BCA
Business Council of Australia

EPBC reforms: draft regulations

BCA submission on the exposure draft EPBC Amendment (2026 Measures No. 2) Regulations 2026

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1. Executive summary

The Business Council of Australia (BCA) counts more than 120 chief executives from leading companies across the Australian economy as members. Our members include companies directly involved in EPBC Act assessments and approvals, including in the mining and resources, energy, property, infrastructure and legal sectors. Our membership also has a strong interest in achieving positive environmental outcomes for the nation.

The BCA's view is that reform of the EPBC Act should deliver measurable improvements in environmental outcomes while supporting the efficient delivery of ecologically sustainable development. These objectives should be pursued together, with efficient processes supporting better environmental decision-making rather than coming at the expense of environmental protection. As implementation approaches, each piece of regulation should be considered with these dual goals in mind.

We welcome the opportunity to comment on the exposure draft Environment Protection and Biodiversity Conservation Amendment (2026 Measures No. 2) Regulations 2026 and the accompanying consultation papers, which support the next stage of reforms due to commence on 1 December 2026. The BCA will make a separate submission on the proposed Restoration Contributions Calculator methodology.

The BCA supports the recognition of advanced restoration actions. Bringing restoration forward can deliver earlier environmental benefits and give proponents more confidence about meeting future approval obligations. Realising these benefits will require binding rules on how environmental gains are recognised, retained and used. Businesses need to know what advanced restoration action registration confirms, how benefits can be transferred or applied over time, and how their investment will be treated if Standards or assessment methods change.

Referral and assessment requirements should be proportionate to an action's likely impacts and to the information reasonably available at each stage. Detailed information requirements at the referral stage can work against early engagement, when project design is still developing. Clear expectations, recognition of existing assessment work, and practical flexibility on offsets would reduce avoidable delay without weakening environmental scrutiny.

Bioregional planning and strategic assessments can help consider development and environmental outcomes across a wider area. To support investment, they need transparent rules on development capacity, a clear relationship with project-specific evidence and protection for work already done. Transitional provisions should preserve existing approvals and manage changes to Standards without requiring completed work to be repeated.

The BCA also seeks clear arrangements for recognising activities and payments that satisfy overlapping state and Commonwealth offset obligations for the same impact. The requirement to maintain restoration actions after an outcome has become durable, and its effect on the restoration contribution charge, should be reconsidered.

This submission proposes changes to the draft regulations and supporting guidance in each of these areas. Many of these matters will depend on guidance, which should be developed with meaningful stakeholder engagement.

2. Key recommendations

Recommendation 1: Provide certainty for advanced restoration investment

- Establish binding crediting rules and bankable units that can be used progressively to meet obligations, building on the draft's provision for transfer and partial use, and protect registered actions against later methodology changes.
- Separate registration from project-specific matching, track the benefits used and remaining, accommodate regional threat-abatement programs and allow proportionate reporting.
- Provide guidance on how gains are valued over time and applied to offset obligations, including whether they can meet all or part of an obligation and how they interact with other offsets, restoration contributions and the Nature Repair Market.

Recommendation 2: Make suspension or revocation of advanced restoration actions a last resort

Limit the compliance grounds for suspension or revocation to material failures, give registered persons notice and a reasonable opportunity to remedy issues before a decision is made, and support adaptive management where ecological outcomes are affected by factors outside their reasonable control.

Recommendation 3: Provide legal certainty for referrals

Recognising the limited design maturity available when proponents refer early, apply the referral requirements in Schedule 2, Part 1 to the extent practicable at referral stage, confirm that a gap in referral content does not of itself affect the validity of later decisions, and limit the uncertainty requirements in items 7.01(e) and 14.01(e) of Schedule 2 and item 7.01(e) of Schedule 4 to material uncertainties that could reasonably and practicably be reduced.

Recommendation 4: Clarify environmental history disclosures

Specify a disclosure period of, for example, five years, and limit disclosure to material matters, such as actual environmental harm or regulatory action. Clarify whether a parent body's history extends to its other subsidiaries, and limit disclosure of executive officers' histories to their time with the proponent or its parent body, and to matters known to the proponent after reasonable inquiry.

Recommendation 5: Make referral information requirements practical

- Revise timeframes to focus on each phase of an action rather than individual components and confirm that decommissioning and rehabilitation timeframes are indicative.
- Provide guidance on what will be accepted as 'confidential'.
- Limit historical land use descriptions to uses relevant to the site's current condition.
- Recognise that tenure and covenant mapping should be required only to the extent practicable, and set the impact threshold for mapping the affected area.
- Use consistent language when referring to compliance with National Environmental Standards.
- Clarify which version of a Standard applies if it is amended during a referral or assessment, and avoid requiring proponents to revisit work already completed in good faith against the Standard in force at the time.
- Add a note on greenhouse gas information for streamlined referrals.

Recommendation 6: Make assessment requirements clear and proportionate

- Clarify in EIS guidelines the scope and depth of assessment against relevant instruments, keeping it proportionate to likely impacts. Allow candidate offset sites or an offset strategy at the draft EIS stage, with provision to substitute an equivalent offset.

- Publish clear eligibility and completeness criteria for streamlined assessment, recognise existing studies and state assessment material, and credit completed work when an assessment changes pathway.

Recommendation 7: Provide clarity for existing approvals

Include a note in regulation 5.05 confirming that the requirements in subparagraph 5.05(c)(iv)–(vi) do not apply to applications to extend approvals for actions referred before the reforms commenced, and limit post-approval assessment to the proposed change and its incremental impacts.

Recommendation 8: Reduce legal risk in greenhouse gas information requirements

Prescribe a method for estimating greenhouse gas emissions, consistent with existing reporting obligations, and confirm that an estimate made using it is a reasonable estimate. Confirm that greenhouse gas information is provided for transparency rather than as a separate consideration in approval decisions.

Recommendation 9: Update publication requirements

Use Part 16 amendments to remove outdated publication requirements and align them with the Community Engagement Standard.

Recommendation 10: Provide transparent rules for development capacity under bioregional plans

- Clarify how the assumed development level foreshadowed in Consultation Paper 2, which is not included in the draft regulations, will be set, and how uncertainty and long-term development scenarios will be accommodated.
- Set regulatory zones and assumed development levels through a transparent, evidence-based process, in consultation with materially affected stakeholders.
- Publish information on remaining capacity and set clear rules for its allocation, the handling of competing applications, any reservation of capacity before registration, and the release of capacity when registrations lapse, as well as how plan changes affect projects working towards registration. Ensure plan changes do not retrospectively affect validly registered priority actions.

Recommendation 11: Ensure bioregional plans remain responsive to evidence and provide certainty

- Confirm that a bioregional guidance plan does not determine whether a project is acceptable and that more current or site-specific evidence must be considered.
- Prevent conclusions developed for one class of action from being applied to another without validation, and consider out-of-cycle review and proponent-initiated variation where material new evidence emerges between scheduled reviews.
- Distinguish the Standards that apply when a plan is made or materially amended from later Standards, which should be considered through the plan's review.

Recommendation 12: Preserve the value of strategic assessments through transition

- Clarify how strategic assessments interact with bioregional plans, including which applies where their requirements conflict, ensuring existing and commenced strategic assessments are recognised rather than duplicated or superseded.
- Ensure guidance allows strategic assessments to set program-level limits, outcomes and management frameworks, rather than requiring every future action to be assessed in the same detail as an individual project.
- Protect completed work through transitional arrangements for assessments underway before the new tests commence and for later changes to Standards.
- Ensure transitional rules cover existing approvals, assessments underway and changes to endorsed policies, plans or programs, distinguishing continued operation, new activities and variations requiring a further decision.

Recommendation 13: Retain the NOPSEMA strategic assessment until its replacement is ready

Keep the existing NOPSEMA strategic assessment in effect until a framework under sections 36G–36H of the Act has been developed through meaningful consultation and confirmed to be fit for purpose in all its elements, rather than transitioning to a fixed timetable. Confirm that the new legislative tests do not apply to its continued operation in the interim, and provide a managed transition that avoids disrupting Environment Plans already in preparation.

Recommendation 14: Avoid duplicate state and Commonwealth compensation

Specify when an activity or payment satisfies corresponding state and Commonwealth obligations, including the eligibility and evidence requirements that apply. Recognise that the same environmental benefit may satisfy overlapping obligations for the same impact, while preventing it from being counted against separate impacts.

Recommendation 15: Reconsider maintenance requirements for restoration actions

Reconsider requiring restoration actions delivered by the Restoration Contributions Holder to be maintained after an outcome has become durable, given that management plans must already set durability criteria, and ensure the maintenance assumption in the restoration contribution charge reflects any change.

Recommendation 16: Clarify compensation pathways for marine protected matters

Clarify how proponents can compensate for residual significant impacts on marine protected matters where offsets and restoration contributions are not practicable.

3. Advanced restoration actions

The BCA supports the recognition of advanced restoration actions in the EPBC framework. They allow proponents to undertake restoration before progressing a development proposal, bringing forward environmental benefits and providing greater certainty about future approval obligations. However, businesses will only invest if they can rely on the benefits they generate being recognised in future.

3.1 Registration of advanced restoration actions

The draft already provides for registration to be transferred (proposed regulation 6C.11) and for part of an action to be used to satisfy an approval condition (proposed regulation 6C.08). Building on this, the framework should establish binding crediting rules and bankable units, allow benefits to be used progressively to meet obligations, such as across stages of a project or as gains are verified, and protect registered actions against later changes in methodology, including changes to National Environmental Standards. Businesses investing before project approval need confidence that accepted evidence and demonstrated benefits can be relied on when an action is later proposed to meet an offset obligation. Registration cannot guarantee suitability for every future project, but clear rules should set out what it confirms, when accepted findings may be revisited and how later changes to Standards or assessment methods will affect registered actions.

The draft regulations separate registration from the use of an action to satisfy an approval condition. They should make clear that registration does not require a proponent to identify a future project or to meet project-specific requirements such as like-for-like matching. These should be assessed when registered benefits are proposed to offset the impacts of a particular project.

3.2 Advanced restoration actions in practice

Proponents also need to understand how the value of a registered action changes over time, including where an action is registered several years before a referral. Guidance should explain how environmental gains are quantified and converted into compensation value, how equivalence with residual impacts is assessed, and whether an advanced restoration action can satisfy all of an approval's offset obligation or only part of it. It should also clarify how registered actions relate to direct offsets and restoration contributions, how transferred actions are applied to future obligations, and how registered actions interact with biodiversity certificates under the Nature Repair Market.

A registered action should be able to deliver recognised benefits for different protected matters and different approvals, provided the same environmental gain is not counted twice. The register should track the environmental value used and remaining, so that using an action's benefit for one protected matter does not automatically exhaust its benefits for others.

The site-based information requirements in proposed regulation 6C.06 may not suit programs that operate across a region. The regulations should expressly allow for broader threat-abatement programs, such as feral cat control or reducing the impact of cane toads, where these can demonstrate measurable improvements for the relevant protected matters.

Reporting should be proportionate and avoid duplication. Proposed regulation 6C.14 requires a first report covering the period from registration to the end of that financial year, even if registration occurs shortly before 30 June. Reporting requirements also continue to apply where only part of an action has been used to satisfy an approval condition, which may duplicate reporting under that approval. The regulations should allow lighter reporting for short initial periods and consolidated reporting where obligations overlap, while maintaining appropriate oversight.

Recommendation 1: Provide certainty for advanced restoration investment

- Establish binding crediting rules and bankable units that can be used progressively to meet obligations, building on the draft's provision for transfer and partial use, and protect registered actions against later methodology changes.
- Separate registration from project-specific matching, track the benefits used and remaining, accommodate regional threat-abatement programs and allow proportionate reporting.
- Provide guidance on how gains are valued over time and applied to offset obligations, including whether they can meet all or part of an obligation and how they interact with other offsets, restoration contributions and the Nature Repair Market.

3.3 Managing uncertainty and revocation

How ecological uncertainty is treated will also affect willingness to invest. Drought, fire, flood, climate variability and other factors outside a proponent's reasonable control can affect the timing or scale of an environmental response, even where an action has been properly implemented. A broad power to suspend or revoke registration because an expected improvement is no longer considered likely could discourage early investment in restoration.

Consultation Paper 3 recognises that advanced restoration actions will be delivered through management plans that may change over time. The regulations should support adaptive management before suspension or revocation is considered, with these measures used as a last resort rather than as a response to ecological uncertainty alone.

The grounds for suspension or revocation in proposed regulation 6C.10(1)(a) and (b) should also be limited to material failures. Without a materiality threshold, a minor reporting delay or a technical departure from a management plan could lead to suspension. The registered person should be given notice and a reasonable opportunity to remedy the issue before suspension or revocation is considered. The draft does not expressly provide for notice or an opportunity to remedy before a decision is made.

Recommendation 2: Make suspension or revocation of advanced restoration actions a last resort

Limit the compliance grounds for suspension or revocation to material failures, give registered persons notice and a reasonable opportunity to remedy issues before a decision is made, and support adaptive management where ecological outcomes are affected by factors outside their reasonable control.

4. Referral requirements

4.1 Early referral and legal certainty

Referral requirements should support early engagement while recognising that project design will continue to evolve. The more detailed requirements assume a level of design maturity that is often not available at referral when proponents engage early in planning and design, as the Community Engagement Standard encourages. Referring early risks descriptions of activities and impacts becoming inaccurate as the design is refined, while referring later reduces the scope for public input to shape the design.

To address this tension and provide legal certainty, the referral requirements in Schedule 2, Part 1 of the EPBC Regulations (as amended by items 44–54 of the exposure draft) should apply to the 'extent practicable' at referral stage. The regulations should also confirm that a gap in referral content does not of itself affect the validity of later decisions.

Items 7.01(e) and 14.01(e) of Schedule 2, and item 7.01(e) of Schedule 4, require proponents to state whether uncertainties could be reduced by further assessment, without any qualification as to materiality or practicability. As further survey work is almost always possible, this risks becoming a routine basis for information requests, regardless of their value to the decision. These requirements should be limited to material uncertainties that could reasonably and practicably be reduced.

Recommendation 3: Provide legal certainty for referrals

Recognising the limited design maturity available when proponents refer early, apply the referral requirements in Schedule 2, Part 1 to the extent practicable at referral stage, confirm that a gap in referral content does not of itself affect the validity of later decisions, and limit the uncertainty requirements in items 7.01(e) and 14.01(e) of Schedule 2 and item 7.01(e) of Schedule 4 to material uncertainties that could reasonably and practicably be reduced.

4.2 Clarity of requirements

4.2.1 Environmental history

The environmental history requirements would benefit from clear limits. Proposed regulation 5.10(j), which applies when the person proposing to take an action changes, and Schedule 2, Part 2, item 10, which applies to referrals seeking streamlined assessment, reflect section 136(4) of the Act. They do not specify a period, a materiality threshold or how far related-entity histories extend. Because proposed regulation 5.10(j) requires a declaration and applies to every assessment pathway, this uncertainty creates a risk of inadvertent non-compliance.

The regulations should specify a disclosure period of, for example, five years, and limit disclosure to material matters, such as actual environmental harm or regulatory action. They should clarify whether a parent body's history extends to its other subsidiaries, and limit disclosure of executive officers' histories to their time with the proponent or its parent body, and to matters known to the proponent after reasonable inquiry, such as findings against an officer personally.

Recommendation 4: Clarify environmental history disclosures

Specify a disclosure period of, for example, five years, and limit disclosure to material matters, such as actual environmental harm or regulatory action. Clarify whether a parent body's history extends to its other subsidiaries, and limit disclosure of executive officers' histories to their time with the proponent or its parent body, and to matters known to the proponent after reasonable inquiry.

4.2.2 Other requirements

Several other requirements would benefit from clarification.

- Item 4.01(c) of Schedule 2 should focus on timeframes for each phase of the action, rather than for individual activities within each phase. Given the long operating life of many approved actions, guidance should confirm that decommissioning and rehabilitation timeframes provided at referral are indicative.
- Proposed regulation 4.03(2) allows confidential information to be omitted from a referral but does not define "confidential". Guidance on what the Department will accept would reduce the risk of disagreements being resolved through information requests that delay the controlled action decision.
- Item 4.01(b)(iv) of Schedule 2 requires historical land uses to be described, without specifying a timeframe or the evidence expected. Guidance should confirm that the requirement is limited to land uses relevant to the current condition of the project area, based on reasonably available records.
- Mapping requirements should reflect the relevance and availability of information. Item 5.05(c) of Schedule 2 would require tenure and covenants to be mapped across the whole affected area, which may extend well beyond land held by the proponent. As this information is largely held in state land registries, the requirement should apply to the extent practicable, consistent with the current regulations. The affected area under item 5.05 is also not limited to areas of significant impact. Guidance on the impact threshold at which the Department expects areas to be mapped would avoid unnecessarily broad affected areas at the referral stage.
- Terminology for National Environmental Standards should be consistent. Schedule 2 variously requires matters to "comply with" the Standards (items 11.02(e)(ii) and 14.01(f)), to be "in accordance with" them (items 4.01(i)(ii) and 11.01) or to be "consistent with" them (items 6.02(d) and 7.01(f)). The language should align with the Act's test of consistency, to avoid implying different thresholds.
- Many Schedule 2 items refer to National Environmental Standards "as in force from time to time". If a Standard is amended after a referral is made, proponents could be required to revisit statements of consistency and supporting work partway through an assessment, adding cost and delay. The regulations should clarify which version applies and avoid requiring proponents to revisit work already completed in good faith against the Standard in force at the time.
- Finally, as section 87(5A)(c) of the Act requires greenhouse gas emissions information for streamlined assessment, a note in Schedule 2, Part 2 should refer proponents to the requirements in section 84A.

Recommendation 5: Make referral information requirements practical

- Revise timeframes to focus on each phase of an action rather than individual components and confirm that decommissioning and rehabilitation timeframes are indicative.
- Provide guidance on what will be accepted as 'confidential'.
- Limit historical land use descriptions to uses relevant to the site's current condition.
- Recognise that tenure and covenant mapping should be required only to the extent practicable, and set the impact threshold for mapping the affected area.
- Use consistent language when referring to compliance with National Environmental Standards.
- Clarify which version of a Standard applies if it is amended during a referral or assessment, and avoid requiring proponents to revisit work already completed in good faith against the Standard in force at the time.
- Add a note on greenhouse gas information for streamlined referrals.

5. Assessment requirements

Assessment requirements should make clear what evidence is needed and which matters must be addressed.

5.1 Environmental impact statements

Proposed item 4B.01 of Schedule 4 requires an environmental impact statement (EIS) to assess whether the action, with the proposed measures, would not be inconsistent with specified agreements, instruments and plans. Although these categories are defined in the EPBC Act and the requirement is limited to relevant documents, the expected depth of assessment is unclear. EIS guidelines should identify the relevant documents and provisions, ensure that the assessment is proportionate to likely impacts, and explain how obligations that apply to governments are to be addressed at project level.

Offset requirements should also reflect the stage of project development. Proposed item 4A.01(c) of Schedule 4 requires a draft EIS to include the details and location of any proposed offset activity. Nominating a specific site at this stage may require commercial arrangements to be finalised before approval or a final investment decision, even though those arrangements may subsequently fall through. Proponents should be able to nominate one or more candidate sites, or an offset strategy that demonstrates feasibility under the Environmental Offsets Standard. Approval conditions should allow an equivalent offset to be substituted if a nominated site becomes unavailable.

5.2 Streamlined assessment pathway

The BCA supports the intent of the streamlined assessment pathway to provide faster decisions where proponents provide complete information at referral. Its value will depend on proponents having certainty at the outset. Clear, published eligibility and completeness criteria should be supported by early scoping advice and a clear approach to minor information gaps. Existing studies and state assessment material should be recognised. Where an assessment moves to a different pathway, completed work should be credited and the remaining information requirements, costs and timing explained.

Recommendation 6: Make assessment requirements clear and proportionate

- Clarify in EIS guidelines the scope and depth of assessment against relevant instruments, keeping it proportionate to likely impacts. Allow candidate offset sites or an offset strategy at the draft EIS stage, with provision to substitute an equivalent offset.
- Publish clear eligibility and completeness criteria for streamlined assessment, recognise existing studies and state assessment material, and credit completed work when an assessment changes pathway.

5.3 Variation of existing approvals

The treatment of existing approvals should be clear on the face of the regulations. Draft regulation 20.25(2) limits the new information requirements in regulation 5.05(c)(iv)–(vi) to approvals to which section 145D(3A) of the Act applies. As EPBC approvals can remain in force for long periods, a note in regulation 5.05 should make clear that these requirements do not apply to applications to extend approvals for actions referred before the reforms commenced.

Post-approval flexibility should not become a retrospective reassessment of settled matters, or a way of applying the new net gain and unacceptable impact tests to existing impacts. Assessment should be limited to the proposed change and its incremental impacts, with existing authorised impacts and conditions preserved.

Recommendation 7: Provide clarity for existing approvals

Include a note in regulation 5.05 confirming that the requirements in subparagraph 5.05(c)(iv)–(vi) do not apply to applications to extend approvals for actions referred before the reforms commenced, and limit post-approval assessment to the proposed change and its incremental impacts.

5.4 Other assessment matters

5.4.1 Greenhouse gas emissions information

No method has been prescribed under section 84A(5) of the Act for estimating greenhouse gas emissions, and the Act does not define what is a "reasonable estimate". The Revised Explanatory Memorandum to the Environment Protection Reform Bill 2025 indicated that disclosure requirements would be aligned with other government legislation and set out in regulations. Greenhouse gas emissions information is required across the assessment pathways, and for streamlined assessment its provision is a precondition for the Minister's choice of assessment approach (section 87(5A)(c)). Without a prescribed method, whether an estimate is reasonable is open to dispute, and decisions could be challenged on the basis that the information was inadequate. Once a method is prescribed, section 84A(8) requires proponents to use it, which would give a clear benchmark for compliance. The regulations should prescribe a method consistent with existing reporting obligations, and confirm that an estimate made in accordance with it is a reasonable estimate for the purposes of section 84A(2).

The Act requires greenhouse gas emissions information to be provided regardless of whether it relates to the relevant impacts of an action (section 84A(1)), and does not make it a separate consideration in approval decisions (section 136(1)). The Revised Explanatory Memorandum states that the requirement is intended to provide transparency and "is an information provision only and not a balancing consideration for decision making". The regulations or explanatory statement should confirm this, to reduce the risk that approvals are challenged on the basis that emissions information was not properly weighed.

Recommendation 8: Reduce legal risk in greenhouse gas information requirements

Prescribe a method for estimating greenhouse gas emissions, consistent with existing reporting obligations, and confirm that an estimate made using it is a reasonable estimate. Confirm that greenhouse gas information is provided for transparency rather than as a separate consideration in approval decisions.

5.4.2 Publication requirements

The amendments to Part 16 (publication requirements) foreshadowed in Consultation Paper 4 are not included in the exposure draft. They should remove outdated requirements and align publication and accessibility obligations with the Community Engagement Standard, to avoid duplication.

Recommendation 9: Update publication requirements

Use Part 16 amendments to remove outdated publication requirements and align them with the Community Engagement Standard.

6. Bioregional planning

6.1 Development capacity

Bioregional planning requires transparent rules on development capacity, as investment decisions will depend on them. Consultation Paper 2 proposes that a priority action may only be registered if it would not exceed the plan's assumed development level, but this requirement is not in the draft regulations. The framework should explain how assumed development capacity will be set and how uncertainty and long-term development scenarios will be accommodated. Regulatory zones and assumed development levels should be set through a transparent, evidence-based process, in consultation with materially affected stakeholders.

Proponents need information on remaining capacity and clear rules governing its allocation, the handling of competing applications and whether capacity can be reserved before registration. The Act already provides for registration to lapse if an action has not substantially commenced, subject to extension. The remaining rules should address how capacity is released or reallocated when registration lapses, and how later changes to a plan affect projects working towards registration. Later changes to a plan or its assumed development level should not retrospectively affect a validly registered priority action that is operating consistently with its conditions.

Recommendation 10: Provide transparent rules for development capacity under bioregional plans

- Clarify how the assumed development level foreshadowed in Consultation Paper 2, which is not included in the draft regulations, will be set, and how uncertainty and long-term development scenarios will be accommodated.
- Set regulatory zones and assumed development levels through a transparent, evidence-based process, in consultation with materially affected stakeholders.
- Publish information on remaining capacity and set clear rules for its allocation, the handling of competing applications, any reservation of capacity before registration, and the release of capacity when registrations lapse, as well as how plan changes affect projects working towards registration. Ensure plan changes do not retrospectively affect validly registered priority actions.

6.2 Practical considerations for bioregional planning

The relationship between the conclusions of a bioregional guidance plan and project-specific evidence also needs clarification. There is no express rule on how a decision-maker should resolve an inconsistency between the two. Without one, proponents may have to disprove a regional model rather than have better evidence assessed on its merits. The regulations should make clear that a bioregional guidance plan does not determine whether a project is acceptable, and that more current, higher-resolution or site-specific evidence must be considered.

Where plans are developed for particular sectors, sector-specific findings should not become general regulatory presumptions. A conclusion developed for one class of action should not be applied to another unless the plan identifies and validates the common impact pathways, assumptions and evidence, and explains any necessary qualifications.

Five-yearly reviews of bioregional plans allow for periodic correction but may be too slow to deal with material errors or new information. The Department should consider how out-of-cycle reviews and proponent-initiated variations will be handled where material new evidence or changed circumstances warrant it.

Bioregional plans will also need to respond to new or amended National Environmental Standards. Requiring an existing plan to become immediately consistent with a Standard made or amended after the plan was approved could alter the basis on which it was developed and create uncertainty for actions already considered or authorised. The regulations should distinguish the Standards that apply when a plan is made or materially amended from later Standards, which should be considered through the plan's review.

Recommendation 11: Ensure bioregional plans remain responsive to evidence and provide certainty

- Confirm that a bioregional guidance plan does not determine whether a project is acceptable and that more current or site-specific evidence must be considered.
- Prevent conclusions developed for one class of action from being applied to another without validation, and consider out-of-cycle review and proponent-initiated variation where material new evidence emerges between scheduled reviews.
- Distinguish the Standards that apply when a plan is made or materially amended from later Standards, which should be considered through the plan's review.

7. Strategic assessments

The regulations and guidance should clarify how strategic assessments and bioregional plans interact, particularly where they overlap, and which applies where their requirements conflict. Existing and commenced strategic assessments, including related development and restoration arrangements, should be recognised in bioregional planning rather than duplicated or superseded. Guidance should also allow strategic assessment requirements to be tailored to the program being assessed, rather than applying requirements designed for individual projects.

7.1 Transitional and change arrangements

Strategic assessments involve significant investment and can take considerable time. Substantial changes to National Environmental Standards during that time could undermine an assessment at an advanced stage. Transitional arrangements should protect work already undertaken, both for assessments underway before the new tests commence and where Standards change during future long-running, landscape-scale assessments.

The additional transitional rules foreshadowed in the consultation papers should expressly cover existing strategic assessment approvals, assessments underway and changes to endorsed policies, plans or programs. They should distinguish between continued operation under an existing approval, new activities covered by that approval and variations that require a further decision.

Recommendation 12: Preserve the value of strategic assessments through transition

- Clarify how strategic assessments interact with bioregional plans, including which applies where their requirements conflict, ensuring existing and commenced strategic assessments are recognised rather than duplicated or superseded.
- Ensure guidance allows strategic assessments to set program-level limits, outcomes and management frameworks, rather than requiring every future action to be assessed in the same detail as an individual project.
- Protect completed work through transitional arrangements for assessments underway before the new tests commence and for later changes to Standards.
- Ensure transitional rules cover existing approvals, assessments underway and changes to endorsed policies, plans or programs, distinguishing continued operation, new activities and variations requiring a further decision.

7.2 NOPSEMA strategic assessment

The existing NOPSEMA strategic assessment provides a well-established framework for managing the environmental impacts of offshore petroleum activities. Under it, Environment Plans must demonstrate that impacts and risks are reduced to as low as reasonably practicable and are of an acceptable level.

The reforms provide for offshore petroleum activities to move from the existing NOPSEMA strategic assessment to a NOPSEMA management or authorisation framework declared under section 36H of the Act. The BCA's concern is with how and when that transition occurs.

The existing strategic assessment should remain in effect until the new framework has been developed through meaningful consultation and confirmed to be fit for purpose in all its elements, including the National Environmental Standard for First Nations Engagement once finalised, rather than transitioning to a fixed timetable. In the interim, the Department should confirm that the new legislative tests do not apply to the continued operation of the existing strategic assessment, and clarify how they would apply to any variation required before the new framework commences.

The transition should be managed to avoid disrupting Environment Plans already in preparation. These have long lead times, and uncertainty during the changeover could delay offshore gas supply that is important to energy security.

Recommendation 13: Retain the NOPSEMA strategic assessment until its replacement is ready

Keep the existing NOPSEMA strategic assessment in effect until a framework under sections 36G–36H of the Act has been developed through meaningful consultation and confirmed to be fit for purpose in all its elements, rather than transitioning to a fixed timetable. Confirm that the new legislative tests do not apply to its continued operation in the interim, and provide a managed transition that avoids disrupting Environment Plans already in preparation.

8. Restoration contributions

8.1 State schemes

Clear arrangements are needed to avoid duplicate assessment and compensation requirements under state and Commonwealth frameworks. The Environmental Offsets Standard recognises payments into state offset funds and allows certain state offsets to meet additionality requirements. However, it is still unclear when an activity or payment satisfies both state and Commonwealth obligations, and what eligibility and evidence requirements apply.

These arrangements should recognise that the same environmental benefit may satisfy overlapping obligations for the same impact, while preventing it from being counted against separate impacts. Making this explicit would support consistent recognition without double counting.

Recommendation 14: Avoid duplicate state and Commonwealth compensation

Specify when an activity or payment satisfies corresponding state and Commonwealth obligations, including the eligibility and evidence requirements that apply. Recognise that the same environmental benefit may satisfy overlapping obligations for the same impact, while preventing it from being counted against separate impacts.

8.2 Maintenance periods

Under the draft regulations, the outcomes of direct restoration actions delivered by the Restoration Contributions Holder must be maintained for at least 25 years after delivery, even if they become durable sooner. Consultation Paper 3 explains that the Holder needs a standard maintenance period and that ecosystem resilience milestones typically occur around 25 years. That supports a standard approach but does not justify continued maintenance once the durability criteria in a management plan have been met. If those criteria are sound, maintenance beyond that point adds cost without additional environmental benefit, and that cost flows through to the restoration contribution charge. The 25-year minimum should be reconsidered. The draft regulations should also align with section 9(7) of the Environmental Offsets Standard, under which a result becomes durable once maintenance activities are no longer needed.

Recommendation 15: Reconsider maintenance requirements for restoration actions

Reconsider requiring restoration actions delivered by the Restoration Contributions Holder to be maintained after an outcome has become durable, given that management plans must already set durability criteria, and ensure the maintenance assumption in the restoration contribution charge reflects any change.

8.3 Marine protected matters

It is unclear how proponents can compensate for residual significant impacts on marine protected matters where neither an offset nor a restoration contribution is practicable. Offset activities in marine environments can be difficult to securely protect or to deliver on a like-for-like basis. The proposed Restoration Contributions Calculator methodology does not explain how it would be applied to marine protected matters, as its cost inputs, such as land values, vegetation types and remoteness categories, are designed for land-based restoration. Without a practical compensation pathway, it is unclear how an action with a residual significant impact on a marine matter could pass the net gain test.

Recommendation 16: Clarify compensation pathways for marine protected matters

Clarify how proponents can compensate for residual significant impacts on marine protected matters where offsets and restoration contributions are not practicable.

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