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Melbourne Biodiversity Institute Submission to Draft Environmental Offsets Standard Policy Paper

We thank the Department for the opportunity to provide feedback on the draft standards for Environmental Offsets. The feedback in this document represents the collected insights of the scholars listed on page 2. We have focused our submission on matters related to anticipated outcomes.



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Feedback on Outcomes

There is insufficient emphasis on the required outcome of offsets. Environmental offsets should lead to an ecological net gain, meaning improvement in biodiversity over time despite the impacts being offset. Most environmental offset schemes fail to do this, which has the perverse impact of legitimizing environmentally destructive activities under the guise of ineffective offsets. Not all activities can be offset and offsets are ineffective in reducing ecological harm. Without clear emphasis on how a given set of offsets will clearly compensate for environmental impacts, they are unlikely to be able to meaningfully protect species and ecosystems. ‘Net gain’ is undefined and open to interpretation in the standards (and in the EPBC Act). Without clear benchmarks for what constitutes net gain, the standard is too fluid to ensure environmental offsets are only provided in instances in which biodiversity will improve as a result.

Offset regimes need to ensure robust “guardrails” or they are likely to generate poor environmental outcomes. Under the proposed reforms, offsets may be managed directly by the proponent under the offsets standard, or offset obligations can be acquitted by paying into a ‘Restoration Contribution Fund’. Substituting offsets for tighter environmental controls can have poor biodiversity outcomes (Godden et al. 2018, ch 5). The use of such restoration funds without robust guardrails (e.g. setting an appropriate price or ensuring ‘like for like’ offsets can be secured and a pipeline of offsets is available) has been demonstrated to be highly problematic. In New South Wales, this approach has led to: a) weakened price signals intended to deter impacts on valuable biodiversity assets, particularly where offsets markets are in use; b) increased risk that ecologically equivalent offsets will not be delivered; c) ‘shortfalls’ where there are underestimates in the amount of money needed to deliver offsets; d) risks that the amount of money in offset funds do not cover the costs of acquisition or restoration; e) exacerbated time-lags between ecological impact and compensation; and now f) risks the use of the offset fund utilising funds to deliver action that should be funded by core government programs – effectively using destruction to bankroll core business (e.g. weed management in National Parks, which would usually be regarded as standard practice rather than an ‘additional’ action in the context of offsetting). Environmental offsets standards must comprehensively address key design issues like these that are known to plague offset regimes. Doing so will reduce problems with these regimes and the scrutiny they draw as a result.

Since 2020 alone, Australian jurisdictions have seen no fewer than 15 formal inquiries into offset systems, run by parliamentary committees, auditors-general and government-commissioned independent experts across the Commonwealth, New South Wales, Queensland and Victoria (Nelson 2025). The well-documented problems with offset systems around Australia warrant greater emphasis on clear guardrails in environmental offsetting.

Design needs to account for key issues to promote environmental benefits. Drawing on lessons from across regimes (e.g. offsets for biodiversity, water quality, water quantity, and greenhouse gas emissions), research has identified 10 key design issues that offset regimes should address to avoid some of the critical problems and issues that often plague them: clarity about “no-go” offset situations, preconditions for using offsets (e.g. strict application of the mitigation hierarchy) and rules about priority of access to available offsets; equivalence (e.g. ‘like for like’ offsets); additionality; data and uncertainty; ownership and transfer rules; monitoring and reporting; adaptation; co-benefits and adverse impacts on third parties; synergies between multiple offset regimes; and ensuring that diverse regulatory approaches are used (Nelson 2025).

There is insufficient inclusion of climate change considerations in the proposed Offsets Standard. The Offsets regime includes climate change as only one of a range of factors which may be considered when assessing the feasibility of proposed offsets. Additionally, it is not clear how ‘the reasonably foreseeable future adverse impacts of climate change’ will be assessed. Australia’s emissions reduction target of 62-70% below 2005 levels by 2035, the mandatory climate-related disclosures scheme (AASB 2024), and case law where scope 3 emissions are considered relevant to courts’ assessments of fossil fuel-related projects (e.g. Gloucester Resources, Youth Verdict), signify a higher standard that governments must meet. This trend is echoed in notable cases in other jurisdictions (e.g. R(Finch) v Surrey County Council (UK Supreme Court), Greenpeace Nordic and Others v. Norway (European Court of Human Rights)). Further, the International Court of Justice’s Advisory Opinion on climate change makes clear that countries have a duty to undertake climate mitigation, including by regulating private actors (paras 272-273), and that climate adaptation is an international obligation which requires Australia to take preventive, proactive measures to implement adaptive action (Nishimura 2025, Ch 2; ICJ Advisory Opinion, paras 209- 10, 255-59). Failing to include adequate climate considerations in new standards causes Australia to fall behind or contravene international and domestic legal benchmarks (McClelland et al 2025; Young 2025; Peel 2023; Peel 2024).

There are two missing Principles critical to the successful application of the Standard:

- i. Transparency and accountability - There is currently no requirement, or indication of how transparency and accountability will be achieved under the current wording of the Standard. The Standard should require that all offsets be recorded in a public Offsets Register that provides data on what matter was impacted, where, and how much was impacted (area of habitat and/or number of individuals), where an offset was located, it’s nature, area and condition. The Offsets Register must also include monitoring data demonstrating how the offset is progressing toward achieving net gain in an ecologically relevant time.
- ii. Offsettable and non-offsettable matters - It is essential that offsets only apply where there is rigorous scientific evidence demonstrating that damage can be reversed, or matters or



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habitats can be restored, recreated, or replaced in an ecologically relevant timeframe. Where no such evidence exists, impacts to the matter or habitat should not be offsettable. A Register of Offsettable Matters and Habitats will be critical to provide clear guidance to proponents on what matters, or habitats can and cannot be offset. Such a list should be overseen by a credible scientific authority such as the Threatened Species Scientific Committee.



References

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