legal instrument, so this should be reviewed.

If rehabilitation back to pre-disturbance values or core ecological function for the MNES is able to be achieved, then it should be considered in the determination of any significant residual impacts and offsetting requirements, appropriately considering the timeliness of those outcomes. Given that presumably rehabilitation is still an important outcome, its explicit exclusion risks sending the wrong message in terms of its value.

The BCA notes that the mitigation hierarchy approach differs from the hierarchy used by the Western Australian EPA, which does incorporate 'rehabilitation' (inclusive of the definition of repair as set out in the draft Standard, but broader to include post operational rehabilitation).

Given the requirement for alignment with the Standards to achieve accreditation, it will be important to work through this with the Western Australia EPA.

The Standard overall does not provide sufficient clarity on the extent of avoidance and minimisation that will be acceptable, to guide assessment officers and proponents, as well as the documentation or evidence that will be sufficient to meet the Standard. An appropriate approach may be to remove the specificity of the mitigation hierarchy included here, rather highlighting the high-level concept, and prepare appropriate detailed guidelines for consultation, to sit beside the Standard. This approach also would address potential conflicts between the Standard and state and territory approaches, while still requiring the mitigation hierarchy to be considered and implemented.

This includes the need for detail and clarity around the way the hierarchy interacts with state and territory planning systems. For example, when development of a site is being planned, there are opportunities first to identify and conserve land for protection at a rezoning stage, which provides for long term and certain conservation through zoning controls. Meanwhile, a controlled action under the EPBC Act may only apply at a development application/permit stage. It's important that the mitigation hierarchy implemented can consider the fact that these broader state processes have also occurred.

### **Recommendation 7.**

The application of the mitigation hierarchy should be drafted in a way that appropriately considers rather than excludes rehabilitation, and is compatible with existing hierarchy implementation at state and territory level.

#### 4.2.2 Other comments on principles

- Principle 2 – the appropriate consideration of impacts on protected matters: it would be useful to provide clarity on what is expected in terms of ‘reasonably foreseeable future events’ including level of supporting evidence required. The Government could assist in this task by collating and sharing information and data on past, current, and potential future impacts to protected matters. Where appropriate, scenarios expected to be addressed by proponents should be aligned with broader Federal Government positions, and should be appropriately timebound.
- Principle 3 – actions with residual significant impacts to protected matters are compensated: clarity would be helpful for impacts to World and National Heritage, where offsets/compensation may not be appropriate.
- Principle 4 - Appropriate evidence and engagement/consultation: it would be useful to explicitly link these requirements to the other standards that are envisaged, on community consultation, First Nations engagement, and the data information standard. This should include clarity on who ‘interested parties’ are. It is important that these requirements are provided in a single place and therefore are consistent, rather than risk creating inconsistencies between different standards.

There should be guidelines developed that support incorporation of legitimate ecologically sustainable development concerns (such as safety, and Traditional Owner and community expectations) in decision making and conditioning, so there is clarity for both assessors and proponents on expectations.

There should be indication added to the principles that conditions applied to approvals should be proportionate to the level of environmental risk.

### **Recommendation 8.**

Additional clarity on the application of the principles contained in the MNES Standard, including through reference to other standards under development or with further guidelines, is necessary.

## 5. Comment on Environmental Offsets Standard

### 5.1 Details of net gain

As outlined in section 3, there is a need to update the Standard and provide supporting regulation to further define the concept of net gain, noting that ‘Principle 4 – Measurable improvements’ in effect provides a starting point for this.

In the BCA’s view it will be important that the following concepts are adopted in respect to net gain:

- To ensure workability, net gain as a concept should be applied across a project and its residual significant environmental impacts in totality, not to each individual protected matter impacted.
- Net gain should apply to certain and near certain residual significant environmental impacts only, it should not be required to apply to speculative or possible impacts that may not materialise (i.e. only required to deliver a net gain against actual impacts, not ‘possible’ impacts which may not actually occur). This is not to suggest that the precautionary principle should not be applied where it is appropriate, but rather where the new net gain requirements are being imposed to deliver a gain, that gain should be based on actual impact.

- The requirement for net gain should be to achieve an outcome that is a relative improvement to the baseline, given the factors within a proponent's control (i.e. a net gain should be based on the impacts to a protected matter caused by a proponent's action, rather than expecting individual proponents to also address the impact of climate change or detrimental actions of other parties). Detailed guidelines for what constitutes an appropriate baseline will likely need to be developed, considering appropriate timeframe, geographic constraint, and handling of external changes.

We are of the view that whatever is formulated, it will need to be subject to consultation. That includes industry subject matter expert input on revisions to the offset calculator.

#### **Recommendation 9.**

Building on the 'measurable improvements' content in the Offsets Standard, regulations should be developed to further detail net gain requirements.

## **5.2 Consistency of language**

The language of the draft Standard should be reviewed so there is consistency between the stated object and the outcomes and principles.

For example, the object of the Standard includes to "**contribute** to the protection and enhancement of protected matters", but the outcomes are to "**provide certainty** that protected matters will be protected and enhanced". This is a potential mismatch in language which should be considered, particularly given that offsets on their own cannot provide this certainty. Presumably the outcome being sought is that high quality offsets that provide for environmental outcomes for protected matters are delivered.

## **5.3 Principles**

### **5.3.1 Feasibility**

In respect to the requirement for an offset activity being 'capable of being commenced' at the time the relevant decision is made under the Act, it should be made clear that the intent is not that the offsets are actually secured prior to approval but rather that they are feasible activities; otherwise, this would be unworkable from a business perspective. This is also counter to principle 8 that specifies commencement prior to relevant impact, as well as the fact that until determination the offset requirements are not final.

There is considerable expense in securing offsets which means for most businesses they are appropriately subject to the final investment decision on a project, which typically occurs post-approval. It is not a reasonable expectation for a proponent to have expended significant investment on an offset for an action which may not even get approved.

There is also potential for detailed consultation with stakeholders around implementation of offset approaches, for example engagement and agreement with relevant First Nations custodians before the final design and implementation of an offset is determined. This understandably occurs post investment decision and post approval, given that engagement is only appropriate once it has been confirmed that the project is proceeding and funding is available for it to proceed.

The scientific uncertainty that exists for some protected matters may mean that a proponent is not able to demonstrate the efficacy of an offset activity to meet the requirement of a 'high degree of certainty'. To factor this in, the principle should focus on achieving a reasonable expectation that the offset activity will contribute to the recovery or conservation of the protected matter, and adaptive management over time. In this circumstance, one objective for government should be to develop scientific data and methods of measurement, to improve certainty over time. The wording of this principle should also be updated to ensure it does not discourage innovation in the design and approach taken to offset activities.

Measurable improvement should consider alternative practical indicators of improvement and surrogate indicators where direct measurement of the condition of the protected matter is not practical or possible, such as vegetation cover, eradication of feral species, or reduction in feral herbivore density.

Flexibility should be available for decision makers where formal expert endorsement is not practical to allow for appropriate expert review rather than requiring formal endorsement. For example, where there may be a limited number of experts, some of whom may have conflicts of interest, it may not be possible to achieve 'endorsement' for professional reasons, and so other appropriate review mechanism should be available.

Finally, the offset framework also needs to adopt a practical approach in response to impacts by natural disasters and upstream/adjacent impacts by third parties, including consideration of compliance impacts for proponents.

#### **Recommendation 10.**

While acknowledging the need to ensure feasibility of offsets, there should be clarity that this is not a requirement for offsets to be in place prior to approval, as to do otherwise would be inconsistent with how business investment decisions are made. To allow for consideration of available scientific certainty around a specific protected matter, the requirement for a 'high degree of certainty' should be replaced with a 'reasonable expectation of certainty'. There should be consideration of flexibility for the requirements of formal expert endorsement where this is not practical in particular circumstances.

### 5.3.2 Direct and tangible

Principle 3 outlines a requirement that direct offsets should be implemented unless indirect offsets have been identified as higher priority in a conservation planning document.

Given that in some circumstances, the relevant document may be significantly out of date and may not reflect the most recent science on a species or community, this could prove to be unnecessarily prescriptive, and prevent indirect offsets being used even if new or emerging information demonstrates that those indirect offsets are likely to deliver a higher priority outcome.

Further, this effectively rules out indirect offsets for species and communities for which there is no relevant conservation planning document.

In that context, some limited flexibility in this principle should be provided for decision makers to allow for the use of indirect offsets where robust, scientific information demonstrates they are likely to achieve a superior outcome even if they are not specifically identified in an existing conservation planning document.

#### **Recommendation 11.**

There should be some limited flexibility for decision makers to allow the appropriate use of indirect offsets, where there is new or emerging scientific information, or where no relevant conservation planning document exists. Resourcing should be made available to support the update of conservation planning documents so that they are current and reflect the latest scientific evidence and can effectively support the use of indirect offsets.

### 5.3.3 Security

There is a need for guidance to be developed for assessment officers on what constitutes security of an offset, where it is not possible to secure the underlying tenure or purchase land, including workability in the offshore environment.

Maintenance periods need to consider what is possible under relevant tenure-based arrangements, which may differ between jurisdictions, as well as project context. A number of members from different industries have flagged that mandated 25- and 100-year maintenance periods will not be feasible in many contexts. For example, 100-year maintenance periods may be difficult to arrange in the context of residential property development. It's

likely this creates significant uncertainty and risk for development projects, when other arrangements or measures of maintenance may be appropriate. The requirement for outcomes to be self-sustaining is also unclear and difficult to ensure in an Australian environmental context. Consideration of external events outside the proponent's control (e.g. natural disaster) need to also be factored into this.

#### **Recommendation 12.**

Timeframes around maintenance periods need to be revised, as mandated timeframes (25- or 100-years) currently in the draft will not be appropriate or implementable in all contexts. Guidelines should also be developed on what constitutes offset security where it is not possible to secure underlying tenure or purchase land.

### 5.3.4 Measurable improvements

The principle on measurable improvements provides a potential starting point for the 'net gain' requirement. It should be made clear that this is the 'net gain' requirement given the term 'net gain' is used in the Act.

It will be important that for individual project actions (as opposed to broader government and national environmental objectives):

- The requirement should be that residual significant impacts to any *individual protected matter* should be offset so that there is no net loss, *but that overall*, the project delivers a measurable improvement across the impacted matters of national environmental significance in totality. This will ensure that no protected matter is worse off due to a project, and that the net gain requirement is able to be delivered in a flexible way around how environmental gains are targeted.
- The baseline should be clearly defined as the dynamic baseline for a protected matter rather than the current state of a protected matter at a point in time. That is, if the baseline prior to the action being undertaken is already declining it is not appropriate to expect an individual project action to address those existing factors. It is however completely appropriate that the government should work to halt the decline and return the protected matter to a growth trajectory. The requirement for an individual project action should be to improve on the baseline (i.e. deliver a net gain against the dynamic baseline). This should be based on data and information available during the development of the assessment documentation, rather than at the point of final approval to avoid the need for an additional round of survey or data gathering work.
- There needs to be further consideration given on how net gain is intended to be delivered for protected matters like heritage or the Commonwealth Marine Environment, where net gain does not fit as neatly into the concepts described above.

#### **Recommendation 13.**

Net gain, or measurable improvements, should be applied at project level rather than to impacts to individual protected matters (noting that no net loss should still be applicable individually). Where relevant, net gain should be based on improving on a dynamic baseline, rather than a point in time.

### 5.3.5 Additionality

The BCA supports the explicit call out in respect to additionality of an approved state or territory offset for the same activity being able to be used to also achieve the outcomes for the Standard. It would be helpful to also clearly specify that payment to an accredited state or territory fund to discharge a state or territory offset requirement (such as the Pilbara Environmental Offsets Fund in Western Australia) will also achieve the outcomes for the Standard in relation to the same residual impact. This will ensure that there is no expectation of double-charging for the same impact.

It will also be important that offset opportunities are not precluded based on being an existing investment. Specifically, an advanced offset regime to enable development of a bank of approved advanced offsets that proponents can draw down on for future approvals needs to be developed (where an improvement to a protected matter is made for use as an offset in the future) and should not unintentionally be excluded by this principle.

#### **Recommendation 14.**

Provide clear wording to indicate that there is no additionality requirement for offset payments to accredited state/territory funds for the same residual impact. Ensure that additionality requirements do not unintentionally exclude advanced offsets.

### 5.3.6 Like-for-like and relevant area

Where it can be demonstrated that a 'like-for-like' outcome is not technically feasible for the protected matter, there should be flexibility for decision makers to consider the delivery of similar offset outcomes which can provide an ecological outcome to support an overall net gain for the protected matter.

The limitation for an ecologically relevant offset activity to be delivered outside the same bioregion as the impact only where it is 'not otherwise reasonably practicable' should be reformulated. Specifically, the ability to move beyond the same bioregion should be open to occur where a superior ecological outcome for the protected matter can be achieved in another bioregion, within reasonable parameters. For example, this may be particularly important if another area is a higher priority because a species is under increased threat, or habitat is scarcer. This will provide the flexibility for the proponent to deliver an outcome that has superior environmental outcomes where that is appropriate and possible.

The amended Act allows for 'alternative restoration actions' being delivered by a restoration contributions holder that will not necessarily meet the criteria laid out in these principles. The Department should consider whether this needs to be made explicit in the Standard (i.e. the principles of like-for-like and relevant area are not directly relevant to decisions where a restoration contribution is used to acquit offset requirements) given the legislation spells out the requirements for a restoration contributions holder as to when an alternative restoration action may be used. Separate guidance and governance should be established to guide the contributions holder.

#### **Recommendation 15.**

Provide flexibility for decision makers where 'like-for-like' offsets are not feasible to consider similar offset outcomes. Amend the requirements for offsets in relevant areas to allow for decision makers to consider offsets delivered outside the immediate bioregion where they can be demonstrated as being superior outcomes for the protected matter. Recognise the use of restoration contributions may mean these principles are not met if an alternative restoration action is selected by the restoration contributions holder.

### 5.3.7 Offset commenced prior to impact

The requirement laid out in the Standard that offsets should be secured and delivery commenced prior to the impact may result in significant deterioration of flexibility for industry. It moves away from the adaptive management approach to a more prescriptive formulation.

There are significant lead times associated with locating and securing offsets. This requirement may unnecessarily delay projects or require the proponent to carry significant financial risk. The Standard should be amended to provide flexibility for deferred offset conditions to address this.

The Samuel Review recommended that offsets should be *secured* (rather than delivery commenced) prior to impact, with delays to achieving offset gains minimised.

We also note that the requirement to pay a Restoration Contribution Charge up front does not allow for any adjustment (reduction) to impacts during further project development, forcing a proponent to pay for impacts that may never occur. An alternative to address this is having payments based on actual disturbance, with an upfront payment of a percentage of overall predicted disturbance to ensure sufficient funds for the restoration holder to progress offset delivery.

**Recommendation 16.**

The commencement requirement should be redrafted to allow appropriate flexibility around deferred offset conditions, noting the Samuel Review put forward the requirement for securing (rather than commencing) offsets before impact, and delivering them with minimum delay. Payment timing for Restoration Contribution Charges should consider how subsequent reductions in impact are handled.

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