

Submission on the UPDATED Draft Policy Position Paper: National Environmental Standard for Environmental Offsets



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This submission is confined to **changes the updated paper makes relative to the November 2025 draft Policy Position Paper**. It does not repeat FOGL’s January 2026 feedback, and should be read with FOGL’s submission on the Exposure Draft, which argues the binding-text and Restoration Contributions Holder questions in full. Annex A tabulates the policy changes between the two papers.

Key changes in the updated paper

1. Conservation-estate additionality - new, and the most significant regression (Principle 5).

- The updated paper newly provides that offsets may be delivered on land already within the conservation estate (national park, conservation area, other protected area) “if they result in additional outcomes beyond what is already required,” and that existing secure land tenure alone is no bar to additionality.
- The prior paper contained no equivalent. The “beyond what is already required” safeguard does not hold: a reserve’s existing management plan is itself a documented under-funding of what conservation requires, so “beyond what the plan requires” is not “beyond what conservation requires” - funding that gap discharges the State’s existing obligation, it does not deliver additional benefit. For the chronically under-resourced Gippsland Lakes Coastal Park and Lakes National Park, this is consolidated-revenue substitution presented as additionality.
- Delete the provision and preserve the Exposure Draft’s silence; if the question is addressed at all, only through a discrete net-gain calculation that isolates additional gain from baseline management and cannot substitute for core funding of existing plan obligations.

2. Maintenance shortened, and a safeguard from the prior paper removed (Principle 2).

- The updated paper shortens the maintenance settings the prior paper described, and removes a safeguard the prior paper contained.
- For temporary impacts the prior paper required “a minimum of 25 years and until the outcome is self-sustaining” - a “later of” construction; the updated paper requires “20 years or until self-sustaining, whichever occurs first.”
- For permanent impacts, the prior paper’s “100 years or until self-sustaining” becomes “the duration of the approval or until self-sustaining.”
- The prior paper provided that “where a lower maintenance period is selected, a greater quantum of offset will be required” - a quantum-for-duration safeguard that the updated paper has deleted.
- Restore the “later of” architecture with 25-year (temporary) and 100-year (permanent) floors, and reinstate the quantum-for-duration provision so that a shorter maintenance period attracts a higher multiplier.
- The binding-text maintenance regression at section 9(5) is addressed in FOGL’s Exposure Draft submission.

3. Net gain now “assessed case-by-case” (Principle 4).

- The prior paper framed net gain as exceeding the baseline; the updated paper states net gain “will be assessed case-by-case, ensuring decisions are workable, legally robust.” Case-by-case discretion is not what makes a decision legally robust - it is the documented source of the systematic over-estimation of offset gains in Australian practice (Maron et al. 2025; Maseyk, Evans and Maron 2017).

- A rules-based net-gain test anchored to section 527K, applied through a presumptive Calculator with published reasons for any departure, is both more defensible and more efficient than case-by-case assessment, and better serves the certainty the reform is intended to deliver.

4. The counterfactual has been removed from the baseline definition (Objective).

- The prior paper’s Baseline definition read “...at the point of approval and in the absence of the action or offset being proposed [static baseline from approval date].” The updated paper has removed “and in the absence of the action or offset being proposed,” leaving a bare static-from-approval baseline in the definition while Principle 4 still requires improvement “relative to a baseline that reflects what would likely have happened in the absence of the proposed offset activity.”
- The deletion moves the definition further from the counterfactual and widens the gap between the definition and Principle 4.
- Restore the counterfactual clause to the definition, and resolve the definition–Principle 4 inconsistency in favour of the counterfactual; FOGL’s main submission sets out the fixed-date anchor.

5. Two new ambition softeners (Outcome 3; Principle 2).

- Outcome 3 read “Offsets provide certainty that protected matters will be protected and enhanced” in the prior paper; the updated paper qualifies it to “appropriate certainty.”
- The self-sustaining discussion newly adds that “achieving the offset outcome is not intended to result in pristine environment or heritage values.” Neither qualifier carries operative content and both lower the stated ambition.
- Restore “certainty” in Outcome 3 and delete the pristine-outcomes sentence.

New positions worth preserving

Protection Statements - expanded, welcomed, but too narrow.

- The prior paper referred to Protection Statements; the updated paper newly empowers the Minister to declare that “certain impacts on certain protected matters cannot be compensated via a restoration contribution when offset measures are known not to be ecologically feasible,” and to identify priority offset activities.
- The new direction is welcome. But the new limb is narrow on three counts:
 - i) it bars only the restoration-contribution route,
 - iii) it engages only where infeasibility is already “known,” and,
 - iii) it rests on Ministerial election.
- Categorical non-compensability is too important to leave to discretion and to the Regulations’ separate “impacts that cannot be compensated” list.
- Elevate the recognition that Ramsar wetlands, World Heritage properties and Critically Endangered ecological communities may be infeasible to offset (Principle 1) from guidance to an operative provision, and pair Protection Statements with a mandatory, impact-specific trigger - the non-compensatable impacts test set out in FOGL’s main submission.

State/territory additionality - narrowed, and to be locked in.

- The prior paper treated additionality as met whenever a State or Territory partnership was relied on to fulfil compensation obligations.
- The updated paper limits this to “the same action and the same affected protected matter, so as to avoid duplication.” This closes a double-counting gap and should be retained.

Conclusion

The updated paper makes several genuine improvements - the additionality narrowing and the Protection Statement non-compensability limb among them. But its most consequential new move, conservation-estate additionality, runs the wrong way, and the maintenance settings have been shortened with a safeguard removed. The Policy Position Paper and the Exposure Draft must be read as a pair, so that an impact that cannot defensibly be offset is not brought back inside the compensable category through these changes.

Annex A - Policy changes since the November 2025 draft Policy Position Paper

Direction coding: *Weakening* lowers biodiversity protection or assessment discipline; *Strengthening* improves it.

Topic (location)	November 2025 draft	May 2026 updated draft	Direction
Additionality - conservation estate (Principle 5)	No provision	Offsets may be delivered on land already in the conservation estate “if they result in additional outcomes beyond what is already required”; existing secure tenure alone no bar to additionality	Weakening (new permission)
Maintenance period - temporary impacts (Principle 2)	“A minimum of 25 years and until the outcome is self-sustaining” (later-of)	“20 years or until self-sustaining, whichever occurs first” (earlier-of)	Weakening (floor cut 25→20; later-of → earlier-of)
Maintenance period - permanent impacts (Principle 2)	“100 years or until self-sustaining, whichever comes first”	“The duration of the approval or until self-sustaining, whichever comes first”	Weakening (100-yr ceiling → approval duration)
Quantum-for-duration safeguard (Principle 2)	“Where a lower maintenance period is selected, a greater quantum of offset will be required”	Provision removed	Weakening (safeguard deleted)
Net gain assessment (Principle 4)	Net gain must “exceed this baseline”	Net gain “assessed case-by-case, ensuring decisions are workable, legally robust”	Weakening (rules-based → discretionary)
Baseline definition (Objective)	“...at the point of approval and in the absence of the action or offset being proposed [static baseline from approval date]”	“...at the point of approval of an action or a class of actions [static baseline from approval date]”	Weakening (counterfactual clause removed)
Outcome 3 - certainty (Outcomes)	“Offsets provide certainty that protected matters will be protected and enhanced”	“Offsets provide appropriate certainty ...”	Weakening (qualifier added)
Pristine-outcomes disclaimer (Principle 2)	None	“Achieving the offset outcome is not intended to result in pristine environment or heritage values”	Weakening (ambition softener)
Additionality - State/Territory schemes (Principle 5)	Met whenever “State and Territory partnerships were relied on to fulfil compensation obligations” (broad)	Limited to “the same action and the same affected protected matter, so as to avoid duplication”	Strengthening (anti-double-counting)
Protection Statements (Attachment A)	Device referenced; Minister must not act inconsistently with it once issued	Adds power to declare impacts “cannot be compensated via a restoration contribution when offset measures are known not to be ecologically feasible,” and to identify priority offset activities	Strengthening (but narrow)

Reworded but not substantively changed (noted for completeness):

- the Restoration Contributions Holder formulation (“consider” → “have regard to”);
- the prior double-negative cleaned to “would not ... be required to act consistently with”), with the Attachment C per-Principle flexibility table retained;

- the advanced-offset additionality carve-out (renamed “advanced offset” → “advanced restoration action”);
- the “will have already met the additionality test” wording unchanged); and
- the Holder relevant-area flexibility (“outside of the Bioregion” → “beyond areas as close to the impact as possible,” tracking the instrument’s bioregion-anchor deletion).

END OF SUBMISSION