



Draft National Environmental Standard (Environmental Offsets) 2025

Submission by the
Invasive Species Council

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About the Invasive Species Council

The Invasive Species Council was formed in 2002 to advocate for stronger laws, policies and programs to keep Australian biodiversity safe from weeds, feral animals, exotic pathogens and other invaders. It is a not-for-profit charitable organisation, funded predominantly by donations from supporters and philanthropic organisations.

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Introduction

Offsets have generally failed to compensate for environmental damage not otherwise avoided or mitigated. But done well, offsets can present an opportunity to protect habitat or areas under imminent threat – from development or invasive species – or to restore the environment above and beyond the level of an approved impact, including at a landscape scale.

However, in its current form, **the draft National Environmental Standard on Environmental Offsets risks perpetuating the flawed offsets system criticised by the Samuel Review – a system that conservationists and ecologists described as a ‘licence for destruction’ and for which there is scant evidence of it having delivered quantifiable, long-term ecological improvements.** This flawed system incentivises developers to see offsets as a starting point rather than an option of last resort and fails to ensure that offsets are resilient to threats, like invasive species and climate change.

The Invasive Species Council is concerned that the draft Offsets Standard will fail to achieve its object of net gains for the environment due to:

- insufficient detail in the Standard about determining the feasibility of offsets and a failure to delineate ‘red lines’ for nature
- the incomplete application of the Standard to all offsets, including restoration contribution charges
- weak and unclear drafting in the Standard on several key issues
- the failure of the Standard to support enduring conservation outcomes, including the robust legal security and long-term funding necessary for effective, ongoing management of threats like invasive species, as well as compliance and enforcement
- the lack of mandatory compliance and enforcement of offset conditions.

Each of these issues is addressed in more detail below. We also make the following recommendations to ensure Offsets Standard tackles threats to nature:

Recommendation 1: In principle 1 of the Offsets Standard ensure that all key threatening processes, including climate change and invasive species, are considered in determining the ‘high degree of certainty’ that an offset will contribute to ‘the recovery or conservation of the affected protected matter’.

Recommendation 2: In principle 1 of the Offsets Standard clearly state when offsets will be unavailable, including for irreversible impacts on critically endangered species, communities or their habitats, or when offsets are determined not to be feasible.

Recommendation 3: Require all proposed offsets, including restoration charges, to comply with all Offset Standard principles.

Recommendation 4: Strengthen and clarify the Offsets Standard by:

- (a) replacing discretionary language like ‘should’ with ‘must’
- (b) placing defined caps on the use of indirect offsets
- (c) requiring an independent scientific panel to assess, against science-based criteria, the proposed use of indirect offsets; the validity of calculations of baselines, impacts, and measurable improvements (i.e. net gains); and deviations from the ‘like-for-like’ requirements

- (d) clarifying what is meant by 'bioregion' and requiring that in determining the 'relevant area' for an offset, consideration must be given to the long-term resilience and viability of the species, community or value of the impacted protected matter
- (e) requiring the Restoration Contributions Holder to spend relevant contribution payments prior to impacts occurring
- (f) clarifying that where offsets rely on management of threatening processes, like invasive species, 'securing' those offsets requires that appropriate investigation of the effectiveness of those measures has been undertaken, documented and further assessed prior to the impact occurring
- (g) requiring all key details about how offsets will be determined, like the offsets calculator, be included in the standard or subject to public comment before the standard is finalised.

Recommendation 5: Ensure the Offsets Standard provides for enduring conservation outcomes by:

- (a) recognising that offsets require ongoing legal protection and maintenance in perpetuity
- (b) providing legal mechanisms to secure, fund, monitor, report and trigger further management action for offset areas
- (c) establishing an online, public offsets register that includes full details of all offset approval conditions, information on offset sites and the legal mechanisms (including details of the management trust) used to protect the site.

Recommendation 6: The Offsets Standard should incorporate a new principle or detailed section establishing mandatory compliance, audit, and enforcement requirements for the regulator.

1. Implement evidence-based, feasible environmental offsets and provide 'red lines' for nature

Invasive species are a long-recognised, highly significant impediment to conservation and ecological restoration in Australia. Weeds and feral predators can rapidly undermine the ecological values of even the best quality or largest of environmental offset areas.

The Invasive Species Council supports principle 1 – requiring offsets to be based on assessments of feasibility informed by ‘data and information which shows, with a high degree of certainty, that the offset activity will likely contribute to the recovery or conservation of the affected protected matter’ – but it needs to be strengthened to provide a clear statement on arguably the most important aspect of environmental offsets: when offsets will not be an appropriate measure because they are not feasible or backed by science.

The Standard should explicitly define the circumstances where offsets cannot adequately or feasibly compensate for the loss of some MNES values or habitats. For example, offsets should not be available for irreversible impacts on critically endangered species, communities or their habitats or where there is no scientific evidence that offsets will be feasible or effective (for example, where the threats to a species have not been shown to be responsive to effect management or mitigation). Although protection statements, the draft Policy Position, and Regulations *may* outline such circumstances, for the Standard to be truly effective, these offsets 'red lines' must be directly reflected within the Standard itself. This will both enhance the clarity of the Standard and ensure the 'no regression principle' applies, protecting these non-negotiable circumstances from erosion over time or with changes in government.¹

Furthermore, the principle 1 definition of a 'high degree of certainty' should be expanded to ensure all major threats are considered in determining the feasibility of proposed offsets. While climate change is certainly a threat to MNES, invasive species currently remain one of the most critical drivers of biodiversity loss. Any determination of a 'high degree of certainty' that an offset will contribute to a protected matter's recovery must include a rigorous, evidence-based assessment of the current and likely future impacts of invasive species (e.g. feral cats, foxes, weeds) at the offset site. For example, if an offset relies on habitat restoration in an area with an uncontrolled, established invasive predator population, there is no 'high degree of certainty' the offset will succeed for susceptible threatened native fauna.

A comprehensive risk assessment of all key threats, particularly invasive species, is necessary to ensure offsets are genuinely feasible and ecologically credible over the long term.

Recommendation 1: In principle 1 of the Offsets Standard ensure that all key threatening processes, including climate change and invasive species, are considered in determining the 'high degree of certainty' that an offset will contribute to 'the recovery or conservation of the affected protected matter'.

Recommendation 2: In principle 1 of the Offsets Standard clearly state when offsets will be unavailable, including for irreversible impacts on critically endangered species, communities or their habitats, or when offsets are determined not to be feasible.

¹ EPBC Act, section 514YG. Notably, the 'no regression' principle does not apply to documents that are 'applied, adopted or incorporated' into the standard.

2. Apply the Standard to all offsets, including offsets delivered through restoration contribution charges

Due to the failure to apply all the principles to all offsets, including restoration contribution charges, the draft Offsets Standard is at risk of undermining its stated objects of providing 'a framework in which offsets (where permitted) adequately compensate for residual significant impacts to deliver a net gain and contribute to the protection and enhancement of protected matters.'

Presently, only 'principle 8 - Offset commenced prior to impact' in the draft Offsets Standard applies to restoration contribution charges. The draft Policy Position explains:

The Restoration Contributions Holder will be required **to consider** the Offsets Standard when making decisions around the expenditure of funds. This is to ensure that restoration actions funded by the Restoration Contributions Holder are consistent with the outcomes and principles set out in the Offsets Standard **where possible**. The **Restoration Contributions Holder would not, however, be required to not act inconsistently with the Offsets Standard when making these decisions**. This is consistent with the provisions in the EPBC Act which will specifically allow for the Restoration Contributions Holder to depart from the like-for-like principle where delivering a like-for-like offset is not feasible. (emphasis added)

Table 1 in Attachment C of the draft Policy Position further shows how the principles in the standard will apply to the restoration contributions holder. From these statements, it is clear that a much lower standard is intended to apply to paid offsets as opposed to offsets delivered by proponents themselves.²

The Invasive Species Council strongly opposes lower standards applying to offsets delivered by the Restoration Contributions Holder, as this incentivises developers to pursue this option rather than exhaust all other options (including avoidance and mitigation), risking replication of the failures of the previous offsets regime and similar schemes in other jurisdictions – such as the NSW Biodiversity Offsets Scheme, which was heavily criticised by the NSW Auditor-General for failing to deliver measurable ecological benefits.³

This lack of mandatory adherence is particularly concerning where the offset is a Restoration Contribution intended to fund long-term invasive species management, including at a landscape scale.

For example, a contribution charge intended to fund a feral cat control program to benefit a threatened mammal population in a bioregion could fail if the Restoration Contributions Holder is only required 'to consider' principle 2 (which requires security for offsets activities ensure that the offset activity will be delivered and, if relevant, maintained for the duration of the impact), or principle 4 (which requires a measurable improvement to the condition of an affected protected matter relative to the baseline for the affected protected matter). Any failure to establish effective and long-term management of the feral cat population would nullify the offset, resulting in a ghost

² Note that Table 1 in Attachment C of the Draft Policy Position states that 'no additional flexibility for the Holder is required for this Principle' for both principles 4 and 5, yet both of those principles are currently drafted as only applying to 'offset activities', which is defined as excluding restoration contribution charges. No explanation is provided for this anomaly in the draft policy Position..

³ NSW Auditor-General, [Effectiveness of the Biodiversity Offsets Scheme](#), NSW Audit Office, 30 August 2022.

offset. Mandatory compliance with all principles is essential to ensure these critical management actions are effective and enduring.

Recommendation 3: Require all proposed offsets, including restoration charges, to comply with all Offset Standard principles.

3. Strengthen and clarify the drafting of the Standard

The draft Offsets Standard principles employ weak, discretionary and/or poorly defined language, which has the potential to seriously undermine its effectiveness, especially for offsets reliant on invasive species management which require rigour, transparency, and long-term legal security.

Below we outline some of the key issues and provide recommendations for their resolution.

- **All principles:** The principles use the term ‘should’ where ‘must’ would provide a stronger threshold. Such discretionary language was criticised in the Samuel Review as resulting in poor environmental outcomes.⁴

Recommended resolution: In all the principles, replace ‘should’ with ‘must’.

- **Principle 3:** This principle states that direct offsets are to be implemented ‘unless a conservation planning document prioritises indirect offsets.’ As many conservation planning documents – including threat abatement plans – were not drafted with such an application in mind, are out of date or drafted inconsistently, there is a need for more guidance on when indirect offsets would be appropriate.

Recommended resolution: In the absence of clear guidance and limits on the use of indirect offsets, amend principle 3 to provide for an independent scientific panel to assess and approve any proposal to use indirect offsets with the object of ensuring those offsets are directed to addressing priority threatening processes or implementing recovery actions for the affected MNES that otherwise are unlikely to be undertaken.

Develop guidelines with criteria for and examples of acceptable indirect offsets, including those that involve research concerning invasive species management for the benefit of the protected matter, and place a cap on the use of indirect offsets (e.g. 10% of total offsets for an action).

- **Principle 4:** This principle provides for offsets to deliver measurable improvements to the condition of a protected matter relative to the baseline. The draft Policy Position states that regulations will specify what is a ‘net gain’ at a project and landscape scale. More detail is required in the standard to explain exactly how the baselines and measurable improvements will be achieved.

Recommended resolution: In the absence of guidance explicitly setting out how measurable improvements, net gains, and baselines are calculated, amend principle 4 to require an independent scientific panel to assess the validity of calculations of baselines, impacts, and measurable improvements (i.e. net gains).

⁴ Samuel, Graeme, [Independent Review of the EPBC Act - Final Report](#) [PDF 5.8MB], 2020, Department of Agriculture, Water and the Environment, Canberra, p 3.

- **Principle 6:** Principle 6 requires ‘like-for-like’ offsets unless a conservation planning document, bioregional guidance plan or bioregional plan identifies a higher conservation priority for the affected protected matter. Again, the conservation planning documents can be very dated and were not drafted with this application in mind. There is also little statutory guidance on the contents of bioregional plans and bioregional guidance plans, especially with respect to how they will identify restoration actions. This provides a great deal of leeway for offsets to be delivered that fail to compensate for the lost attribute of an affected protected matter. Greater clarity is required for how and when any deviation from like-for-like is allowed.

Recommended resolution: In the absence of guidance explicitly setting out when deviation from the ‘like-for-like’ requirement will be considered appropriate, amend principle 6 to provide for an independent scientific panel to assess and approve any proposal not to apply ‘like-for-like’ offsets.

Such assessments should apply guidelines with criteria for and examples of acceptable deviations from the ‘like-for-like’ requirements, aimed at ensuring offsets are directed to addressing priority threatening processes or implementing recovery actions for the affected MNES that otherwise are unlikely to be undertaken.

- **Principle 7:** This principle refers to the relevant areas for offset being in an area that is ‘ecologically relevant’ to the affected protected matter. The definition of ‘ecologically relevant’ then refers to offset activity being delivered in the ‘same bioregion as the impact’ or in an alternative ‘ecologically similar’ bioregion as close as possible to the site as the protected matter. The Act and the standard do not define what a ‘bioregion’ is, or provide any guidance on how such an area is established (including for the preparation of bioregional guidance plans or bioregional plans). While the draft Policy Position defines a bioregion as ‘as described in the Interim Biogeographic Regionalisation for Australia (IBRA)’, it is unclear how and if this has any binding weight. More guard rails are required in this principle to ensure that offsets do not allow for (a) species to be made functionally extinct in an area or (b) cumulative fragmentation of existing populations or species to reduce their resilience and/or viability.

Recommended resolution: Clarify what is meant by ‘bioregion’ in principle 7 and ensure that in determining an ‘ecologically relevant’ area for a protected matter, consideration is given to the long-term resilience and viability of the species, community or value of the impacted protected matter.

- **Principle 8:** This principle requires that offsets should be secured and delivery of offsets should commence prior to the impact, rather than prior to commencement of the action. Notes below this principle then clarify that payment of any restoration contribution charge will satisfy that requirement. As already discussed, the Standard should ensure that all principles are equally applied to offsets (whether delivered through contributions charges or otherwise). This will ensure that if a restoration contribution charge is payable, then the Restoration Contributions Holder will be required to determine whether offsets are feasible before the action commences. Furthermore, where offsets require active management of threats, such as invasive species, this activity should also commence prior to the impact in order to gauge whether the offset is practicable and to allow for measurement of the likely benefits of that offset.

Recommended resolution: Delete note 1 to principle 8. Insert a new note to clarify that the Restoration Contributions Holder must spend relevant contribution payments prior to impacts occurring. Insert a further note to clarify that, where an offset relies on management of threatening processes, ‘securing’ those offsets requires that appropriate

investigation of the effectiveness of those measures has been undertaken, documented and further assessed prior to the impact occurring. For example, in cases where invasive species control is the offset mechanism, the invasive management program must be operational and demonstrating measurable success (e.g. a documented reduction in predator density or weed cover) before the development impact occurs.

- **Other general issues:** The draft Policy Position refers to a range of yet-be-finalised regulations, guidelines, rulings and other policy documents that will sit alongside the standard and better define how offsets will be applied. Some of these documents, such as the offsets calculator and Cost Recovery Implementation Statements for Offsets (which includes charges relating to the ‘full costs of implementing, monitoring and managing offsets’), will determine whether the scheme succeeds in achieving its objectives.

Recommended resolution: To ensure offsets are calculated transparently and consistently, the offsets calculator should be incorporated into the Standard (and be subject to the no-regression principle). Other relevant regulations, guidelines and rulings be available for public comment prior to the finalisation of the Standard.

Recommendation 4: Strengthen and clarify the Offsets Standard by:

- replacing discretionary language like ‘should’ with ‘must’
- placing defined caps on the use of indirect offsets
- requiring an independent scientific panel to assess, against science-based criteria, the proposed use of indirect offsets; the validity of calculations of baselines, impacts, and measurable improvements (i.e. net gains); and deviations from the ‘like-for-like’ requirements
- clarifying what is meant by ‘bioregion’ and requiring that in determining the ‘relevant area’ for an offset, consideration must be given to the long-term resilience and viability of the species, community or value of the impacted protected matter
- requiring the Restoration Contributions Holder to spend relevant contribution payments prior to impacts occurring
- clarifying that where offsets rely on management of threatening processes, like invasive species, ‘securing’ those offsets requires that appropriate investigation of the effectiveness of those measures has been undertaken, documented and further assessed prior to the impact occurring
- requiring all key details about how offsets will be determined, like the offsets calculator, be included in the standard or subject to public comment before the standard is finalised.

4. Provide for enduring conservation outcomes

The Invasive Species Council strongly supports the principle that offsets be enduring and securely protected, but we hold some concerns about the current framing in the Standard, which does not appear to contemplate that many offsets, especially those reliant on controlling threats like invasive species, will require ongoing legal protection and maintenance in perpetuity.

The reliance, in principle 2, on arbitrary ‘maintenance periods’ of between 25 to 100 years or when the ‘outcome intended by an offset activity’ is ‘self-sustaining’ (as determined by the Minister) poses a real risk that subsequent threats, such as the incursion of invasive species, could nullify the offset

(e.g. the incursion of cats into a predator-free enclosure for a vulnerable threatened animal could imperil any offset).

To ensure offsets provide net benefits in ecologically relevant timescales, the Offsets Standard must explicitly detail the legal mechanisms required to:

- secure offset areas, preventing uses and activities inconsistent with conservation outcomes
- establish trusts to manage and administer funds for ongoing maintenance of offsets, including the management of invasive animals and plants
- mandate transparent monitoring and reporting on the condition of protected matters within offset areas
- trigger further management action if declines in the protected matters are detected.

Furthermore, given the historical lack of transparency and accountability for offsets, the Standard should mandate the establishment and maintenance of an online public register. This register should include full details of all offset approval conditions, site information, and the legal mechanisms (including the management trust) used to protect the site, thereby ensuring greater transparency and accountability for offset delivery.

Recommendation 5: Ensure the Offsets Standard provides for enduring conservation outcomes by:

- (a) recognising that offsets require ongoing legal protection and maintenance in perpetuity
- (b) providing legal mechanisms to secure, fund, monitor, report and trigger further management action for offset areas
- (c) establishing an online, public offsets register that includes full details of all offset approval conditions, information on offset sites and the legal mechanisms (including details of the management trust) used to protect the site.

5. Mandate robust and independent compliance and enforcement of environmental offsets

History has shown that a lack of compliance monitoring and enforcement means that approvals subject to environmental offsets can permit environmental harm in exchange for benefits that are never actually created, leading to an overall loss of environmental value.⁵ Ghost offsets – e.g. offsets overrun by invasive species and left without proper care and maintenance – can also pose a great threat both to the MNES they were intended to protect and to the values of surrounding areas.

The Samuel Review found that the lack of compliance and enforcement of offsets conditions, and the Act more generally, was undermining the achievement of its objectives.⁶ The Review recommended that a Standard for Compliance and Enforcement be created.⁷

It is presently unclear whether such a standard is being actively contemplated. In its absence, the Invasive Species Council believes the Offsets Standard should include a further principle or section

⁵ Atte Moilanen et al, Monitoring in biodiversity offsetting, *Global Ecology and Conservation*, 2024, 54:e03039, <https://doi.org/10.1016/j.gecco.2024.e03039>;

⁶ Samuel Review, pp 19, 21.

⁷ Samuel Review, pp 21, 151.

establishing mandatory compliance, audit, and enforcement requirements for the regulator (whether that be the National Environmental Protection Agency and/or the accredited state or territory regulator), including:

- **Independent audit program:** A requirement for the National EPA to conduct mandatory, proactive, and independent audit programs of approved offset sites, including regular physical site inspections, particularly for sites where invasive species management is the key offset activity.
- **Public compliance reporting:** Mandatory annual public reporting on the compliance status of all active offset sites, detailing any non-compliance issues and the enforcement action taken.
- **Clear penalty framework:** An overarching substantial penalty framework in the Standard for failures to meet offset conditions, so that it is clear that proponents who fail to meet offset conditions or management targets, will face penalties. If possible, these penalties should be directed into a restoration contributions special account.

This new principle or section ensures that the responsibility for verifying ecological outcomes and managing threats like invasive species does not solely rely on the proponent's self-reporting.

Recommendation 6: The Offsets Standard should incorporate a new principle or detailed section establishing mandatory compliance, audit, and enforcement requirements for the regulator.