

Submission on the Exposure Draft National Environmental Standard (Environmental Offsets) 2026 and the UPDATED Draft Policy Position Paper



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Contents

- Executive summary5
- §1 Introduction and scope7
 - 1.1 Purpose of this submission.....7
 - 1.2 Position within the broader NGO response7
 - 1.3 Relationship to the MNES Standard and the cross-NGO position.....8
 - 1.4 Citation conventions and standing instructions8
 - 1.5 Structure.....8
- §2 The Gippsland Lakes Ramsar context8
- §3 Method and analytical framework9
 - 3.1 Method9
 - 3.2 Evidence base 10
 - 3.3 The five-pillar non-compensatable impacts test..... 10
 - 3.4 How the five-pillar test interacts with the Offsets Standard..... 11
 - 3.5 What this submission does not address..... 12
- §3A The architectural flaw at section 7(2) 12
 - 3A.1 The clause..... 12
 - 3A.2 The architectural flaw 12
 - 3A.3 The cross-NGO consensus and the drafting remedy..... 13
 - 3A.4 Why this is the central recommendation..... 14
- §4 The structural regression: net gain demoted from Principle to sub-element..... 15
 - 4.1 The change 15
 - 4.2 Why the demotion matters..... 15
 - 4.3 The case-by-case discretion shift 15
 - 4.4 The “equal to or greater than” Outcome 2 — a genuine improvement..... 16
 - 4.5 Five-pillar test application 16
 - 4.6 Recommendations..... 16
- §5 The baseline collapse: counterfactual integrity at risk..... 17
 - 5.1 The change 17
 - 5.2 Why the counterfactual matters..... 17
 - 5.3 The Kunming-Montreal Global Biodiversity Framework reference 17
 - 5.4 The “current baseline” definition in section 4 18
 - 5.5 Five-pillar test application 18
 - 5.6 Recommendations..... 18
- §6 The duration collapse: maintenance periods materially shortened in binding text 19

6.1 The four-part change.....	19
6.2 The evidence base — why these durations are wrong	20
6.3 The asymmetry between impact and compensation.....	20
6.4 The Policy Position Paper “pristine outcomes” disclaimer	20
6.5 The five-pillar test application.....	20
6.6 Recommendations.....	21
§7 The spatial anchor collapse: bioregion deleted from binding text	22
7.1 The change	22
7.2 Why this matters	22
7.3 The Policy Position Paper signal	22
7.4 The cultural relevance addition — a genuine improvement to preserve	23
7.5 The Shearwater illustration	23
7.6 The five-pillar test application.....	23
7.7 Recommendations.....	23
§8 Additionality and the direct-and-tangible demotion: two regressions in one section	24
8.1 The additionality regime in section 12	24
8.2 The conservation estate question — instrument silent, policy paper expansive	25
8.3 The “quantifiable” demotion in section 10	25
8.4 The five-pillar test application.....	26
8.5 Recommendations.....	26
§9 The Restoration Contributions Holder: an under-disciplined parallel offset system.....	27
9.1 The architecture in the binding instrument	27
9.2 The “have regard to” formulation.....	28
9.3 The maintenance period gap.....	28
9.4 The Restoration Contributions Advisory Committee	28
9.5 Recommendations.....	29
§10 The five-pillar non-compensatable impacts test: operational application to the Gippsland Lakes Ramsar....	29
10.1 Why the five-pillar test belongs in the Offsets Standard	29
10.2 The five pillars consolidated	30
10.3 Application to the Gippsland Lakes Ramsar — worked example.....	30
10.3A Application at the level of a specific impact within a Ramsar listing.....	31
10.4 Application to other Gippsland-relevant protected matters	33
10.5 Recommendations.....	33
§11 Welcomed improvements to lock in	35
§12 Consolidated recommendations R1–R26	38

12.1 Recommendations summary table	38
12.2 Tier breakdown.....	39
12.3 Priority recommendations.....	39
§13 Conclusion	39
Annex A — Three-document clause-level comparison	41
Annex B — Five-pillar non-compensatable impacts test: source synthesis.....	46
Annex C — Citations and references	47
Peer-reviewed scientific literature	47
Australian primary sources.....	48
International sources.....	48
Other.....	49
Annex D — Alignment with the cross-NGO position.....	49

Executive summary

Improvements welcomed

FOGL endorses the Australian Government’s policy direction toward binding national environmental standards and welcomes the structural improvements in the May 2026 Exposure Draft relative to the November 2025 Exposure Draft.

The May 2026 Exposure Draft properly enacts in binding text:

- Anchoring of the net gain concept to section 527K of the EPBC Act
- Mandatory feasibility (“must be feasible”, not “should”)
- “Equal to or greater than the required net gain” in Outcome 2
- Culturally relevant timeframes and areas
- Expanded definition of conservation planning documents
- Indigenous Protected Areas, ILUAs and Native Title in security architecture

These are genuine improvements properly enacted in binding text and FOGL identifies them for lock-in at §11 of the submission.

Central architectural flaw at section 7(2)

FOGL identifies a central architectural flaw in section 7(2) of the Exposure Draft that mirrors the central flaw in the parallel Exposure Draft National Environmental Standard for Matters of National Environmental Significance.

Section 7(2) deems an offset activity to achieve the Objective and Outcomes where the offset activity is consistent with the Principles. Mere consistency with the Principles is deemed sufficient to achieve the Outcomes. This is the same inverted-architecture flaw that Environmental Justice Australia has identified for the MNES Standard, and the same drafting remedy applies:

The Principles must be applied in a way that is consistent with the Outcomes and that promotes the Objective.

Substantive regressions enacted in binding text

Beyond the section 7(2) architecture, the May 2026 Exposure Draft enacts several substantive regressions on biodiversity outcomes:

Maintenance — permanent impacts	100-year cap deleted; replaced with the duration of the approval (s.9(5)(b)).
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Maintenance — temporary impacts	25-year minimum reduced to 20 years (s.9(5)(a)); “later of” architecture flipped to “the earlier of”, meaning maintenance ends at year 20 even where the offset is not yet self-sustaining.
Quantifiable benefit (Principle 3)	Demoted from operative requirement to permitted alternative to “qualitative” (s.10(2)(a)).
IBRA bioregion anchor (Principle 7)	Deleted; replaced with “the same area” qualified by a Note permitting “nearby or surrounding sites” (s.14(2)(a) and Note).
Like-for-like deviation (Principle 6)	Expanded to a Ministerial satisfaction test on “greater conservation benefit” (s.13(2)).
“Appropriate evidence” residual	Permits a residual category across every Principle broad enough to admit material that is neither peer-reviewed nor expert-attested.

FOGL’s 26 recommendations

FOGL makes 26 numbered recommendations addressing the architectural flaw, the substantive regressions, the welcomed improvements (see §11), and the under-developed transparency and compliance architecture. Five recommendations are marked ★ as the load-bearing priorities for the integrity of the Standard architecture. R7 (maintenance period) restores the November 2025 architecture for temporary impacts and strengthens it for permanent impacts to a 100-year floor: the indefinite duration of a permanent impact requires a compensation obligation extending across the full restoration trajectory documented in the peer-reviewed literature.

★ R1	Section 7(2) rewording	Require Principles to be applied consistently with the Outcomes and to promote the Objective
★ R5	Counterfactual baseline	Fixed 2020 reference date aligned with the Kunming-Montreal Global Biodiversity Framework
★ R7	Maintenance period	Restore the 100-year minimum for permanent impacts and the “later of” architecture
★ R11	Bioregion anchor	Reinstate the IBRA bioregion anchor in Principle 7 (s.14(2))
★ R20	Five-pillar test	Insert the non-compensatable impacts test as a new section of the Standard

The submission applies the five-pillar non-compensatable impacts test — synthesised from Pilgrim et al. (2013), IUCN (2016) Resolution WCC-2016-Res-059, the Business and Biodiversity Offsets Programme Standard, the Wentworth Group (2023) Recommendation 4 framework, and Australian operational practice under SIG 1.1 (2013) — to identify which impacts cannot defensibly be offset and to specify the operational consequence.

The two Standards are a pair

This submission is FOGL-only. It reads the Offsets Standard together with the MNES Standard: an impact the MNES Standard identifies as non-compensable cannot then be compensated under the Offsets Standard. FOGL's positions on the two instruments are consistent, and align with the cross-NGO consensus at §1.2 and with the companion coastal submission of the Coastal Waterways and Wetlands Alliance.

The MNES Standard answers what protection is owed.

The Offsets Standard answers what may substitute for that protection.

§1 Introduction and scope

1.1 Purpose of this submission

This submission responds to two consultation documents released by the Department of Climate Change, Energy, the Environment and Water in May 2026 for joint consultation closing 11:59pm AEST, Tuesday 9 June 2026: (a) the Exposure Draft National Environmental Standard (Environmental Offsets) 2026, the legislative instrument to be made by the Minister under section 514YD of the Environment Protection and Biodiversity Conservation Act 1999 (the "Exposure Draft" or "the Standard"); and (b) the UPDATED Draft Policy Position Paper, the accompanying commentary.

The Exposure Draft is the binding text. The Policy Position Paper is non-binding commentary that signals the direction of travel for operationalisation, future amendment, and the development of supporting guidance, calculators, and regulations. This submission addresses both documents and is structured around the binding instrument, with the Policy Position Paper analysed where it signals direction of travel that has not yet been enacted.

FOGL's substantive expertise on the Gippsland Lakes Ramsar values, the cumulative environmental pressures the catchment faces, and the integration of state and federal environmental policy is the basis for this submission. It builds on FOGL's January 2026 submission on the November 2025 Exposure Draft, and is consistent with FOGL's position on the MNES Standard and with the cross-NGO consensus set out below.

1.2 Position within the broader NGO response

FOGL aligns with the cross-NGO consensus reflected in the published positions of Environmental Justice Australia, the Environmental Defenders Office, the Australian Conservation Foundation, WWF-Australia, the Australian Marine Conservation Society, the Biodiversity Council, and the Wentworth Group of Concerned Scientists. The cross-NGO themes are: rewording of section 7(2) to require the Principles to be applied in a way that is consistent with the Outcomes and that promotes the Objective; restoration of substantive duration requirements; restoration of a counterfactual baseline anchored in international best practice; declaration of certain MNES as presumptively non-compensatable; restoration of the IBRA bioregion anchor in Principle 7; and application of the Standard to all relevant decisions including under bilateral arrangements.

FOGL’s distinctive contribution is regional Ramsar anchoring. The Gippsland Lakes are one of Australia’s most significant Ramsar wetlands. The Standard’s design directly determines whether the cumulative offset pressure across the Gippsland catchment can be defensibly managed.

1.3 Relationship to the MNES Standard and the cross-NGO position

The MNES Standard and the Offsets Standard must operate as a consistent pair. The central architectural argument on the MNES Standard — reflected across the cross-NGO submissions listed at §1.2 — is that its section 7(2) inverts the Standards architecture by deeming compliance with the Principles sufficient to achieve the Outcomes. The drafting remedy, drawn from Environmental Justice Australia’s published position, is to reword section 7(2) to require that the Principles are applied in a way that is consistent with the Outcomes and that promotes or supports the Objective. The same flaw is present in section 7(2) of the Offsets Standard. The same remedy applies. Recommendation 1 of this submission proposes the parallel rewording.

The MNES Standard and the Offsets Standard must be internally consistent: an impact identified as non-compensable under the MNES Standard cannot then be compensated under the Offsets Standard. FOGL’s positions on the two instruments are consistent, and align with the cross-NGO consensus set out at §1.2 and with the companion coastal submission of the Coastal Waterways and Wetlands Alliance.

1.4 Citation conventions and standing instructions

References to the Exposure Draft Offsets Standard use section numbers (e.g., “s.9(5)(b)”) and refer to the May 2026 Exposure Draft unless otherwise specified. References to the November 2025 Exposure Draft are expressly identified. References to the Policy Position Paper are identified as such. Peer-reviewed citations from FOGL’s January 2026 submission are accepted as authoritative per standing instruction.

1.5 Structure

§2 sets out the Gippsland Lakes Ramsar context. §3 sets out the three-document analytical framework and the evidence base. §3A presents the central architectural critique of section 7(2). §§4–8 analyse the substantive regressions in the binding instrument. §9 addresses the Restoration Contributions Holder architecture. §10 consolidates the five-pillar non-compensatable impacts test analysis with operational application to the Gippsland Lakes Ramsar. §11 identifies welcomed improvements to lock in. §12 presents the consolidated recommendations R1–R26. §13 concludes. Annex A is the three-column clause-level diff. Annex B sets out the five-pillar source synthesis. Annex C is the citation list. Annex D is the cross-reference table of MNES Standard Consolidated Recommendations.

§2 The Gippsland Lakes Ramsar context

The Gippsland Lakes are a Ramsar Wetland of International Importance, listed in 1982 under criteria including the support of a significant population of waterbirds, support of vulnerable species, and support of populations of plant and animal species important for maintaining the biological diversity of the bioregion. The Lakes’ ecological character description (DSEWPac, 2010; 2023 Addendum prepared by DEECA) sets out the Limits of Acceptable Change framework that governs assessment under section 16 of the EPBC Act.

The Standard’s design directly determines whether the cumulative offset pressure across the Gippsland Lakes catchment can be defensibly managed. The Shearwater–Paynesville Residential Development (EPBC 2023/09592, approved 19 December 2025) is one illustration. An independent expert assessment identified roughly five times the habitat the proponent recognised — 6.3 hectares against 1.216 hectares (Hansen, 14 May 2025 expert report) — for the Latham’s Snipe values at the impact site, a discrepancy left unresolved on the public record. The Shearwater–Paynesville approval is not aberrant; it is the operational pattern that an offset methodology permitting proponent-selected baselines, proponent-procured expert assessment, and proponent-set risk-of-loss assumptions to anchor offset arithmetic without independent verification at material discrepancy thresholds reliably produces. The Standard as drafted preserves the methodological architecture that produced this outcome. The methodology correction this submission proposes at Recommendation 4 addresses this failure mode directly.

What matters for this submission is what the Standard’s design now permits in binding text. The May 2026 Exposure Draft has enacted, not merely signalled, several of the regressions identified in this submission. The IBRA bioregion anchor in Principle 7 has been deleted (s.14(2)). The 100-year maintenance period cap for permanent impacts has been deleted (s.9(5)(b)). The 25-year minimum maintenance period for temporary impacts has been reduced to 20 years and the “later of” architecture flipped to “the earlier of” (s.9(5)(a)). The “quantifiable” requirement in the direct-and-tangible Principle has been demoted (s.10(2)(a)). The like-for-like deviation pathway has been expanded to a Ministerial satisfaction test (s.13(2)).

Under the binding instrument as drafted, a future Gippsland Lakes-adjacent action could discharge its offset obligation in a “nearby or surrounding” area outside the South East Coastal Plain bioregion. A future permanent impact on Ramsar values could be compensated by an offset that ends 30 years after the impact begins, transferring all subsequent cost to the public. A future like-for-like deviation could be approved on the basis of Ministerial satisfaction that an alternative offset delivers “greater conservation benefit” — a contestable evidentiary test that the Department’s offset arithmetic has historically permitted to overstate gains. These are not hypothetical risks. They are the operational consequences of the binding text as drafted.

§3 Method and analytical framework

3.1 Method

This submission is grounded in: three-document forensic clause-level analysis of the November 2025 Exposure Draft, the May 2026 Exposure Draft, and the May 2026 Policy Position Paper (Annex A presents the diff table); peer-reviewed scientific literature on biodiversity offsets, restoration timeframes, baseline-of-decline failure modes, and offset performance; statutory analysis of the EPBC Act as reformed by the Environment Protection Reform Bills 2025; and the five-pillar non-compensatable impacts test described at §3.3. Where the binding instrument has enacted a regression, the submission recommends amendment of the binding text. Where the Policy Position Paper signals a direction of travel that has not been enacted, the submission identifies the risk and recommends that the binding instrument’s current wording be retained against the signalled softening.

3.2 Evidence base

The peer-reviewed literature anchoring this submission includes Maron et al. (2015) on baselines of decline and Maron et al. (2025) on offset effectiveness and the role of offsets in a nature-positive future; Maseyk, Evans and Maron (2017) on deriving risk-of-loss estimates and the over-estimation of averted-loss gains; Gibbons et al. (2016) on restoration time-frames and the circumstances in which no net loss is feasible; Gibbons et al. (2018) on empirical NSW outcomes from a decade of biodiversity offsetting; Laitila, Moilanen and Pouzols (2014) on minimum biodiversity offset multipliers; Moilanen and Laitila (2016) on indirect leakage in avoided-loss offsetting; Lindenmayer et al. (2017) on the anatomy of a failed offset; zu Ermgassen et al. (2023) on the measured underperformance of the Victorian offset scheme; O'Brien and Gordon (2024) on averted-loss gain overestimation under Victorian offset policy; Moreno-Mateos et al. (2012) on structural and functional loss in restored wetland ecosystems; Rampling, zu Ermgassen, Hawkins and Bull (2024) on governance gaps undermining offset delivery; Hansen et al. (2024) on Gippsland Lakes waterbird and shorebird populations; Hansen, Honan, Stewart, Walters and Weston (2025) on setback distances for migratory shorebirds; Contos, Gorrod, Caves and Oliver (2025) on inter-observer variation in offset field assessments; Pilgrim et al. (2013) on offsetability assessment; and the Wentworth Group of Concerned Scientists (2023) Cumulative Impacts Report. International standards cited include the Kunming-Montreal Global Biodiversity Framework, IUCN (2016) Resolution WCC-2016-Res-059, the Business and Biodiversity Offsets Programme Standard, the Ramsar Convention, and the United Nations Declaration on the Rights of Indigenous Peoples. The full bibliography is at Annex C.

3.3 The five-pillar non-compensatable impacts test

The Offsets Standard rests on an architectural assumption — that all significant impacts on protected matters are, in principle, compensatable through offsets, subject to the Principles. This assumption is empirically wrong on a sufficiently large category of impacts that the Standard's design cannot proceed defensibly without testing it. Peer-reviewed literature demonstrates that certain categories of impact cannot be offset within ecologically meaningful time-frames, and that attempting to offset such impacts produces systematic conservation losses rather than gains.

The five-pillar test is a structured assessment producing a categorical determination on the basis of five sequential tests. Where all five pillars indicate engagement, the impact is non-compensatable and offsets are not an available compliance pathway. The test is synthesised from Pilgrim et al. (2013), IUCN (2016) Resolution WCC-2016-Res-059, the BBOP Standard, the Wentworth Group (2023) Recommendation 4 framework, and Australian operational practice under SIG 1.1 (2013). The formulation is the operationally tractable synthesis FOGL advances for both the MNES and Offsets Standards.

Pillar 1 — Irreplaceability. Tests whether the value being impacted is replaceable within an ecologically meaningful time-frame. Sub-tests: ecological uniqueness; restoration time-frame (Gibbons et al. (2016) document that no net loss is feasible only where biodiversity can be restored within approximately 55 years, assuming maximum typical restoration effectiveness of 50%; habitat-specific assessment is required where these conditions are not met); geographic and demographic constraints.

Pillar 2 — Demonstrated scientific knowledge of restoration. Tests whether the scientific knowledge required to restore the impacted value exists and has a documented track record of successful application at the relevant scale. Pilgrim et al. (2013) identify this as a separate criterion from irreplaceability.

Pillar 3 — Feasible offset options. Tests whether a feasible offset option exists meeting same-species, same-bioregion and additionality constraints. Sub-tests: (i) theoretical availability of suitable offset sites; (ii) additionality compatibility (not already obligated under existing protection); (iii) cumulative supply availability — where same-species, same-bioregion offset options on equivalent unprotected tenure are exhausted or compromised by existing offset commitments, no feasible option exists at the relevant point in time. Where no feasible offset option meeting the substantive criteria exists, the impact cannot be offset regardless of resource commitment.

Pillar 4 — Serious or irreversible damage. Tests whether the impact constitutes serious or irreversible damage in the sense of section 391 EPBC Act and Object section 3A(b). Sub-tests: seriousness (population-level impacts; substantial and measurable change in ecological character); irreversibility.

Pillar 5 — Precautionary principle. Tests whether the precautionary principle requires protection rather than compensation. Section 391 EPBC Act makes the precautionary principle mandatory in Ministerial decision-making. Where scientific uncertainty about consequences combines with threat of serious or irreversible damage, the precautionary principle requires protection rather than reliance on offset compensation.

3.4 How the five-pillar test interacts with the Offsets Standard

The five-pillar test operates as a structured assessment at the front-end of the decision-making process for any action with residual significant impacts on a protected matter that is presumptively non-compensatable. Where all five pillars indicate engagement, the impact is non-compensatable: the Offsets Standard is not the relevant compliance pathway, and the action must be either avoided, mitigated or repaired consistent with the MNES Standard, or refused. Where one or more pillars do not engage, the impact is compensatable, and the standard offset architecture applies, subject to the substantive corrections this submission recommends at §§4–9.

The May 2026 Policy Position Paper introduces the device of Protection Statements, by which the Minister may declare that certain impacts on certain protected matters cannot be compensated. This is welcomed (§11). The five-pillar test and Protection Statements operate at different levels and serve complementary functions, not alternative ones. Protection Statements are discretionary and categorical: they are declared at Ministerial initiative at the level of a protected matter, identifying that the matter is presumptively non-compensatable. The five-pillar test is mandatory and impact-specific: it is applied at the front end of decision-making at the level of a residual significant impact, determining whether that specific impact engages the categorical criteria. Protection Statements set the categorical presumption; the five-pillar test triggers the Statement and operationalises it for specific impacts. Neither device substitutes for the other. The Policy Position Paper's reliance on Ministerial discretion to declare Statements is too narrow a base for what is, on the peer-reviewed evidence, a mandatory categorical question. The five-pillar test provides the operational basis on which Protection Statements should be triggered, not merely permitted.

3.5 What this submission does not address

This submission is silent on broader EPBC reform questions that fall outside the Offsets Standard remit — including AI-assisted assessment processing, the broader Reform Act 2025 design choices, and the architecture of state bilateral devolution as such. FOGL aligns with the cross-NGO consensus position (§1.2) that the Standard must apply to all relevant decisions, including under bilateral arrangements; that substantive consistency requirement is addressed by Recommendation 1 (the section 7(2) and section 7(3) rewording) and by the corrected offset methodology at Recommendation 4. The broader architectural design of bilateral devolution falls outside the scope of this submission. The Offsets Standard’s operation also depends architecturally on the MNES Standard’s upstream characterisation of impacts. An impact characterised as a “repairable impact” under section 4 and Step 3 Repair of the MNES Standard never engages the Offsets Standard at all, because the offset obligation under Principle 3 of the MNES Standard is not triggered. The cross-NGO position on the MNES Standard proposes a thresholded definition of repairable impact (12 months, 0.1 hectares or 1 per cent, 24-month reversibility on peer-reviewed methodology) plus independent peer-review panel concurrence on Critically Endangered, Ramsar, and World Heritage categories under new sub-sections 8(6A) to 8(6D) of the MNES Standard. The peer-review panels are constituted by random selection from a published Roster of pre-qualified experts maintained by the Department, with cost recovery from the proponent, a 60-day default-protective fallback if advice is not provided, and annual audit by Environment Information Australia. The Offsets Standard’s effectiveness in the architecture of this submission’s recommendations is conditional on the upstream repairable-impact loophole being closed; in the absence of that closure, characterisations of impacts as repairable will operate as the principal offsets-avoidance pathway regardless of how the Offsets Standard is drafted. Silence on those questions is not endorsement of the policy direction; other submissions may legitimately take a more oppositional position.

§3A The architectural flaw at section 7(2)

3A.1 The clause

Section 7(2) of the Exposure Draft Standard provides:

“An offset activity intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on an affected protected matter will achieve the objective and outcomes in section 5 and 6 of this standard where that offset activity is consistent with the principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard.”

Read with section 7(1), which states that the Principles are the means “by which the outcomes and objectives in section 5 and section 6 of this standard are to be achieved”, section 7(2) deems an offset activity that is consistent with the Principles to achieve the Objective and Outcomes. The Principles are the operative consistency test; the Objective and Outcomes are deemed met by Principle-consistency.

3A.2 The architectural flaw

This is the inverted-architecture flaw that the cross-NGO submissions identify as the central problem of the MNES Standard. The architecture of National Environmental Standards under the reformed EPBC Act, as described by the Samuel Review (Recommendation 3, requiring legally enforceable National Environmental Standards, with

Recommendation 3(b) requiring that activities and decisions made by the Minister be consistent with Standards; Recommendation 4(c), requiring decisions targeted to achieve the environmental outcomes set out in Appendix B1) and reflected in the structure of section 514YD, places the Objective at the apex: it is the overarching aim that anchors the Standard to the Objects of the EPBC Act. Outcomes are the specific results the Standard is intended to achieve. Principles are the requirements applied through implementation to facilitate the realisation of Outcomes and promote the Objective.

The architectural relationship is hierarchical and directional: Principles serve Outcomes; Outcomes serve the Objective; the Objective serves the Objects of the Act. Section 7(2) inverts this architecture. It deems an offset activity that is “consistent with the Principles” to “achieve the Objective and Outcomes”. The Outcomes are converted from substantive results into procedural compliance with a list of conditions. The Objective is reduced to whatever the cumulative application of the Principles produces. If the Principles are individually weak — as §§4–8 of this submission demonstrate several of them now are — the section 7(2) deeming makes that weakness flow through directly to the Objective itself. A decision-maker assessing an offset activity under the Standard need only demonstrate Principle-consistency to satisfy the consistency requirement under sections 7(4)(a)–(d). The Objective and Outcomes drop out of the operative test.

An alternative reading is available on the face of section 7. Section 7(1) provides that the Principles are the means “by which the outcomes and objectives... are to be achieved”. On this alternative reading, section 7(2) does not deem the Outcomes met but describes the mechanism by which they are achieved through Principle-consistency. The alternative reading does not save the architecture. Sections 7(4)(a)–(d) operate the consistency test exclusively on the Principles, not on the Outcomes. There is no operative pathway in the Standard by which the Outcomes function as an independent compliance benchmark. The Objective and Outcomes are textually present at sections 5 and 6 but textually absent from the consistency test that determines what compliance requires. Whether the Standard’s architecture is read as a deeming construction (the natural reading) or as a means-end construction (the alternative reading), the operative consequence is identical: the Outcomes have no independent operational role. The rewording proposed at Recommendation 1 forecloses both readings.

3A.3 The cross-NGO consensus and the drafting remedy

The cross-NGO consensus on the parallel MNES Standard provision is reflected in submissions by EJA, EDO, ACF, WWF-Australia, AMCS, and the Biodiversity Council. The headline drafting remedy is set out in EJA’s Final MNES Submission Guide (May 2026):

“Reword section 7(2) to require that the Principles are applied in a way that is consistent with the Outcomes, and that promotes or supports the Objectives.”

This remedy applies identically to section 7(2) of the Offsets Standard. The parallel rewording would read:

(2) An offset activity intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on an affected protected matter will be consistent with this Standard where that offset activity is consistent with the Principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard applied in a way that is consistent with the Outcomes in section 6 and that promotes the Objective in section 5.

This rewording preserves the section 7(2) consistency test as the operative compliance mechanism, but it reverses the directionality. Principles are no longer deemed to achieve Outcomes; Principles are required to be applied in a way that achieves Outcomes. The hierarchy is restored.

3A.4 Why this is the central recommendation

The rewording of section 7(2) is the central recommendation of this submission because every other recommendation depends on it. If section 7(2) remains as drafted, individually strengthened Principles can still be applied in a way that does not substantively deliver the Outcomes, and the Standard will still be deemed consistent. If section 7(2) is reworded as proposed at Recommendation 1, the individually strengthened Principles will need to be applied in a way that substantively achieves the Outcomes, and the Standard’s discipline is restored. The section 7(2) rewording is operationally minimal. It does not alter any Principle, any Outcome, or the Objective. It changes the relationship between them, in a single sentence, to align with the Samuel Review architecture and with the broader cross-NGO consensus. It is the highest-return single drafting amendment available in the consultation.

Recommendation 1 ★. Reword section 7(2) of the Exposure Draft National Environmental Standard (Environmental Offsets) 2026 to require that the Principles are applied in a way that is consistent with the Outcomes and that promotes the Objective, in the form set out at §3A.3 of this submission. Apply the parallel rewording to section 7(2) of the Exposure Draft MNES Standard. In addition, amend section 7(3) of the Exposure Draft to remove the controlling-provision scoping limitation: replace the existing text with: “The principles in sections 8, 9, 10, 11, 12, 13, 14 and 15 of this standard apply in relation to an offset activity that is intended to compensate for the damage that will or may be caused by a residual significant impact of an action or class of actions on an affected protected matter, whether or not the relevant provision of Part 3 of the Act is designated a controlling provision under section 75.” The current section 7(3) restricts the operation of the Principles to offset activities for matters where the relevant Part 3 provision is a controlling provision — a structural complement to the section 7(2) override. A failure to add a controlling provision (whether through delay, oversight, or acceptance of a proponent’s contestable section 78 position) removes the Principles from operation on the offset activity for that impact altogether. The Shearwater–Paynesville case study documents this on the primary-document record: section 18 was not added as a controlling provision over approximately 23 months between the 5 January 2024 Latham’s Snipe uplisting and the 19 December 2025 approval, with the consequence that the section 18 offset Principles would not operate on the Latham’s Snipe habitat impact even under a 7(2)-strengthened Standard. The substantive section 7(3) amendment is the architectural complement to the section 7(2) rewording and parallels the equivalent amendment sought across the cross-NGO submissions on the MNES Standard. The rewording restores the Outcomes-based assessment architecture that the Samuel Review (2020) identified as essential to credible national environmental standards and to the accountability framework that the EPBC Act reforms are intended to deliver.

§4 The structural regression: net gain demoted from Principle to sub-element

4.1 The change

In the November 2025 Exposure Draft, the operative Principle 4 was structured around the concept of net gain. The May 2026 Exposure Draft renames Principle 4 to “Measurable improvements” (s.11) and folds the net gain concept into the Outcomes provision (s.6(b)) and into the Feasibility Principle (s.8(2)(b)). The Policy Position Paper sets out the rationale: net gain is to be assessed “case-by-case, ensuring decisions are workable, legally robust, and deliver real environmental improvement”. This is a two-part change: structural (net gain demoted from being the substantive content of an operative Principle to a definitional component referenced across multiple Principles); and methodological (the methodology shifts from rules-based to ministerial case-by-case).

4.2 Why the demotion matters

Principles are what the Standard requires in the operative sense. Section 7(1) provides that the Principles are the means by which the Outcomes and Objective are to be achieved; sections 7(4)(a)–(d) make the consistency test operate on the Principles. Folding net gain into a Principle named “Measurable improvements” weakens that discipline. The Principle’s name no longer signals what it requires. “Measurable improvements” is a procedural descriptor — it says that improvements must be measurable. It does not say that those improvements must constitute a net gain against the relevant baseline. The substantive requirement is buried in the cross-reference to the Outcomes provision and in the definition of “required net gain” at section 4.

The Principle 4 wording itself is procedural rather than substantive. Section 11(1) provides that there must be a high level of confidence that an offset activity will deliver a measurable improvement relative to a baseline that reflects what would likely happen in the absence of the offset activity. The operative test is whether the improvement is “measurable”, not whether it is sufficient. The substantive sufficiency test — equal to or greater than the required net gain — appears in the Outcomes provision at section 6(b), but Outcomes are not the operative compliance test under section 7(2). They are deemed achieved by Principle-consistency. The combined effect of section 7(2) and the renaming of Principle 4 is that the Standard can be procedurally complied with by demonstrating measurable improvement of any positive magnitude, with the substantive sufficiency test dropping out of the operative compliance assessment.

4.3 The case-by-case discretion shift

The Policy Position Paper signals that net gain will be “assessed case-by-case”. The shift from rules-based to discretionary assessment has not yet been enacted in the binding instrument. The case-by-case approach is in tension with three structural features of the reformed EPBC Act and the Standard architecture: section 527K of the EPBC Act anchors the net gain concept to a statutory definition; the Calculator framework operates through standardised inputs and outputs; and peer-reviewed evidence (Maron et al., 2025; Maseyk, Evans and Maron, 2017) demonstrates that discretionary assessment is the failure mode that has produced systematic over-estimation of offset gains in Australian practice.

4.4 The “equal to or greater than” Outcome 2 — a genuine improvement

The May 2026 Exposure Draft section 6(b) provides that offsets must deliver a measurable improvement “equal to or greater than the required net gain”. This is a genuine improvement on the November 2025 wording. However, “equal to” is the operative floor. Given the documented uncertainty in offset arithmetic (the multiplier analyses of Laitila et al. 2014 and Gibbons et al. 2016 indicate ratios well above unity), an “equal to” floor is too low. The floor should be “greater than”, with the magnitude specified by the corrected Calculator methodology this submission proposes at Recommendation 4.

4.5 Five-pillar test application

Application of the five-pillar test to the case-by-case discretion shift demonstrates that for impacts engaging Pillars 1, 2 and 3, the case-by-case approach produces decisions that cannot be defended on the underlying evidence. Where the value being impacted is irreplaceable, no case-by-case discretion can produce a net gain. The case-by-case approach is most dangerous precisely where the five-pillar test indicates that the impact is approaching the non-compensatable boundary. The rules-based approach is the discipline that prevents Ministerial discretion from being deployed at that boundary.

4.6 Recommendations

Recommendation 2. Rename Principle 4 (section 11) from “Measurable improvements” to “Net gain”. Restructure section 11 so that the substantive operative requirement is that the offset activity delivers a net gain — defined by reference to section 527K of the EPBC Act — against the relevant baseline. “Measurable improvement” remains a sub-component, describing the form in which net gain is to be demonstrated.

Recommendation 3. Amend section 6(b) Outcome 2 so that the measurable improvement is “greater than” rather than “equal to or greater than” the required net gain, with the magnitude specified by Calculator methodology consistent with peer-reviewed offset literature.

Recommendation 4. Adopt a corrected offset methodology: 0% risk-of-loss default unless documented imminent threat; exclusion of prior management gain and security gain from offset arithmetic; 50% confidence default, higher only on independent peer-reviewed evidence; time-to-ecological-benefit set at the lesser of the recovery timeframe in the matter’s Conservation Advice or 30 years (Gibbons et al. 2016; Maron et al. 2025). Adopt boosted multipliers, tiered by listing status, drawing on the multiplier analyses of Laitila et al. (2014) and Gibbons et al. (2016), which identify ratios well above 1:1 up to the ~10:1 ceiling of operational feasibility. The Calculator should be presumptive; ministerial departures should require published reasons, independent expert review, and consistency with the corrected methodology. The Offsets Assessment Calculator is a separate instrument; this recommendation requires it to be published and conformed to these defaults, not relocated into the Standard. Address the “appropriate evidence” residual category in sections 8(4), 9(4), 9(10), 10(4), 11(4), 12(6), 13(4), and 14(4) through two specifications: (a) Traditional Owner knowledge that does not appear in peer-reviewed literature is preserved within the residual category as a protected evidence type, consistent with the recognition at the section 4 definition of “suitably qualified expert” and with the United Nations Declaration on the Rights of Indigenous Peoples; (b) consultant reports procured by the proponent of the action being offset, where not independently peer-reviewed or verified by

an expert not engaged by the proponent, are excluded from the residual “other evidence” category. This preserves the residual category’s legitimate purpose (Traditional Owner knowledge; emerging evidence methods; departmental records) while closing the failure mode (proponent-procured material substituting for peer-reviewed or expert evidence).

§5 The baseline collapse: counterfactual integrity at risk

5.1 The change

The November 2025 Exposure Draft section 11(2) defined the baseline as “an evidence-based estimate of the likely 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.” The May 2026 Policy Position Paper defines the baseline as “An evidence-based estimate of the likely condition of a protected matter at the point of approval of an action or a class of actions [static baseline from approval date]”. The counterfactual clause has been deleted from the policy paper. The May 2026 Exposure Draft section 11(1) and 11(2), however, retains the counterfactual: “an offset activity will deliver a measurable improvement to the affected protected matter relative to a baseline that reflects what would likely happen in the absence of the offset activity”. The binding instrument has retained the counterfactual element. The policy paper has deleted it. The two are misaligned. The policy paper signals the direction of travel; the instrument has not yet followed it.

5.2 Why the counterfactual matters

The counterfactual element of the baseline is the conceptual mechanism that distinguishes offset gain from offset prevention of loss. Without a counterfactual, an offset that prevents a 50% decline in a protected matter is credited as a 50% gain — even though the protected matter is in exactly the same condition at the end of the offset as it was at the start. The systematic failure mode identified by Maron et al. (2015) — baselines of decline locking in loss — is the failure mode that the counterfactual element of the baseline is designed to prevent. Gibbons et al. (2018) document the empirical magnitude of the failure mode: a ten-year evaluation of NSW offset policy outcomes (2005–2014) found that 21,928 hectares were approved for clearing against 83,459 hectares established as offsets, an apparent surplus on calculator-arithmetic grounds, but the policy will require approximately 146 years to avert as much native vegetation loss as the development impacts it approved caused, because the assumed declining-baseline counterfactual substantially overstates the observed clearance rate. The finding is directly operative for the EPBC offset architecture, which uses the same averted-loss methodology. The Exposure Draft’s retention of the counterfactual is welcome. The Policy Position Paper’s signalled deletion must be resisted.

5.3 The Kunming-Montreal Global Biodiversity Framework reference

The Kunming-Montreal Global Biodiversity Framework, adopted by the parties to the Convention on Biological Diversity in December 2022, operates against reference baselines anchored to a fixed historical date (2020 for most Targets), enabling cumulative progress assessment across the Framework period. Australia is a party and has committed to implementing the Framework. Recommendation 5 of this submission anchors the baseline to a fixed 2020 reference date aligned with the Framework. The same alignment is required for the Offsets Standard.

A fixed-date counterfactual baseline aligned with the Framework is the international best-practice approach. The current Exposure Draft baseline is decision-point-anchored rather than fixed-date-anchored. This permits the operative baseline to drift downward over time as the ecological condition of the protected matter declines. For the Gippsland Lakes Ramsar specifically, this matters concretely. An offset for a future Gippsland Lakes-adjacent action assessed against a 2026 baseline credits the offset against a baseline that already reflects measurable declines documented in the 2023 ECD Addendum. An offset assessed against a 2020 baseline, with the counterfactual element retained, would require the offset to demonstrate gain against a more conservative reference condition.

5.4 The “current baseline” definition in section 4

The May 2026 Exposure Draft section 4 defines “measurable improvement” as “a tangible and quantifiable increase in condition for protected matters relevant to a current baseline”. “Current” implies a moving baseline anchored to the present time, rather than a fixed-date counterfactual anchored to 2020. This is the policy paper’s signalled direction of travel reflected in the binding instrument’s definitions, even as the operative provision at section 11(2) retains the counterfactual. The misalignment needs resolution in favour of the more protective wording.

5.5 Five-pillar test application

The baseline question engages Pillar 1 (irreplaceability) and Pillar 4 (serious or irreversible damage). Where the baseline against which an offset is assessed is itself degraded, the offset arithmetic produces compensable determinations on values that are, on a properly counterfactual assessment against a Framework-aligned 2020 baseline, in fact irreplaceable or in fact subject to serious damage. A degraded baseline pushes more impacts inside the compensatable category; a Framework-aligned counterfactual baseline keeps the boundary where the science supports it.

5.6 Recommendations

Recommendation 5 ★. Amend section 11(1) and 11(2) of the Exposure Draft to anchor the baseline to a fixed 2020 reference date aligned with the Kunming-Montreal Global Biodiversity Framework, with the counterfactual element retained. Section 11(1) should read: “There must be a high level of confidence that an offset activity will deliver a measurable improvement to the affected protected matter relative to a baseline that reflects the likely condition of the protected matter in 2020 and in the absence of the offset activity being undertaken.” Section 11(2) should anchor the baseline to a fixed reference date of 1 January 2020, adjusted for documented condition changes between 2020 and the time of the decision based on appropriate evidence. Where 2020 baseline data are unavailable, the Standard should specify a precautionary substitute (the more conservative of the available baselines), not default to date-of-approval. The fixed-date baseline applies prospectively to decisions made under the reformed Act; existing approvals are unaffected.

Recommendation 6. Amend the section 4 definition of “measurable improvement” to remove the word “current” from “current baseline”. Replace with: “relevant to the baseline determined in accordance with section 11”.

§6 The duration collapse: maintenance periods materially shortened in binding text

This is the most substantive single regression in the May 2026 Exposure Draft. The maintenance period provisions in section 9(5) have been redrafted in ways that materially weaken the Standard’s capacity to protect biodiversity outcomes over time. The changes are enacted in binding text. They are operative on commencement of the Standard.

6.1 The four-part change

The 100-year cap deleted. The November 2025 Exposure Draft section 9(5)(b) provided maintenance for permanent impacts of “the earlier of 100 years and the day on which the Minister determines that the outcome is self-sustaining”. The May 2026 Exposure Draft section 9(5)(b) provides: “where the damage to the affected protected matter is long term or permanent – the earlier of: (i) the period of the approval or bioregional plan (as relevant); or (ii) until the outcome of the offset activity becomes self-sustaining.” The 100-year figure has been deleted from the binding instrument and replaced with “the period of the approval or bioregional plan”. For most major projects, the period of approval is 20 to 50 years. A permanent impact on a Ramsar wetland, a Critically Endangered ecological community, or habitat for a Critically Endangered species can now be compensated by an offset that ends 30 years after the impact begins, with all subsequent maintenance cost falling on the public or the protected matter’s continuing degradation.

The 25-year minimum reduced to 20 years. The November 2025 Exposure Draft section 9(5)(a) provided a maintenance period for temporary impacts of “the later of 25 years and when the outcome of the restoration measure is self-sustaining”. The May 2026 Exposure Draft section 9(5)(a) provides “the earlier of: (i) 20 years; or (ii) until the outcome of the offset activity becomes self-sustaining”. Two changes: 25 years became 20 years; “later of” became “earlier of”.

The “later of” / “earlier of” architectural flip. This is the most consequential of the four changes. Under the November 2025 wording, an offset for a temporary impact had to be maintained for both a minimum of 25 years and until self-sustaining — whichever was later. Under the May 2026 wording, the offset is maintained for either 20 years or until self-sustaining — whichever is earlier. The directionality is reversed. Under the November 2025 architecture, an offset declared self-sustaining at year 8 was still maintained until year 25, providing a 17-year buffer against false-positive self-sustaining declarations. Under the May 2026 architecture, an offset declared self-sustaining at year 8 ends at year 8. The maintenance discipline that protects against false-positive declarations has been deleted.

The “self-sustaining” definition. Section 9(6) provides: “The outcome of an offset activity becomes self-sustaining at the point at which maintenance is no longer needed to maintain that outcome.” Section 9(7) requires that “The criteria for when the outcome of the offset activity becomes self-sustaining must be provided in a management plan.” The definition is bare. The instrument provides no methodology, no independent verification requirement, no minimum monitoring period before a self-sustaining declaration, and no consequence for false-positive declarations. The criteria for self-sustaining are set in a management plan — a proponent-prepared document subject to Departmental approval.

6.2 The evidence base — why these durations are wrong

Gibbons et al. (2016) document that no net loss is feasible only where biodiversity can be restored within approximately 55 years, assuming maximum typical restoration effectiveness of 50%. A 20-year maintenance period for an offset in a habitat class with a 55-year restoration window terminates compensation at approximately year 20 of a 55-year ecological trajectory. The corrected methodology at Recommendation 4 sets the time-to-ecological-benefit floor at up to 30 years; the Exposure Draft at section 9(5)(a) caps the maintenance period for temporary impacts at 20 years. Maintenance can therefore end before the ecological benefit is even due — the mismatch is direct.

Laitila, Moilanen and Pouzols (2014) demonstrate that multipliers under reasonable parameterisations must account for the time lag between development impact and offset ecological benefit; for permanent impacts, the time-lag analysis produces multipliers substantially exceeding 1:1 ratios. Moilanen and Laitila (2016) demonstrate that averted-loss offsets are subject to indirect leakage — the relocation of the threatening process — most acute when the maintenance period is short. zu Ermgassen et al. (2023), evaluating Victoria's offset scheme against counterfactuals, found that avoided-loss offsets delivered no detectable gain in woody vegetation extent relative to comparison sites — the documented operational failure mode of contemporary Australian offset practice, compounded by the systematic shortening of maintenance periods and the transfer of long-term maintenance cost from proponents to the public. Moreno-Mateos et al. (2012) show that restored ecosystems typically remain structurally and functionally below reference condition for decades, so gains credited against an immediate-equivalence assumption are systematically over-stated.

6.3 The asymmetry between impact and compensation

The maintenance period question is, at its core, a question of asymmetry between the duration of the impact and the duration of the compensation. A permanent impact on a Ramsar wetland persists indefinitely. An offset for that impact, under the May 2026 wording, is maintained for “the period of the approval” — a defined and finite period. The November 2025 100-year cap was already an inadequate response to the asymmetry. The deletion of the 100-year cap removes the only existing partial response. The May 2026 wording leaves no provision in the binding instrument that addresses the asymmetry at all.

6.4 The Policy Position Paper “pristine outcomes” disclaimer

The Policy Position Paper includes the sentence: “Achieving the offset outcome is not intended to result in pristine environment or heritage values.” This is a pre-emptive ambition-ceiling. The Standard's Objective at section 5 refers to “restoration, recovery and enhancement” — language that the Exposure Draft has correctly strengthened from the November 2025 “protection and enhancement”. A pristine outcome is not the operative ambition, and no one is proposing that it should be. The disclaimer is a redundant softener whose only function is to pre-emptively lower expectations. It has no operative purpose and should be deleted.

6.5 The five-pillar test application

The maintenance period question engages all five pillars of the non-compensatable impacts test for the relevant categories of impact. For impacts engaging Pillar 1 (irreplaceability), the value cannot be replaced within any maintenance period; the five-pillar test directs that the impact be classified as non-compensatable and the

maintenance period provision should never be reached. For impacts engaging Pillar 2 (demonstrated scientific knowledge of restoration), the maintenance period question is the question of how long the proponent's compensation obligation must extend in the absence of demonstrable restoration trajectories. For impacts engaging Pillar 4 (serious or irreversible damage), the maintenance period question is the question of whether the compensation can outlast the damage; for permanent impacts, the answer must be yes; the May 2026 wording produces an answer of no. For impacts engaging Pillar 5 (precautionary principle), the May 2026 wording deploys uncertainty in the opposite direction: where there is uncertainty about whether self-sustainability has been achieved, the maintenance period ends earlier, not later. This is anti-precautionary.

6.6 Recommendations

Recommendation 7 ★. Amend section 9(5) of the Exposure Draft to strengthen the maintenance period provisions: section 9(5)(a) (temporary impacts): “where the damage to the affected protected matter is short term or temporary – the later of: (i) 25 years; or (ii) until the outcome of the offset activity becomes self-sustaining.” Section 9(5)(b) (long-term or permanent impacts): “where the damage to the affected protected matter is long term or permanent – the later of: (i) 100 years; or (ii) until the outcome of the offset activity becomes self-sustaining.” Two changes: (a) reverse “the earlier of” to “the later of” in both provisions, restoring the architecture present in the November 2025 wording for temporary impacts and applying that architecture to permanent impacts; (b) establish a 25-year floor for temporary impacts and a 100-year floor for permanent impacts. The 100-year floor for permanent impacts is a strengthening of the November 2025 wording (which used “the earlier of” for permanent impacts, treating 100 years as a ceiling). The strengthening is justified by the asymmetry between the indefinite duration of a permanent impact and the finite duration of the maintenance obligation: where the impact persists indefinitely, the compensation obligation must extend across the full restoration trajectory documented in the peer-reviewed literature (Gibbons et al. 2016: approximately 55 years for comparable habitat classes; Maron et al. 2024 on operational failure modes of short maintenance periods). For bioregional plan offsets where the plan is indefinite under the EPBC Act, the 100-year floor operates as a minimum independent of plan duration.

Recommendation 8. Insert a new section 9(7A) providing that the criteria for self-sustaining must be developed in consultation with, and verified by, an independent expert not procured by the proponent; that a minimum monitoring period of 10 years post-claimed-self-sustainability must elapse before any termination of maintenance obligations; and that the management plan in section 9(7) must specify both the criteria and the monitoring methodology, with both subject to Departmental approval. Rampling, zu Ermgassen, Hawkins and Bull (2024) document that even strong substantive offset standards fail substantially in delivery without independent verification and compliance architecture; proponent-set self-sustaining criteria are the central failure mode this provision addresses.

Recommendation 9. Insert a quantum-for-duration trade-off provision: where a proponent selects a maintenance period at the minimum statutory floor and seeks to terminate maintenance on a self-sustaining declaration before the statutory floor is reached, the offset multiplier must be increased to account for the higher risk of the outcome failing to reach self-sustaining status. The corrected Calculator methodology at Recommendation 4 specifies the operational form.

Recommendation 10. Delete from the Policy Position Paper the disclaimer “Achieving the offset outcome is not intended to result in pristine environment or heritage values”. The disclaimer has no operative purpose and pre-emptively softens the Objective set out at section 5 of the Standard.

§7 The spatial anchor collapse: bioregion deleted from binding text

7.1 The change

The November 2025 Exposure Draft section 14(2) provided: “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, within an alternative, ecologically similar, bioregion that is as close to the site of the affected protected matter as possible.” The May 2026 Exposure Draft section 14(2) provides: “An offset activity will be located in an area that is relevant to the affected protected matter if: (a) the offset activity is located in the same area in which the residual significant impact on the affected protected matter has or will occur; or (b) where it is not reasonably practicable for subsection (2)(a) to be satisfied: (i) the offset activity is located in an area that is ecologically or culturally relevant to the protected matter; and (ii) the locating the offset activity in the area is likely to result in an equivalent or greater conservation outcome for the affected protected matter.” The Note to section 14(2)(a) provides: “the reference to the ‘same area’ is not limited to the site of the impact, but may also include nearby or surrounding sites.” The IBRA bioregion anchor has been deleted from the legislative instrument.

7.2 Why this matters

The Interim Biogeographic Regionalisation for Australia (IBRA) is the established scientific basis for biogeographic referencing in Australia. IBRA divides Australia into 89 bioregions and 419 subregions, each defined by integrated geological, climatic, vegetation, and faunal characteristics. IBRA is the spatial framework used by the Department in conservation planning, by state and territory governments in environmental policy, by the National Reserve System, and by the scientific literature on Australian biogeography. “The same area” has no defined meaning in the Standard. The Note’s clarification that “the same area” may include “nearby or surrounding sites” does not provide a defined meaning; it expands the term without anchoring it.

The fallback in section 14(2)(b) is more permissive still. An offset that is not in “the same area” need only be in an area that is “ecologically or culturally relevant” — terms equally undefined — and is “likely to result in an equivalent or greater conservation outcome”. The “equivalent or greater conservation outcome” test is the Ministerial satisfaction test that the like-for-like Principle (s.13(2)) also deploys, and it is subject to the same evidentiary weakness: the comparison is between two hypothetical conservation outcomes, both projected on contestable expert evidence procured at the proponent’s expense.

7.3 The Policy Position Paper signal

The Policy Position Paper provides that offsets should be “located as close to the impact as possible, or where this is not reasonably practicable, be located within an alternative ecologically or culturally relevant area”. The Restoration Contributions Holder flexibility provisions in Attachment C signal a further direction of travel: “the relevant area for the Holder may be extended beyond areas as close to the impact as possible” influenced by “a

focus on enhancing the biological integrity of an ecosystem that supports more than one protected matter”. The combined effect of section 14 of the Exposure Draft and the policy paper’s Holder flexibility provisions is that a Gippsland Lakes-adjacent residual significant impact could be discharged by an offset delivered in a different bioregion, a different state, or a different drainage division.

7.4 The cultural relevance addition — a genuine improvement to preserve

Section 14(2)(b)(i) introduces “culturally relevant” as a permissible relevance criterion alongside “ecologically relevant”. This is a genuine improvement. Cultural relevance for First Nations protected matters — including Indigenous heritage values, cultural landscapes, and species of cultural significance — should be guided by traditional knowledge holders. The addition should be preserved alongside, not in place of, the bioregional ecological anchor. The two relevance criteria operate on different dimensions: ecological relevance is the scientific basis for biogeographic equivalence; cultural relevance is the First Nations-led basis for cultural-landscape equivalence.

7.5 The Shearwater illustration

The Shearwater–Paynesville Residential Development provides a concrete illustration of what the spatial anchor weakening permits. Under the November 2025 wording, the bioregion anchor would have required the offset sites to be either in the same bioregion as the impact (the South East Coastal Plain bioregion, in which the Gippsland Lakes are located) or in an “alternative, ecologically similar, bioregion that is as close to the site of the affected protected matter as possible”. The same-bioregion requirement is operationally tractable. Under the May 2026 wording, the spatial relevance test would be whether the offset sites are in “the same area” — which may include “nearby or surrounding sites” without further definition — or in an “ecologically or culturally relevant” area producing “equivalent or greater conservation outcome”. The Shearwater case is not exceptional. It is the operational pattern that section 14 of the May 2026 Exposure Draft permits and that the November 2025 wording, with its bioregion anchor, partially constrained.

7.6 The five-pillar test application

The spatial anchor question primarily engages Pillar 3 (feasible offset options). The pillar requires that a feasible offset option meeting same-species, same-bioregion and additionality constraints be available; absence of any one of those three elements means no feasible offset option exists. Under the November 2025 wording, the same-bioregion constraint was operationalised in the binding text. Under the May 2026 wording, it has been deleted. The third element of the Pillar 3 test no longer has an operational basis in the Standard. For Ramsar wetlands, the spatial anchor question also engages Pillar 1 (irreplaceability): a Ramsar wetland’s ecological character is defined by reference to its specific biogeographic, hydrological and ecological context; an offset for a Ramsar impact delivered in a different bioregion does not address the irreplaceability problem but confirms it.

7.7 Recommendations

Recommendation 11 ★. Amend section 14(2) of the Exposure Draft to restore the IBRA bioregion anchor: “(2) An offset activity will be located in an area that is relevant to the affected protected matter if: (a) the offset activity is located within the same IBRA bioregion (as in force from time to time) as the residual significant

impact on the affected protected matter; or (b) where it is not reasonably practicable for subsection (2)(a) to be satisfied: (i) the offset activity is located in an alternative IBRA bioregion that is ecologically or culturally relevant to the affected protected matter; and (ii) the locating the offset activity in the area is likely to result in an equivalent or greater conservation outcome for the affected protected matter, demonstrated by appropriate evidence including independent expert review.” The cultural relevance addition from the May 2026 wording is preserved. Where for legal-drafting reasons the binding instrument retains the May 2026 “same area” wording, the guidance documents accompanying the Standard (including the operational guidance and the updated Calculator user manual) must specify IBRA as the operational basis for determining “the same area” and “ecologically relevant area”, with the IBRA bioregion as the default unit of analysis and any departure requiring published reasoning addressing the ecological relevance criteria. This ensures that the operational interpretation of section 14(2) by Departmental assessors, proponents, and reviewing courts is anchored in the established scientific framework.

Recommendation 12. Preserve and strengthen the cultural relevance addition with explicit free, prior and informed consent (FPIC) requirements under the United Nations Declaration on the Rights of Indigenous Peoples. Where the cultural relevance limb is engaged, the determination must be made on advice from traditional First Nations knowledge holders, with consent procedures consistent with FPIC.

Recommendation 13. The Restoration Contributions Holder’s spatial flexibility under the Policy Position Paper Attachment C should be bounded by an outer limit specified in regulations: the Holder may extend offset delivery beyond the same IBRA bioregion only to contiguous bioregions or to the same IBRA drainage division, and only with Restoration Contributions Advisory Committee endorsement on published reasoning.

§8 Additionality and the direct-and-tangible demotion: two regressions in one section

8.1 The additionality regime in section 12

The May 2026 Exposure Draft section 12 is structured as a mandatory primary requirement (s.12(1) — “must be likely to deliver an additional benefit”) with two carve-outs (ss.12(3) and 12(4)). The state/territory carve-out at section 12(3) is appropriately narrowed to offsets that apply “in relation to the same action or class of actions and the same affected protected matter”, which addresses the double-counting risk that arose under the November wording. The narrowing is a genuine improvement and should be locked in.

The advanced restoration action carve-out at section 12(4) is concerning. Section 12(4) provides that an offset activity registered as an advanced restoration action “is not precluded from delivering an additional benefit”. The Policy Position Paper rationalises this on the basis that “Registered advanced restoration action activities will have already met the additionality test at the point that they were secured and managed”. This rationalisation has two problems. First, the additionality test at the point of registration is not the same additionality test as at the point of application to a specific impact. At registration, the question is whether the proposed action goes beyond existing obligations and protections — a static-baseline test. At application, the question is whether the action delivers a benefit that would not have occurred in the absence of the action being offset — a counterfactual test relative to the specific impact. These are different tests. Passing the first does not imply passing the second.

Second, the operational consequence is that the proponent of a future action with a residual significant impact can purchase or commission advanced restoration actions in advance of the action, register them, and then apply them as additionality-satisfying offsets at the point of approval. The advanced restoration action was developed in anticipation of being applied to an impact — that is the policy purpose of the mechanism — and yet section 12(4) treats it as additional to the impact for whose anticipation it was developed. The circularity is structural.

8.2 The conservation estate question — instrument silent, policy paper expansive

The May 2026 Exposure Draft section 12 is silent on whether offsets may be delivered on land already within the conservation estate. The May 2026 Policy Position Paper, however, contains expansive new language: “Where land tenure is already secured (for example formally designated as being within the conservation estate such as national park, conservation area, or other protected area) offset activities can be delivered if they result in additional outcomes beyond what is already required for the affected protected matters.” This is policy paper signalling not yet enacted in the binding instrument. The submission’s task is to recommend that the binding instrument retain its silence (refusing to enact the policy paper’s signalled expansion) and that the policy paper itself be amended.

The conservation estate question is structurally important for the Gippsland Lakes. The Gippsland Lakes Coastal Park, the Lakes National Park, and surrounding protected areas are candidates for “offsets-on-park” arrangements under the policy paper’s signalled position. Each of these protected areas is chronically resource-constrained; management plans frequently identify resourcing gaps for which proponent-funded “additional” management would fill the gap. The “additional outcomes beyond what is already required” test is the test whether the proponent’s contribution exceeds the existing management plan — but the existing management plan is itself a documented under-funding of what the science requires. Filling that gap is not biodiversity additionality; it is consolidated revenue substitution. *zu Ermgassen et al. (2023)* document systematic additionality failures in offsets delivered on existing protected-area tenure. Recommendation 4 of this submission addresses this through the exclusion of “prior management gain” from offset arithmetic — gain that would have occurred under the existing management framework cannot be counted as offset gain.

8.3 The “quantifiable” demotion in section 10

The November 2025 Exposure Draft section 10(1) required that an offset activity provide a “direct, tangible and quantifiable benefit”. “Quantifiable” was a co-equal operative requirement alongside “direct” and “tangible”. The May 2026 wording moves “quantifiable” from section 10(1) to section 10(2)(a) and pairs it with “or qualitative”. “Quantifiable” is demoted from being an operative requirement of the Principle’s headline statement to being one of two permitted forms of the benefit. “Qualitative” becomes the operative alternative: an offset that provides a “qualitative” benefit satisfies the test even where no quantifiable benefit can be demonstrated.

The systematic use of qualitative benefit assessment is a recognised failure mode of contemporary offset practice (Maron et al. 2025). Qualitative assessments cannot be tested against the impact they purport to offset; they cannot be aggregated into Calculator methodology; they cannot be subjected to material-discrepancy peer review. The Note 1 examples of direct offsets — “securing and actively managing land and managing pest species” — are quantifiable activities. The Note 2 examples of indirect offsets — “scientific research and education” — are not quantifiable in the same operational sense. The “qualitative” pathway in section 10(2)(a) appears to be

designed to accommodate indirect offsets within Principle 3. The accommodation is the wrong direction. Indirect offsets should be subject to a quantification discipline, not have the quantification discipline relaxed to accommodate them.

8.4 The five-pillar test application

The additionality and quantifiable questions engage Pillars 2 and 3. The “qualitative” benefit pathway admits offsets where the scientific knowledge of restoration is insufficient to support quantitative claims — the absence of evidence dressed as a permitted alternative (Pillar 2 engagement). The advanced restoration action carve-out and the conservation estate policy paper signalling permit offsets to satisfy additionality through categorical carve-outs rather than substantive testing (Pillar 3 engagement). In both cases, the additionality and quantification disciplines that distinguish defensible offsets from arithmetic compliance are weakened.

8.5 Recommendations

Recommendation 14. Amend section 10(1) of the Exposure Draft to restore “quantifiable” as a co-equal operative requirement: “An offset activity must provide a direct, tangible and quantifiable benefit to the affected protected matter.” Delete the “qualitative” alternative from section 10(2)(a). Where indirect offsets cannot satisfy the quantifiable test, the Standard should require alternative compliance pathways (avoidance, mitigation, or repair under the MNES Standard) rather than relaxing the quantifiable discipline. Also amend section 10(1) “should” to “must” — the hortatory form is inconsistent with the operative architecture of the other Principles. For clarity: this recommendation targets the biodiversity offset arithmetic; assessment methodologies for cultural values and Indigenous heritage are preserved through the section 4 “suitably qualified expert” recognition of traditional owners and the FPIC architecture proposed at Recommendation 12, and operate as a distinct evidence pathway not subject to the quantifiable test.

Recommendation 15. Amend section 12(4) of the Exposure Draft to specify the operational test by which advanced restoration actions satisfy additionality at the point of application. The amended provision should read: “Despite subsection (2), an offset activity that is registered as an advanced restoration action under regulations made for the purposes of section 170CAA of the Act may deliver an additional benefit at the point of application to a residual significant impact only if: (a) the action was registered before the action being offset was referred under section 68 of the Act; (b) the proponent of the action being offset has not contributed financially to the establishment or maintenance of the advanced restoration action before the point of application; (c) the Department publishes the additionality assessment with the approval decision, including reasoning addressing the criteria in paragraphs (a) and (b).” This preserves the policy purpose of the advanced restoration action mechanism (early restoration delivery) while preventing the circularity in which a proponent funds an advanced restoration action in anticipation of a specific impact and then applies the same action as additionality compensation for that impact. The additionality test at the point of application is therefore a temporal and financial-independence test, not a re-assessment of the substantive additionality test that was applied at registration.

Recommendation 16. Amend the Policy Position Paper Principle 5 to delete the language permitting offsets on existing conservation estate. The Exposure Draft’s silence on this question should be preserved against the policy paper’s signalled expansion. Where the conservation estate question is to be addressed, it should be

addressed through a separate regulatory provision specifying that (a) the additional management is itself a registered, monitored, compliance-enforced action; (b) a discrete net gain calculation isolates the additional gain from baseline management; (c) the responsible agency consents in writing and is resourced to deliver and monitor; (d) the offset is publicly registered with annual reporting; and (e) the action cannot substitute for consolidated revenue funding of existing management plan requirements.

§9 The Restoration Contributions Holder: an under-disciplined parallel offset system

9.1 The architecture in the binding instrument

The May 2026 Exposure Draft introduces the Restoration Contributions Holder (“the Holder”) as a statutory officeholder under the EPBC Act with operative reference in the section 4 definitions and at section 7(4)(d)(ii) (the bioregional plan pathway). The instrument’s treatment of the Holder is structural: the Holder is defined; the Holder operates within the bioregional plan pathway; the Holder’s offset activities are subject to the Principles in sections 8 to 15 except where varied. The Policy Position Paper Attachment C provides the operational guidance on how the Principles apply to the Holder, with explicit flexibilities on Principles 1, 2, 3, 6, 7, and 8. The cumulative effect of the policy paper flexibilities is that the Holder operates as a parallel offset system to which a different set of operational rules applies.

The Holder architecture creates a fungibility question distinct from the question of substantive flexibilities. The Holder aggregates restoration contribution charges across multiple actions and multiple protected matters, and applies the aggregated funds to offset activities that do not necessarily map one-to-one onto specific impacts. Like-for-like at the impact level is a different problem from like-for-like at the aggregated level. The Standard’s Principle 6 (sections 13(1)–13(3)) operates at the impact level; for Holder-delivered offsets, the like-for-like discipline must be specified at the aggregated level — that is, the portfolio of Holder-delivered offsets must, when aggregated, match the portfolio of impacts to which the underlying charges relate, on the same like-for-like, same-bioregion, and additionality constraints that apply to direct offsets at the impact level. Aggregation must not be a mechanism for relaxing like-for-like discipline; it is a mechanism for delivering it at scale.

The Restoration Contributions Holder operates on aggregated restoration contribution charges levied under the Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025. The substantive adequacy of the Charge — whether the charge level is calibrated to fund offsets meeting the Standard’s Objective of net gain across all offset activities — falls outside the Offsets Standard remit and is properly addressed in the Charge Imposition Act regulatory framework. However, the substantive adequacy of the Charge is a necessary condition for the Holder architecture to deliver against the Standard’s Objective. Where the Charge is calibrated below the level required to fund offsets meeting the Standard’s substantive requirements, the Holder cannot deliver against the Outcomes regardless of how rigorously the Principles are applied to expenditure decisions. The two regulatory instruments must be calibrated against each other.

9.2 The “have regard to” formulation

The Policy Position Paper provides that the Holder will be required to “have regard to” the Standard when making decisions on the expenditure of funds, but “would not, however, be required to act consistently with” the Standard. The “have regard to” formulation is materially weaker than the “consistency” test that applies to direct offsets under section 7(4)(a)–(d). Under the consistency test, the decision-maker must be satisfied that the offset is consistent with the Principles. Under the “have regard to” formulation, the Holder must take the Principles into account but may depart from them on the Holder’s own determination of strategic priority. The Holder’s flexibility is built on the difference.

The Holder’s role — to deliver restoration actions funded by aggregated restoration contribution charges across multiple actions and multiple protected matters — does justify some procedural flexibility relative to proponent-delivered offsets for specific impacts. The justification does not extend to substantive flexibility on the Principles themselves. A Holder-delivered offset must still deliver net gain (Outcome 2). The flexibilities articulated in the policy paper Attachment C selectively dilute substantive requirements in ways that the Exposure Draft does not authorise.

9.3 The maintenance period gap

The Policy Position Paper Attachment C provides that “The maintenance period for a Restoration Contribution will be required to be static” and that “The applicable maintenance period for Restoration Contributions is yet to be finalised and will be consulted on separately”. This is the single most consequential remaining design question for the Holder architecture. The maintenance period for a Holder-delivered offset is not specified in the Exposure Draft, is not specified in the Policy Position Paper, and is to be consulted on separately. The Department is asking submitters to comment on an offset architecture in which the duration of the offset obligation for Holder-delivered offsets is undefined. The substantive question — what maintenance period is necessary for the offset to deliver the required net gain — is independent of the funding base. It is determined by the ecological characteristics of the protected matter, not by who is delivering the offset.

9.4 The Restoration Contributions Advisory Committee

The Policy Position Paper gives the Restoration Contributions Advisory Committee a role in endorsing Holder departures from the Principles (Attachment C), yet the Committee is not in the operative provisions of the instrument and the policy paper sets no discipline around those endorsements. Within the four corners of the Standard the point is narrow but important: a Committee-endorsed departure from any Principle should not take effect without published reasoning and a pathway to review, so that the flexibility Attachment C contemplates cannot erode the Principles unaccountably — and, consistent with the Department’s own position that a residual impact cannot be compensated by restoration contribution where an offset is known not to be available, the contribution pathway must not become a route around a non-compensatable finding. The Committee’s own constitution — its establishment, composition and governance — is a matter for the Act and the regulations that create it, and for the separate consultation on the restoration-contribution framework; FOGL will address it there.

9.5 Recommendations

Recommendation 17. Address the Restoration Contributions Holder “have regard to” formulation through two distinct amendments: (a) Policy paper amendment: delete from the Policy Position Paper Attachment C the statement that the Holder “would not, however, be required to act consistently with” the Standard, and replace with a statement that the Holder must act consistently with the Standard subject to the procedural flexibilities expressly provided for the Holder. This amendment is within the Department’s administrative control and can be made without primary legislative change. (b) Binding instrument or regulation amendment: a consistency requirement applicable to Holder decisions on expenditure of restoration contribution charges must be made by the most direct legal instrument available — by inserting a provision in section 7 of the Exposure Draft under the Standard-making power in section 514YD of the EPBC Act, or, where vires under section 514YD do not support that placement given the Holder’s primary-legislation establishment, by regulation under the appropriate enabling provision. The substantive requirement is non-negotiable: a Holder operating to weaker substantive rules than direct proponents is incompatible with the Standard’s Objective of net gain across all offset activities, regardless of delivery mechanism. The drafting form is a procedural matter to be resolved within the Department’s legislative architecture.

Recommendation 18. Specify the Holder maintenance period in the binding instrument, not in separate consultation. The maintenance period for Holder-delivered offsets must be at least 100 years for permanent impacts and 25 years for temporary impacts, with the “later of” architecture restored as proposed at Recommendation 7. The maintenance period is an ecological question, not a funding-mechanism question.

Recommendation 19. Within the Standard and its Policy Position Paper, require that any departure by the Holder from a Principle — including any departure endorsed by the Restoration Contributions Advisory Committee under Attachment C — be published with reasons addressing the affected Principle and be open to review, so that the flexibility Attachment C contemplates cannot dilute the Principles without accountability. The Committee’s own establishment, composition and governance are matters for the Act and the regulations that create it and for the separate consultation on the restoration-contribution framework; this submission does not address them here.

§10 The five-pillar non-compensatable impacts test: operational application to the Gippsland Lakes Ramsar

10.1 Why the five-pillar test belongs in the Offsets Standard

The Offsets Standard, as drafted, proceeds on the architectural assumption that all residual significant impacts on protected matters are, in principle, compensatable through offsets, subject to the Principles. The Principles set the conditions for compensation. The Standard does not provide an operational test for impacts that are not compensatable in principle. This is a structural gap. The MNES Standard contains the same gap. FOGL advances the parallel five-pillar test for the MNES Standard, and the same answer is required in the Offsets Standard; the coastal and marine application is developed in the companion submission of the Coastal Waterways and Wetlands Alliance.

The two Standards must answer the same prior question consistently. The MNES Standard answers what protection is owed to a protected matter. The Offsets Standard answers what may substitute for that protection. If the MNES Standard identifies an impact as non-compensatable (engaging the categorical Outcome-not-satisfied position advanced for the MNES Standard), the Offsets Standard cannot then provide a pathway to compensate it. The Policy Position Paper introduces the device of Protection Statements; this is welcomed (§11). It is, however, an inadequate substitute for the five-pillar test because Protection Statements are discretionary, narrow in trigger, and operate at the level of declaration about a protected matter rather than assessment of a specific impact. The five-pillar test is the operational basis on which Protection Statements should be triggered, not an alternative to them.

10.2 The five pillars consolidated

The five-pillar non-compensatable impacts test is set out at §3.3 and detailed at Annex B. For convenience, the operative summary is: Pillar 1 — Irreplaceability; Pillar 2 — Demonstrated scientific knowledge of restoration; Pillar 3 — Feasible offset options; Pillar 4 — Serious or irreversible damage; Pillar 5 — Precautionary principle. Where all five pillars are engaged on an action's impact on a Critically Endangered species, a Ramsar wetland, a World Heritage value, or an irreplaceable habitat, the impact is non-compensatable.

10.3 Application to the Gippsland Lakes Ramsar — worked example

The Gippsland Lakes are a Ramsar Wetland of International Importance, listed in 1982. The 2010 Ecological Character Description and the 2023 Addendum prepared by DEECA establish the Limits of Acceptable Change framework against which significant impact is assessed. The Lakes are within the South East Coastal Plain IBRA bioregion, Gippsland Plain (SCP01) subregion. The Lakes support populations of waterbird and shorebird species — including the Latham's Snipe assessed in the Shearwater–Paynesville assessment — and a complex of estuarine, freshwater, and saline wetland ecosystems whose ecological character is the basis of the international listing.

Pillar 1 — Irreplaceability. The Gippsland Lakes ecological character is irreplaceable. The Ramsar Convention's listing criteria are designed to identify wetlands meeting specific international ecological criteria — the Lakes meet criteria including support of a population of waterbirds, support of vulnerable species, and biodiversity-maintenance for the bioregion. These criteria are met by the specific Lakes complex; they are not met by alternative wetlands at any other location. The biogeographic, hydrological, and ecological context that produces the Lakes' Ramsar values cannot be replicated. Pillar 1 is engaged.

Pillar 2 — Demonstrated scientific knowledge of restoration. Scientific knowledge of how to restore Ramsar-level ecological character to a wetland that has lost it is partial. The component parts are subject to documented restoration methodologies, but their integration into a wetland complex meeting Ramsar criteria has no documented track record of successful application at the scale of the Gippsland Lakes. Moreno-Mateos et al. (2012) demonstrate that restored wetland ecosystems remain structurally and functionally below reference condition even decades after restoration. Pillar 2 is engaged.

Pillar 3 — Feasible offset options. No feasible offset option meeting same-species, same-bioregion, and additionality constraints exists for an impact on Gippsland Lakes Ramsar ecological character. No alternative Ramsar wetland of international importance exists in the same bioregion. Pillar 3 is engaged.

Pillar 4 — Serious or irreversible damage. A substantial and measurable change in the ecological character of the Gippsland Lakes Ramsar site — the threshold in SIG 1.1 (2013) for significant impact assessment under section 16 EPBC Act — constitutes serious damage in the section 391 EPBC Act sense. Moreno-Mateos et al. (2012) demonstrate that restored wetland ecosystems do not recover reference-level structure and function on management-relevant timeframes, reinforcing the irreversibility characterisation for impacts on the Gippsland Lakes Ramsar values. Pillar 4 is engaged.

Pillar 5 — Precautionary principle. Section 391 EPBC Act makes the precautionary principle mandatory in Ministerial decision-making. Scientific uncertainty about cumulative impacts on Gippsland Lakes ecological character is documented in the 2023 ECD Addendum. Combined with the threat of serious or irreversible damage, the precautionary principle is engaged. Pillar 5 is engaged.

All five pillars are engaged on a residual significant impact on Gippsland Lakes Ramsar ecological character. Application of the five-pillar test produces a categorical determination: the impact is non-compensatable. The Offsets Standard is not the relevant compliance pathway. The action must be avoided, mitigated, or repaired consistent with the MNES Standard, or refused.

10.3A Application at the level of a specific impact within a Ramsar listing

The worked example at §10.3 applies the five-pillar test to a residual significant impact on Gippsland Lakes Ramsar ecological character as a whole. The Offsets Standard, however, operates on specific residual significant impacts of specific actions, not on the categorical protected matter. The five-pillar test must therefore be applied at the level at which the Standard operates. This sub-section applies the test to a specific impact within the Gippsland Lakes Ramsar listing — the Latham’s Snipe habitat impact assessed in the Shearwater–Paynesville assessment — to demonstrate that the test is selective rather than absolute and produces different determinations at different levels of impact specificity.

Pillar 1 — Irreplaceability (contestable). Latham’s Snipe habitat at a specific site is not unique to that site. Latham’s Snipe is a migratory species using a flyway-scale network of wetland habitats across south-eastern Australia. The flyway connectivity is irreplaceable in the operational sense, but specific habitat patches are individually replaceable subject to feasibility constraints. Pillar 1 engagement on a specific habitat impact depends on whether the impacted habitat is critical to the flyway-scale population (population-bottleneck habitat) or one of many functionally substitutable habitat patches. The Hansen et al. (2024) population analysis indicates that the Gippsland Lakes region functions as a key staging area in the East Asian–Australasian Flyway and that habitat loss in the region produces flyway-scale population effects; on this evidence, Pillar 1 is engaged for the Shearwater site. For a non-staging-area habitat patch elsewhere in the species’ range, Pillar 1 might not be engaged.

Pillar 2 — Demonstrated scientific knowledge of restoration (partially engaged). Restoration methodology for shorebird habitat has a more developed evidence base than restoration for Ramsar wetlands as a whole. Wetland habitat creation, hydrological restoration, and invasive species management have documented track records of partial success in shorebird contexts. The methodology is not, however, demonstrated at scales and timeframes commensurate with replacing critical staging-area habitat for a migratory shorebird whose flyway-scale population is in documented decline. Pillar 2 is engaged on the evidence available, with the engagement weaker than for whole-Ramsar restoration but still sufficient to support a determination.

Pillar 3 — Feasible offset options (case-specific). Whether a feasible offset option exists for Latham’s Snipe habitat at Shearwater depends on whether suitable same-species, same-bioregion offset sites are available on equivalent unprotected tenure with the required ecological character. The Shearwater–Paynesville proponent’s preliminary documentation identified offset sites; the independent assessment (Hansen, 14 May 2025 expert report) identified roughly five times the proponent’s habitat extent — 6.3 hectares against 1.216 hectares. The gap indicates either (i) the proposed offset sites are inadequate as feasible offsets, in which case Pillar 3 is engaged; or (ii) the proponent’s identification of offset sites is methodologically defensible and Pillar 3 is not engaged. Resolution of Pillar 3 depends on independent peer-reviewed assessment of habitat extent and quality at both impact and offset sites, with the methodology corrections proposed at Recommendation 4 applied.

Pillar 4 — Serious or irreversible damage (engaged at population level). A population-level impact on Latham’s Snipe — demonstrated through the loss of critical staging-area habitat — constitutes serious damage in the section 391 EPBC Act sense. The irreversibility sub-test is engaged for habitat loss that occurs in a flyway-scale decline context: even where the habitat type is theoretically reversible through restoration, the time-lag between impact and restored function exceeds the population’s capacity to absorb cumulative habitat losses. Pillar 4 is engaged.

Pillar 5 — Precautionary principle (engaged). Scientific uncertainty about flyway-scale cumulative pressures combined with documented serious damage at the population level engages the section 391 EPBC Act precautionary principle. Pillar 5 is engaged.

On the available evidence and methodology, all five pillars are engaged for the Shearwater Latham’s Snipe impact, with Pillars 1 and 3 contingent on independent assessment of the population and habitat-availability evidence. The determination is therefore: non-compensatable, subject to peer-reviewed independent assessment confirming Pillars 1 and 3 engagement. This is the operational form of the five-pillar test at the impact level. The test is selective — a different impact within the same Ramsar listing, on a non-staging-area habitat patch with documented same-species same-bioregion offset availability, might engage three pillars but not all five, in which case the impact is compensatable subject to the corrected offset methodology of §4 and §6 of this submission.

The Pillar 4 and Pillar 5 engagement is reinforced by two evidence sources. First, the Powling Street Wetlands precedent in Port Fairy (VCAT P1972/2013 and P2086/2013) records a Latham’s Snipe population that met the criteria for International Importance prior to construction of a housing development on a portion of the habitat; since completion, the population has decreased from approximately 50 individuals to fewer than 20 individuals (Hansen, 14 May 2025 expert report). The single-site population data establishes correlation rather than proven causation, but the precedent indicates the type of post-development population outcome the precautionary principle requires consideration of. Second, Hansen, Honan, Stewart, Walters and Weston (2025), “Estimating setback distances for a threatened, cryptic, data-sparse migratory shorebird” (PLOS ONE 20(4): e0317081), provides peer-reviewed setback-distance methodology directly applicable to the Shearwater disturbance buffer architecture, with the empirical finding that the proposed buffer widths at the Shearwater impact site are inadequate against documented flight-initiation distances. The two sources together strengthen the Pillar 4 (serious or irreversible damage) and Pillar 5 (precautionary principle) determinations for the Shearwater impact and the broader Gippsland Lakes Ramsar context.

10.4 Application to other Gippsland-relevant protected matters

Beyond the Ramsar values, the five-pillar test engages categorically for the Gippsland Plain's Critically Endangered ecological communities — Gippsland Red Gum Grassy Woodland, at less than 5 per cent of its original extent, among them — and for Critically Endangered species and the migratory shorebirds of the JAMBA, CAMBA and ROKAMBA agreements, whose flyway connectivity is irreplaceable. Lindenmayer et al. (2017), in a detailed evaluation of an offset for a comparable temperate woodland, documented failure to deliver no net loss, reinforcing the categorical engagement of Pillars 1, 2 and 4.

10.5 Recommendations

Recommendation 20 ★. Insert a new section into the Exposure Draft National Environmental Standard (Environmental Offsets) 2026 implementing the five-pillar non-compensatable impacts test. Suggested drafting:

“7A Non-compensatable impacts —

(1) Where a residual significant impact of an action or class of actions on an affected protected matter engages **all five of the pillars** in subsection (2), the impact is not compensatable through offsetting under this Standard.

(2) The five pillars are:

(a) the value being impacted is not replaceable within an ecologically meaningful timeframe (irreplaceability);

(b) the scientific knowledge required to restore or re-create the impacted value does not exist or has no documented track record of successful application at the relevant scale (demonstrated scientific knowledge of restoration);

(c) no feasible offset option exists meeting same-species, same-bioregion and additionality constraints (feasible offset options);

(d) the impact constitutes serious or irreversible damage in the sense of section 391 of the Act and Object section 3A(b) (serious or irreversible damage);

(e) scientific uncertainty about consequences, combined with threat of serious or irreversible damage, engages the precautionary principle under section 391 of the Act (precautionary principle).

(3) Where the impact is determined to be non-compensatable under subsection (1), this Standard does not authorise compensation through an offset activity. The action must comply with the National Environmental Standard for Matters of National Environmental Significance through avoidance, mitigation, or repair, or be refused.

(4) The Department makes a preliminary determination under subsection (1) on published reasoning addressing each pillar.

(5) Where the affected protected matter is a Critically Endangered species, a Critically Endangered ecological community, a declared Ramsar wetland, or a declared World Heritage property, and the Department's preliminary determination is that one or more of the five pillars is not engaged, the Department must refer the determination for peer-review opinion to a three-member panel constituted by random selection from the Independent Expert Roster, with conflict-of-interest screening.

The Independent Expert Roster is the same national Roster proposed for section 8(6B) of the MNES Standard in the cross-NGO submissions, with domain coverage extended as required to serve both functions.

(6) The panel must provide its opinion within 45 days of constitution. Where the panel does not provide an opinion within 60 days, the impact is deemed to engage all five pillars (the default-protective fallback). Where the panel's opinion supports the engagement of any of the five pillars not identified in the Department's preliminary determination, the Department's final determination must reflect the panel's opinion.

(7) The cost of constituting the panel and obtaining its opinion is recoverable from the proponent under the existing EPBC cost-recovery provisions.

(8) The Department must publish all preliminary determinations, panel opinions, and final determinations under this section, and Environment Information Australia must audit decisions made under this section annually and report to Parliament."

Recommendation 21. Amend section 7(4) of the Exposure Draft to add a new subsection (e) providing that "Where an impact is determined to be non-compensatable under section 7A, the consistency test under this section is not engaged." This ensures that non-compensatable impacts do not enter the offset assessment pathway and cannot be deemed consistent with the Standard on the basis of Principle-compliance. Where Recommendation 20 is not accepted in the form proposed, Recommendation 21 should be implemented with the cross-reference adjusted to whatever non-compensatability mechanism the Department adopts in its place — including the categorical Outcome-not-satisfied mechanism, or the parallel five-pillar test in the MNES Standard, advanced across the cross-NGO submissions. The substantive principle that Recommendation 21 implements — that an impact determined non-compensatable on any operative test must not enter the offset assessment pathway — operates independently of the specific drafting vehicle for that determination.

Recommendation 22. This Recommendation is directed to the Minister for the Environment under existing EPBC Act authority and is not a recommended amendment to the Exposure Draft Standard. The Minister should issue standing Protection Statements under the EPBC Act for Ramsar wetlands of international importance, World Heritage properties, and Critically Endangered ecological communities, declaring that residual significant impacts on these values are presumptively non-compensatable. The Protection Statements operationalise the five-pillar test for these categorical protected matters; departures from the presumption require published reasoning addressing each pillar and independent scientific review. The Recommendation is presented in this submission because the Protection Statement architecture is the most direct mechanism for the substantive position the submission advances on categorical non-compensatability, and because the Standard's operative provisions at section 7A (under Recommendation 20) and the MNES Standard's parallel architecture achieve substantively similar outcomes through Standard amendment. The

submission’s strategic position is that the Department should both amend the Standard as recommended at Recommendation 20 and support the Minister’s issuance of standing Protection Statements as recommended here. The two mechanisms are complementary, not alternatives.

§11 Welcomed improvements to lock in

Submissions on consultation documents are most effective when they identify what should be preserved alongside what should be changed. The May 2026 Exposure Draft contains genuine improvements relative to the November 2025 draft and the cross-NGO concerns documented through the earlier consultation. FOGL identifies these for lock-in below.

Mandatory feasibility. Section 8(1) provides that “An offset activity must be feasible”. The shift from the November 2025 hortatory “should be feasible” to the mandatory “must be feasible” is a substantive improvement. Locked in.

Required net gain statutory anchor. The section 4 definition of “required net gain” — “the net gain for the protected matter within the meaning of section 527K of the Act” — anchors the net gain concept to a statutory definition in the primary Act. This statutory grounding is welcomed and significantly stronger than the November 2025 wording.

“Equal to or greater than” Outcome 2. Section 6(b) requires that the measurable improvement be “equal to or greater than the required net gain”. The improvement is welcomed; Recommendation 3 strengthens it further to “greater than”.

Ecologically or culturally relevant timeframe. Section 8(2)(c) specifies that an offset must achieve the intended outcome “in a reasonable and ecologically or culturally relevant timeframe, having regard to the damage”. The cultural relevance addition is welcomed.

Cultural relevance in Principle 7. Section 14(2)(b)(i) introduces “ecologically or culturally relevant” as the relevance test in the fallback limb. The cultural relevance addition is welcomed; Recommendation 12 strengthens it with FPIC requirements under UNDRIP.

Conservation planning documents — expanded definition. The expanded definition at section 4 ensures that the documents informing offset design and like-for-like assessment span the full range of statutory and operational conservation instruments.

Suitably qualified expert — Indigenous traditional owner inclusion. The section 4 definition includes traditional owners as suitably qualified experts in relation to offset activities relating to Indigenous heritage. The recognition is welcomed; it should be strengthened from an exemplary statement to an operative requirement for matters involving Indigenous heritage values.

Indigenous Protected Areas, ILUAs, and Native Title in security mechanisms. Section 9 Note 2 identifies these among examples of mechanisms that provide legal protections for direct offsets. The recognition is welcomed; it should be paired with FPIC requirements under UNDRIP as proposed at Recommendation 12.

State/territory additionality narrowing. Section 12(3) limits the state/territory additionality carve-out to offsets that apply “in relation to the same action or class of actions and the same affected protected matter”. This anti-double-counting provision is welcomed and locked in.

Mandatory direct offset preference. Section 10(5) provides that “An offset activity must be a direct offset unless a relevant conservation planning document identifies an indirect offset as a higher priority measure”. The “must” language is operationally important. Locked in.

Mandatory offset registration before impact. Section 15(1) and 15(5) require that an offset activity be secured and registered before the impact occurs. This addresses one of the documented opacity failures of the pre-reform offset system.

Protection Statements as a categorical exclusion device. The Policy Position Paper’s expansion on Protection Statements is welcomed. The device should be paired with the five-pillar test under Recommendation 22, with standing Protection Statements issued for Ramsar wetlands, World Heritage properties, and Critically Endangered ecological communities.

Ramsar and World Heritage explicitly named as location-specific values. The Policy Position Paper identifies “values that are location specific and cannot be substituted, such as World Heritage properties or Ramsar wetlands” as values for which offsets may be infeasible. This recognition is welcomed; it should be elevated from policy paper guidance to operative provision in the Standard itself.

Tightened staged-offset rules. The Policy Position Paper Principle 8 tightening of staged-offset arrangements is welcomed. The same discipline should apply to landscape-scale approaches under Part 10 of the EPBC Act and to bioregional plan implementation.

Recommendation 23. Elevate from the Policy Position Paper to operative provision in the Exposure Draft Standard the recognition that Ramsar wetlands, World Heritage properties, and Critically Endangered ecological communities are values for which offsetting is presumptively infeasible. Drafting cross-reference to Recommendation 22 (standing Protection Statements).

Recommendation 24. Apply the staged-offset discipline articulated at Policy Position Paper Principle 8 to landscape-scale approaches under Part 10 of the EPBC Act and to bioregional plan implementation. Each stage or component must demonstrate that impacts are sufficiently discrete and that indirect impacts do not carry over to later stages or components.

Transparency and compliance architecture

Section 15(1) and 15(5) require that an offset activity be secured and registered before the impact occurs. The registration requirement is welcomed (above) but is operationally incomplete in two respects: the instrument does not require public access to the register, and the instrument does not align the compliance discipline applicable to registered offsets with the EPBC Compliance Policy (2024) framework. Rampling, zu Ermgassen, Hawkins and Bull (2024) document that even substantively strong offset standards fail in delivery where compliance, monitoring and enforcement architecture is under-specified. zu Ermgassen et al. (2023) document the same delivery shortfall in the Victorian scheme. Recommendations 25 and 26 address the transparency and compliance gaps respectively.

Recommendation 25. Insert a new section 15A providing for a public offsets register. The register must be publicly accessible without charge, searchable by spatial boundary and protected matter, and updated within 30 days of any registration, variation or termination event. The register must record, for each offset activity: (a) the offset activity name and the action being offset (with EPBC reference); (b) the affected protected matter; (c) the location (with IBRA bioregion and subregion); (d) the offset multiplier applied; (e) the maintenance period and self-sustaining criteria; (f) the security mechanism under section 9; and (g) the monitoring methodology and outcome reports as they become available. The register operates jointly with the Commonwealth cumulative impacts register sought across the cross-NGO submissions on the MNES Standard.

Recommendation 26. Align section 15 of the Exposure Draft with the EPBC Compliance Policy (2024) framework by inserting a new section 15B specifying: (a) mandatory annual reporting against the management plan's outcome criteria; (b) financial security under section 9 sized to fund the management plan to the end of the maintenance period; (c) Departmental compliance audits at 5-yearly intervals; (d) consequences for failure to deliver against management plan outcomes, including triggering of additional security drawdowns and statutory review of the underlying approval.

§12 Consolidated recommendations R1–R26

The 26 recommendations are presented in two ways: a single-table summary for navigation, and operative drafting form in the body sections referenced. The tier classification is: Tier A (substantive regression remediation in binding text); Tier B (structural strengthening); Tier C (locking in welcomed improvements).

12.1 Recommendations summary table

#	Recommendation summary	Section	Tier
R1 ★	Reword s.7(2) to require Principles to be applied consistently with Outcomes and to promote the Objective	§3A	A
R2	Rename Principle 4 (s.11) from “Measurable improvements” to “Net gain”	§4	A
R3	Amend s.6(b) Outcome 2 to “greater than” the required net gain	§4	B
R4	Adopt corrected offset methodology (0% risk-of-loss; 50% confidence; 30-year time-to-ecological-benefit; exclude prior-management and security gain; boosted multipliers); add to “appropriate evidence” residual category two specifications: Traditional Owner knowledge preserved; proponent-procured non-peer-reviewed material excluded	§4	A
R5 ★	Anchor baseline to fixed 2020 reference date aligned with Kunming-Montreal GBF (counterfactual retained)	§5	A
R6	Amend s.4 definition of “measurable improvement” to remove “current” from “current baseline”	§5	B
R7 ★	Amend s.9(5) to apply “the later of” architecture with 25-year floor (temporary) and 100-year floor (permanent); strengthening justified by impact-compensation asymmetry	§6	A
R8	Insert new s.9(7A) requiring independent verification of self-sustaining criteria and minimum 10-year post-declaration monitoring	§6	A
R9	Insert quantum-for-duration trade-off provision in Calculator methodology	§6	B
R10	Delete “pristine outcomes” disclaimer from Policy Position Paper	§6	B
R11 ★	Amend s.14(2) to restore IBRA bioregion anchor (as in force from time to time); guidance documents to specify IBRA as operational basis for “same area”	§7	A
R12	Strengthen cultural relevance with explicit FPIC requirements under UNDRIP	§7	B
R13	Bound Restoration Contributions Holder spatial flexibility to contiguous IBRA bioregions or same drainage division	§7	B
R14	Amend s.10(1) to restore “quantifiable” as co-equal operative requirement and “should” to “must”	§8	A
R15	Amend s.12(4) to specify operational additionality test for advanced restoration actions: registration before referral; financial independence; published reasoning	§8	A
R16	Amend Policy Position Paper Principle 5 to delete conservation estate signalling	§8	B
R17	Address Holder “have regard to” formulation through paired amendments: (a) policy paper deletion of departure language; (b) binding instrument consistency requirement, subject to statutory provenance confirmation	§9	A
R18	Specify Holder maintenance period in binding instrument (not separate consultation): at least 100 years permanent; 25 years temporary	§9	A
R19	Within the Standard/PPP, require published reasons and review for any Holder or Committee-endorsed departure from a Principle; Committee constitution deferred to the Act/regulations	§9	B
R20 ★	Insert new s.7A implementing the five-pillar non-compensatable impacts test	§10	A
R21	Amend s.7(4) to add subsection (e) excluding non-compensatable impacts from the consistency test	§10	A
R22	Issue standing Protection Statements for Ramsar wetlands, World Heritage properties, Critically Endangered ecological communities	§10	A
R23	Elevate Ramsar/WH/CEEC infeasibility recognition from Policy Position Paper to operative provision in the Standard	§11	C
R24	Apply staged-offset discipline to landscape-scale approaches under Part 10 and bioregional plan implementation	§11	C
R25	Insert new s.15A: public offsets register with seven specified data fields, searchable by spatial boundary and protected matter	§11	B
R26	Insert new s.15B: align with EPBC Compliance Policy (2024) — annual reporting; security sized to maintenance period; 5-yearly Departmental audits; failure consequences.	§11	B

12.2 Tier breakdown

Tier A (substantive regression remediation): R1, R2, R4, R5, R7, R8, R11, R14, R15, R17, R18, R20, R21, R22 — 14 recommendations.

Tier B (structural strengthening): R3, R6, R9, R10, R12, R13, R16, R19, R25, R26 — 10 recommendations.

Tier C (locking in welcomed improvements): R23, R24 — 2 recommendations.

12.3 Priority recommendations

Five recommendations are marked ★ as the load-bearing priorities for the integrity of the Standard architecture: R1 — section 7(2) rewording; R5 — fixed 2020 reference baseline aligned with the Kunming-Montreal Global Biodiversity Framework; R7 — restoration of “the later of” and the 25-year/100-year minimum maintenance periods; R11 — restoration of the IBRA bioregion anchor in Principle 7; R20 — insertion of the five-pillar non-compensatable impacts test.

§13 Conclusion

The May 2026 Exposure Draft National Environmental Standard (Environmental Offsets) 2026 has enacted, in binding text, several of the substantive regressions signalled in the policy direction of travel that emerged through the November 2025 to January 2026 consultation period. The most consequential regressions are: the deletion of the 100-year maintenance period for permanent impacts; the reduction of the 25-year minimum to 20 years for temporary impacts; the architectural flip from “the later of” to “the earlier of” in the maintenance period provisions; the deletion of the IBRA bioregion anchor in Principle 7; the demotion of “quantifiable” from operative requirement to permitted alternative; and the expansion of like-for-like deviation to a Ministerial satisfaction test on “greater conservation benefit”. The central architectural flaw, present in the same form in the parallel MNES Standard, is at section 7(2): the deeming of an offset activity to achieve the Objective and Outcomes by virtue of consistency with the Principles, inverting the Standards architecture that the Samuel Review established.

The May 2026 Exposure Draft has also enacted several genuine improvements: mandatory feasibility; the statutory anchor to section 527K for required net gain; the “equal to or greater than” formulation in Outcome 2; cultural relevance in Principle 7; the expanded conservation planning documents definition; Indigenous Protected Areas, ILUAs, and Native Title recognition in security mechanisms; the state/territory additionality narrowing; and the mandatory offset registration requirement. These improvements respond to consultation submissions on the November 2025 draft and should be locked in.

The 26 recommendations of this submission are intended to operate together. The section 7(2) rewording at Recommendation 1 is the central architectural recommendation; without it, individually strengthened Principles can still be applied in a way that does not substantively deliver the Outcomes. The five-pillar non-compensatable impacts test at Recommendation 20 is the operational mechanism by which the Standard recognises the categorical limits to compensation, internally consistent with the parallel MNES Standard submission. The remaining recommendations address the substantive regressions, lock in the welcomed improvements, bound the Restoration Contributions Holder architecture against the policy paper’s signalled direction of travel toward

an under-disciplined parallel offset system, and address the under-developed transparency and compliance architecture.

FOGL's regional Ramsar perspective is the basis on which the submission identifies the operational failure modes that the Standard's design creates at scale. The Gippsland Lakes are an internationally significant Ramsar wetland under measurable cumulative pressure. The Standard's design directly determines whether that pressure can be defensibly managed through offsetting, or whether offsetting itself becomes a vector of the cumulative pressure. The five-pillar test, applied to the Gippsland Lakes Ramsar at §10, produces a categorical determination of non-compensatability. The Standard, as drafted, does not contain the operational mechanism to recognise that determination. The recommendations of this submission are the means by which the Standard can be brought into alignment with what the peer-reviewed evidence and the EPBC Act's own architecture require.

The submission is lodged in coordination with the companion coastal submission of the Coastal Waterways and Wetlands Alliance, and reads the Offsets Standard and the MNES Standard as a consistent pair.

Annex A — Three-document clause-level comparison

This annex presents the operative-clause comparison between the November 2025 Exposure Draft, the May 2026 Exposure Draft, and the May 2026 UPDATED Draft Policy Position Paper. Significance coding: **red** = material weakening enacted in binding text; **orange** = material weakening signalled in policy paper but not yet enacted; **green** = material strengthening enacted in binding text; **yellow** = mixed or structural; blank = procedural or definitional.

#	Element	Nov 2025 Exposure Draft	May 2026 Exposure Draft	May 2026 Policy Paper	Significance	§
1	Section 7(2) architecture	n/a (different architecture)	Principles consistency deems Outcomes achievement	Not addressed	Red	§3A, R1
2	Required net gain definition	Undefined	Anchored to s.527K EPBC Act	Anchored consistently	Green	§11
3	Outcome 2 wording	Measurable improvement from baseline	Equal to or greater than required net gain	Greater than residual significant impacts (internal inconsistency)	Green/Yellow	§4, R3
4	Outcome 3 wording	Provide certainty	Provide a high level of certainty	Provide appropriate certainty (further softening)	Red/Orange	§11
5	Baseline counterfactual	In the absence of action or offset activity	In the absence of the offset activity (s.11(1))	Deleted: static baseline from approval date	Green instrument / Orange policy paper	§5, R5
6	Baseline reference date	Decision point	Decision point	Decision point	Red (continuing problem; not corrected in any draft)	§5, R5
7	S.4: measurable improvement definition	n/a	Increase in condition relevant to current baseline	Same	Red (binding)	§5, R6
8	Maintenance period — temporary	Later of 25 years and self-sustaining	Earlier of 20 years or self-sustaining	20 years or self-sustaining	Red	§6, R7

#	Element	Nov 2025 Exposure Draft	May 2026 Exposure Draft	May 2026 Policy Paper	Significance	§
9	Maintenance period — permanent	Earlier of 100 years and self-sustaining	Earlier of period of approval or self-sustaining	Duration of approval or self-sustaining	Red	§6, R7
10	Maintenance architecture (later vs earlier)	Later of (temporary) / earlier of (permanent)	Earlier of (both)	Earlier of (both)	Red	§6, R7
11	Self-sustaining definition	Brief	Maintenance no longer needed (s.9(6))	Full subsection with proponent-amend mechanism	Red/Orange	§6, R8
12	Self-sustaining criteria	Implicit	Must be in management plan (s.9(7))	Detailed proponent-procurement framework	Red	§6, R8
13	Feasibility — mandatory	Should be feasible	Must be feasible (s.8(1))	Mandatory consistent	Green	§11
14	Feasibility — required net gain test	Implicit	Explicit (s.8(2)(b))	Consistent	Green	§11
15	Feasibility — timeframe	n/a	Ecologically/culturally relevant (s.8(2)(c))	Consistent	Green	§11
16	Confidence terminology	High degree of certainty	High level of confidence	High level of confidence	Yellow	§3, R4
17	Direct and tangible — quantifiable	Co-equal operative requirement	Quantifiable or qualitative (s.10(2)(a))	Consistent with instrument	Red	§8, R14
18	Direct offset definition	Note only	Defined term (s.4)	Consistent	Green	§11
19	Indirect offset definition	Note only	Defined term (s.4)	Consistent	Green	§11
20	Like-for-like — defined term	Implicit	Defined (s.4)	Consistent	Green	§11

#	Element	Nov 2025 Exposure Draft	May 2026 Exposure Draft	May 2026 Policy Paper	Significance	§
21	Like-for-like — deviation test	Conservation planning document priority only	Ministerial satisfaction on greater conservation benefit (s.13(2))	Ministerial discretion expanded	Red	§8
22	Additionality — mandatory language	Implicit	Must be likely to deliver additional benefit (s.12(1))	Mandatory consistent	Green	§11
23	Additionality — state/territory carve-out	Broad	Narrowed: same action, same matter (s.12(3))	Narrowing consistent	Green	§11
24	Additionality — advanced restoration action	Implicit	Categorical: not precluded (s.12(4))	Carve-out signalled	Red	§8, R15
25	Additionality — conservation estate	Silent	Silent	Expansive policy paper signalling	Orange	§8, R16
26	Relevant area — bioregion anchor	Same bioregion (IBRA)	Same area + nearby/surrounding Note	As close as possible	Red	§7, R11
27	Relevant area — cultural relevance	n/a	Ecologically or culturally relevant (s.14(2)(b)(i))	Consistent	Green	§11, R12
28	Relevant area — fallback test	Same or better outcome	Equivalent or greater conservation outcome (s.14(2)(b)(ii))	Consistent	Red (Ministerial satisfaction)	§7
29	Conservation planning documents	Brief	Expanded enumeration including ruling (s.4)	Consistent	Green	§11
30	Suitably qualified expert definition	Implicit	Defined; traditional owner example (s.4)	Consistent	Green	§11
31	Security — IPA/ILUA/Native Title recognition	n/a	Section 9 Note 2 examples	Consistent	Green	§11, R12
32	Security — legal protection preference	Strong language	Should be used when available (s.9(8))	Consistent	Red (softened)	§9

#	Element	Nov 2025 Exposure Draft	May 2026 Exposure Draft	May 2026 Policy Paper	Significance	§
33	Security — alternative mechanism pathway	Restrictive	Broad (s.9(9))	Consistent	Red	§9
34	Direct offset preference	Should be implemented	Must be a direct offset (s.10(5))	Consistent	Green	§11
35	Offset registration	Implied	Mandatory pre-impact (s.15(1), s.15(5))	Consistent	Green	§11
36	Restoration Contributions Holder	Implicit/referenced	Defined term; operative in s.7(4)(d)(ii)	Full Attachment C framework	Yellow	§9
37	Holder — have regard to formulation	n/a	Not in binding text	Policy paper formulation	Orange	§9, R17
38	Holder — maintenance period	n/a	Not specified	Deferred to separate consultation	Orange	§9, R18
39	Restoration Contributions Advisory Committee	n/a	Not in operative provisions	Policy paper framework	Orange	§9, R19
40	Protection Statements	Brief reference	Not in this instrument	Full Attachment A treatment	Green	§10, R22
41	Five-pillar non-compensatable test	n/a	Not addressed	Not addressed	Red (absence)	§10, R20
42	Appropriate evidence — other evidence residual category	n/a	All Principles permit “other evidence”	Not addressed	Red	§3
43	S.7(3) controlling-provision narrowing	Broader scope	Controlling provision narrowing (s.7(3))	Not addressed	Red	§3A
44	S.7(4) four decision pathways	Less structured	Four-pathway architecture (s.7(4)(a)–(d))	Consistent	Yellow	§1.1

#	Element	Nov 2025 Exposure Draft	May 2026 Exposure Draft	May 2026 Policy Paper	Significance	§
45	Staged-offset rules	Permitted	Permitted	Tightened with case-by-case discrete-impact requirement	Green	§11, R24
46	Affected protected matter definition	Assessed as having	Will or may be damaged by (s.4)	Consistent	Green	§11
47	Pristine outcomes disclaimer	n/a	Not in instrument	Not intended to result in pristine outcomes	Orange	§6, R10
48	S.14(2)(a) Note — same area includes nearby/surrounding	n/a	Note expansive	Consistent	Red	§7, R11
49	S.15 staged-offset Note	Implicit	Note: must commence prior to stage impact	Consistent	Green	§11
50	Bioregional plan restoration contribution architecture	Less detailed	s.7(4)(d) full pathway	Consistent	Yellow	§9

Annex B — Five-pillar non-compensatable impacts test: source synthesis

The five-pillar non-compensatable impacts test is synthesised from five primary sources, each contributing operational content to one or more pillars. The synthesis is the operationally tractable formulation FOGL advances for both the MNES and Offsets Standards; the coastal and marine application is developed in the companion submission of the Coastal Waterways and Wetlands Alliance. It is not a single canonical formulation in the literature.

Pilgrim, J.D. et al. (2013). “A process for assessing the offsetability of biodiversity impacts.” *Conservation Letters* 6(5): 376–384. Pilgrim et al. (2013) establish the methodological foundation for offsetability assessment as a categorical process separate from the offset adequacy assessment. The paper identifies irreplaceability, vulnerability, and the existence of demonstrated restoration methodology as separate criteria. Pillar 1 (irreplaceability) and Pillar 2 (demonstrated scientific knowledge of restoration) are derived from this source.

IUCN (2016). Resolution WCC-2016-Res-059 on the application of biodiversity offsets. The IUCN Resolution identifies the limits to offsetting as a categorical question that must be answered prior to offset design. The Resolution identifies irreplaceability as the first-order test for offset suitability. Pillar 1 (irreplaceability) draws operationally on the IUCN framework.

Business and Biodiversity Offsets Programme (2012). Standard on Biodiversity Offsets. The BBOP Standard provides the operational limits framework for offset design, including the same-species and same-bioregion constraints. Pillar 3 (feasible offset options) operationalises the BBOP limits framework.

Wentworth Group of Concerned Scientists (2023). Cumulative Impacts Report. Recommendation 4 (Step 5(a)) defines non-compensatable impacts as “all impacts that are not able to be counterbalanced with absolute gains either in totality or in an ecologically meaningful timeframe. In other words, the value that would be impacted is irreplaceable”. The definition is the operative source for Pillar 1.

Significant Impact Guidelines 1.1 (2013). SIG 1.1 operationalises the EPBC Act section 391 precautionary principle and the section 3A(b) Object in the assessment of significant impacts. SIG 1.1’s definitions of “substantial and measurable change in ecological character” and “serious damage to the environment” inform Pillar 4. The section 391 precautionary principle is the basis for Pillar 5.

The integration of these five sources into a sequenced five-pillar test produces a categorical determination through structured application: where all five pillars indicate engagement, the impact is non-compensatable. FOGL proposes the test for the MNES Standard; this submission proposes the parallel test in operative drafting form as a new section 7A of the Offsets Standard (Recommendation 20). The two Standards must contain the test in consistent form to maintain their internal consistency.

Annex C — Citations and references

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Annex D — Alignment with the cross-NGO position

FOGL's offsets recommendations align with the cross-NGO position on the MNES Standard set out at §1.2, and with the companion submission of the Coastal Waterways and Wetlands Alliance. The MNES Standard and the Offsets Standard must be read as a consistent pair: an impact the MNES Standard identifies as non-compensable cannot then be compensated under the Offsets Standard.