

30 January 2026

Rachel Parry
Deputy Secretary
Department of Climate Change, Energy, the Environment and Water
GPO Box 3090
Canberra ACT 2601



Chamber of Commerce
and Industry WA

T: (08) 9365 7555
E: membership@cciwa.com
W: www.cciwa.com

Via email: EnvironmentLawReform@dcceew.gov.au

Dear Deputy Secretary

Consultation: National Environmental Standard: Offsets

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia. We are fundamentally committed to using our insights to develop and advocate for public policies that help realise our vision to make Western Australia the best place to live and do business.

Thank you for the opportunity to provide comment on the proposed National Environmental Standards (NES), which underpins the *Environment Protection and Biodiversity Conservation Act (the EPBC Act)*.

The primary objective of the newly reformed *EPBC Act* is to create an approvals framework that is better for the environment and better for business, facilitating ecologically sustainable development.

The NES must first align with the objectives, principles and outcomes of the *EPBC Act* and, they must also be workable, realistic, and concise.

From the outset, we note that environmental offsets are a crucial component of Australia's environmental approvals system. Historically, States have developed their own offset standards and schemes, reflective of local protected matters and desired conservation outcomes. At the same time, the Federal Government has powers to regulate offset standards, creating a duplicated and often, conflicting regulatory framework for proponents.

To ensure the *EPBC Act* delivers on its objectives, minimising the potential for policy conflict and duplication must be a top priority. It is our view that the Offsets NES, as proposed, requires significant amendment to make it workable, realistic and concise.

Furthermore, finding offset solutions should be incentivised when they are needed, rather than deterring private sector investment. The current proposal simply shifts the burden onto the public sector to deliver all offsets.

With this in mind, we provide the following in relation to the proposed Offsets NES.

Offsets must be workable and realistic: It is our view that the thresholds set under the regulations are currently unworkable and not realistic, particularly the application for individual project assessments and at a project scale. For example, *Principle 2* requires a maintenance period of 25 years for temporary actions or 100 years for permanent actions, unless the Minister deems otherwise. CCIWA Members have advised this will be nearly impossible to achieve.

Offset practicality is particularly relevant to the Pilbara, where changes in mining tenure, native title and overlapping land uses complicate management arrangements. Members have also highlighted the lack of workability of *Principle 3*, *Principle 7* and *Principle 8*. For example:

- *Principle 3* suggests that research as an indirect offset can only occur once conservation planning has been completed. However, to develop such plans, research is required.
- *Principle 7* fails to account for traditional owner lands and biomes, which cross State boundaries at landscape scale. The 'relevant area' is also not well defined and is too open to interpretation. If the offsets policy is not workable, this could undermine trust in the system.
- *Principle 8* creates a narrow definition of 'commencement', requiring either a restoration contribution upfront or deferral. With the former, this upfront payment could potentially be for impacts that may never occur.

We therefore urge the Federal Government to undertake further consultation and research on the timeframe for offset management, prior to the finalisation of the Offsets MNES. This should consider allowing obligations to be transferred as tenure and rights-holders change.

While further consultation and research occur, we recommend the regulations reflect existing Federal settings.¹ Any change to the maintenance period should occur with suitable lead-in time for industry and environmental consultants.

State scheme accreditation and interaction: We welcome reference to existing State or Territory schemes being accredited as part of the Offsets NES. However, accrediting State schemes is currently not formalised in policy or regulation. There is also a risk that State schemes will be ineligible due to *Principle 5 - Additionality*, which may be a limiting factor for legacy projects which require reassessment.

As a case in point, the Pilbara Environmental Offsets Fund (PEOF) provides proponents in the Pilbara with a key mechanism for delivering strategic, landscape-scale conservation outcomes. Proponents should be able to provide contribution through the PEOF as a form of offset for a Federal environmental approval. The PEOF is already widely used and supported by industry in the Pilbara. However, the current wording of *Principle 5* may rule the PEOF ineligible.

¹ Commonwealth Government. [Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy](#). October 2012.

We therefore recommend that the regulations and guidance for accreditation to partially or fully recognise existing State policy frameworks and offset funds where they deliver outcomes equivalent to, or better than, the Offsets NES.

We also welcome the explicit intent to include 'advanced offsets/advanced restoration action' in the framework, which capture the supply of offsets for future use, transfer or sale by proponents or offset providers.² However, despite this inclusion, there is currently no guidelines or authorised pathways for these to be considered and approved by DCCEEW.

To this end, we recommend the inclusion of an approved list of schemes within the regulation. This provides certainty to industry, and that these schemes apply regardless of Bilateral Agreements being secured with State or Territory Governments.

We also seek clear confirmation that, where a State scheme is endorsed or accredited as a contribution scheme with appropriate alignment, payment into a State scheme should fully discharge the EPBC Act obligation for the relevant residual significant impacts. A single payment should ordinarily satisfy both State and Commonwealth requirements, and contributions to accredited schemes should be taken to satisfy the additionality test.

Further, we recommend further detail regarding the mechanism for proposing advanced offsets be released, to ensure workability. This could be achieved by DCCEEW automatically recognising existing State processes for lodging advanced offsets.

Determining the baseline: CCIWA Members have noted that the baseline definition should be detailed further, as there are matters not currently captured in either regulation or policy. For example, neither document clearly articulates how predicted environmental changes factor into baseline calculations. This could result in a significant amount of extra survey data, for example if there is a need to predict movement of introduced species. Further, a specific offset site 'baseline' may not always be available as they relate to individual projects. The baseline should be the regional area that the program is being applied to, yet funds may be used for a number of activities in several locations.

Addressing ambiguity: For clarity in application, we recommend limiting the number of interchangeable terms within the Offsets Standards. This is not the first time that CCIWA has raised concerns with the use of terminology, and the risks associated with using terms with similar meaning, but different intent.³

For example, throughout the document, 'tangible' is used interchangeably with quantifiable and measurable. These all have different meanings and interpretations. Similarly, 'Net Gain' is used interchangeably with projected gain, measurable

² Commonwealth Government. [Policy Statement: Advanced environmental offsets under the Environmental Protection and Biodiversity Conservation Act 1999](#). September 2017.

³ Chamber of Commerce and Industry Western Australia. [Nature Positive – Consultation March 2024](#). May 2024

improvement, and gain. These introduce a high risk of conflation and divergence from regulatory requirements.

Similarly, the interchangeable use of 'repair', 'remediate', 'rehabilitation' and 'restoration' is creating a lot of confusion about what activities constitute repair and offsets for the purpose of the mitigation hierarchy.

To minimise the risk of conflation between the regulation and policy, or misapplication of the *EPBC Act* and regulation, we strongly suggest the use of non-ambiguous terminology that aligns with the EPBC Act.

Further clarification needed on core definitions and other NES: The policy and regulation diverge when clarifying key concepts such as, 'Net Gain'. This all has implications for future Bilateral Agreement with States, as the Minister must be satisfied that the accredited State process and the decisions made under it are 'not inconsistent' with all relevant NES.

Similarly, there is a lack of clarity over the number of NES being developed, their intent, and target audiences. In a recent Parliamentary debate, the Minister alluded to a standalone NES on 'Net Gain'.⁴ It is also unclear when a Restoration Contributions Calculator will be finalised.

Until industry have clarity over the full suite of regulations and policy, including the offsets calculator, it is difficult for industry to fully understand their requirements under the EPBC Act. This also hampers State Governments in their efforts to secure Bilateral Agreements, as they cannot compare future NES requirements against existing processes.

Should you wish to discuss the content of this letter further, please do not hesitate to contact Anthea Wesley, Head of Policy, via email .

Yours sincerely

Matt Golds
Acting CEO

⁴ Parliament of Australia. [Hansard – Senate, page 78](#). November 2025