

1 June 2026

Our ref: KB:P&E

Dr James Popple
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By email: [REDACTED]

Dear Dr Popple

Revised Draft National Environmental Standards for Environmental Offsets

Thank you for the opportunity to provide feedback for inclusion in the Law Council's submission on the exposure draft of the NES Environmental Offsets 2026 (**Offsets Standard**) and Updated Draft Policy Position Paper: NES for Environmental Offsets.

Members of our Planning and Environment Law Committee raise the following concerns about the Offsets Standard:

1. The Offsets Standard requires that offset activities deliver "the required net gain" to meet the Standard; however, this has not been defined. This concern is set out in more detail below.
2. There is currently nothing in the proposed regulatory framework that sets out guidance on how an offset or net gain payment will need to be calculated, leaving the determination of quantum up to broad discretion of the decision-maker. The Principles in the Offsets Standard are also not required to be applied when considering a restoration contribution charge payment as an offset option. This leaves room for considerable inconsistency in the determination of whether 'net gain' is achieved or the offsets proposed are adequate. This also brings into question how the framework will ensure adequate compensation for impacts is provided for, to ensure the framework assists in meeting the objects of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

Both of these issues could perhaps be rectified by providing reference to the development and implementation of an 'offsets calculator' in a regulation and linking this to the definition of 'net gain', as well as the method for determining the quantum of payment or activity for each offset.

3. We also raise the possible inconsistency of the Offsets Standard with the EPBC Act requirements at subclauses 7(2) and (4). This is less of an issue for the Offsets Standard, in our view, where the principles in this standard can be viewed more clearly as means by which the outcomes and objectives can be achieved. However, it appears the application of the objectives and outcomes are being bypassed, which is arguably out of alignment with the EPBC Act requirements as per the draft MNES Standard (we refer to our recent submission in relation to the draft MNES Standard).

Defining 'net gain'

As stated above, there is a need to define 'net gain' to provide a clear threshold for compliance with the Offsets Standard as:

1. Delivering 'required net gain' is now the test for whether the Offset Standard has been met.
 - a. The updated Objective of the Offsets Standard is generally to ensure that offset activities deliver the "required net gain".
 - b. Similarly, the Outcomes of the Standard include that offset activities provide a measurable improvement that is equal to or greater than "the required net gain" for the protected matter.
2. "Required net gain" means the net gain for the protected matter within the meaning of section 527K of the EPBC Act.
 - a. Section 527K provides that an action 'passes the net gain test' if complying with the conditions of the approval results in a net gain, as prescribed by regulations, or otherwise as the Minister is satisfied in appropriate.
 - b. There has been no proposal for regulations to prescribe net gain.
3. The 'Updated Draft Policy Position Paper: National Environmental Standard for Environmental Offsets' provides that:

"Policy documentation will provide guidance for application of the net gain test to protected matters, and outline the evidence required for the Minister to be satisfied compensation would achieve a net gain. The policy will be supported by an updated Offsets Calculator and a new Restoration Contributions Calculator."

While this is helpful, it brings into question whether the policy position will satisfy the requirements of section 527K for prescription via regulations. Further, it is difficult to assess the functional operation of the Offsets Standard in the absence of this detail.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

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Peter Jolly
President